



Immigration: Terrorist Grounds for Exclusion and Removal of Aliens

Ruth Ellen Wasem, Michael John Garcia

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The Immigration and Nationality Act (INA) spells out a strict set of admissions criteria and exclusion rules for all foreign nationals who come permanently to the United States as immigrants (i.e., legal permanent residents) or temporarily as nonimmigrants. Notably, any alien who engages in terrorist activity, or is a representative or member of a designated foreign terrorist organization, is generally inadmissible. After the September 11, 2001, terrorist attacks, the INA was broadened to deny entry to representatives of groups that endorse terrorism, prominent individuals who endorse terrorism, and (in certain circumstances) the spouses and children of aliens who are removable on terrorism grounds. The INA also contains grounds for inadmissibility based on foreign policy concerns.

The report of the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) concluded that the key officials responsible for determining alien admissions (consular officers abroad and immigration inspectors in the United States) were not considered full partners in counterterrorism efforts prior to September 11, 2001, and as a result, opportunities to intercept the September 11 terrorists were missed. The 9/11 Commission's monograph, *9/11 and Terrorist Travel*, underscored the importance of the border security functions of immigration law and policy.

In the 110th Congress, legislation was enacted to modify the terrorism-related grounds for inadmissibility and removal, as well as the impact that these grounds have upon alien eligibility for relief from removal. The Consolidated Appropriations Act, 2008 (P.L. 110-161) modified certain terrorism-related provisions of the INA, including exempting specified groups from the INA's definition of "terrorist organization" and expanding immigration authorities' waiver authority over the terrorism-related grounds for exclusion. P.L. 110-257 expressly excludes the African National Congress (ANC) from being considered a terrorist organization, and provides immigration authorities the ability to exempt most terrorism-related and criminal grounds for inadmissibility from applying to aliens with respect to activities undertaken in opposition to apartheid rule in South Africa. Immigration reform is an issue in the 111th Congress, and legislative proposals may contain provisions modifying the immigration consequences of terrorism-related activity.

The case of Umar Farouk Abdulmutallab, who allegedly attempted to ignite an explosive device on Northwest Airlines Flight 253 on December 25, 2009, has refocused attention on terrorist screening during the visa process. He was traveling on a multi-year, multiple-entry tourist visa issued to him in June 2008. State Department officials have acknowledged that Abdulmutallab's father came into the Embassy in Abuja, Nigeria, on November 19, 2009, to express his concerns about his son, and that those officials at the Embassy in Abuja sent a cable to the National Counterterrorism Center. State Department officials maintain they had insufficient information to revoke his visa at that time.

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