

**DEPARTMENT OF HOMELAND SECURITY****Office of the Secretary****DEPARTMENT OF STATE****Office of the Secretary****Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act**

**AGENCY:** Office of the Secretary, DHS; Office of the Secretary, DOS.

**ACTION:** Notice of determination.

**DATES:** This determination is effective June 3, 2008.

**Authority:** 8 U.S.C. 1182(d)(3)(B)(i).

The Secretary of Homeland Security and the Secretary of State, following consultations with the Attorney General, hereby conclude, as a matter of discretion in accordance with our respective authorities under section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(3)(B)(i), as amended by the Consolidated Appropriations Act, 2008 (CAA), Public Law 110-161, Div. J, section 691(a), 121 Stat. 1844, 2364 (December 26, 2007), as well as the foreign policy and national security interests deemed relevant in these consultations, that section 212(a)(3)(B) of the INA, excluding subclause (i)(II), shall not apply with respect to an alien not otherwise covered by the automatic relief provisions of section 691(b) of the CAA, for any activity or association relating to the Mustangs, provided that there is no reason to believe that the relevant terrorist activities of the alien or the recipients were targeted against noncombatant persons, and further provided that the alien satisfies the relevant agency authority that the alien:

(a) Is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of each activity or association falling within the scope of section 212(a)(3)(B) of the INA;

(d) Poses no danger to the safety and security of the United States; and

(e) Is warranted to be exempted from the relevant inadmissibility provision by the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in

consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets the criteria set forth above.

This exercise of authority may be revoked as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply to any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the Department of Homeland Security or by the Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: June 3, 2008.

**Michael Chertoff,**

*Secretary of Homeland Security.*

**Condoleezza Rice,**

*Secretary of State.*

[FR Doc. E8-13642 Filed 6-17-08; 8:45 am]

**BILLING CODE 9111-97-P**

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(a) Is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of each activity or association falling within the scope of section 212(a)(3)(B) of the INA;

(d) Poses no danger to the safety and security of the United States; and

(e) Is warranted to be exempted from the relevant inadmissibility provision by the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and