1. Which of the exemptions cover interaction with the Taliban at checkpoints?

*AH: Depending on the circumstances, either the duress exemption (if the Taliban extracted something from the applicant at a checkpoint under actual threat of harm) or the “sub-duress” portion of the “certain limited material support” exemption (if, for example, the Taliban were not hostile but asked for money to let a person through a checkpoint and getting through that checkpoint was necessary to the applicant for the types of reasons the exemption contemplates).*

1. Asylum client’s PSG includes his family. His father was a colonel in the NDS. His family is in hiding. Can asylum be denied to my client because of his father’s activities in the NDS?

*AH: Assuming you have reason to think the father’s activities would cause the father to be denied asylum, the answer to this is likely no but would depend on what bar or inadmissibility ground USCIS is looking at as well as the son’s age/marital status and whether he was involved in any way in the acts that would likely result in a denial of admission/protection to the father.  If USCIS believed the father to be inadmissible to the U.S. on TRIG grounds, for example, the son would only need to be concerned about becoming inadmissible based on the simple fact of their family tie if the son is still a “child” under the INA (i.e., he is currently under 21 and remains unmarried), if the father’s activities that are problematic in this regard took place within the last 5 years, and if the son knew or reasonably should have known about them and has not renounced them.  If the son was providing what USCIS would consider to be “material support” to the father that went beyond what the “certain limited material support” or “insignificant material support” exemptions would cover, that might be an issue for the son—but it is not at all clear to me that USCIS would choose to treat the NDS as an undesignated (“Tier III”) terrorist organization for INA purposes, so I am a  skeptical that TRIG would turn out to be the relevant lens here.  The persecutor bar, which might be relevant if the father is known (to the son or more publicly) to have ordered the arbitrary detention or assassination of journalists, civil society activists, or others targeted based on protected grounds, would not apply to the son unless the son was actually involved in those acts in such a way as to trigger that bar.*

1. Does this apply to members of the Sepah branch of military service in Iran who want to come to the US?

*AH: Do the “certain limited material support” and “insignificant material support” exemptions potentially apply to people who performed mandatory military service in Iran during which they were assigned to Sepah, and have since separated from military service? Is that the question? I think that is unlikely because in general, military service is . . . military service, it’s typically not insignificant nor does it, in general, fall into the categories (humanitarian assistance/routine social transactions/routine commercial transactions/limited material support under pressure not rising to the level of duress) that the “certain limited material support” exemption would cover.  Also, having received military-type training not under duress is a separate inadmissibility ground.  There may be individual cases where these arguments could be made, and I am happy to talk separately about those, but I do not think this exemption is in general the one that is going to cure the problems of former Sepah conscripts.*

1. Can you please address situation where someone forced to receive military training, or join military? I am not sure I caught our explanation of what can be done.

*AH: There is a long-standing exemption covering receipt of military-type training under duress.  You can find its text and accompanying implementation memo here:* [*https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-grounds-trig/terrorism-related-inadmissibility-grounds-trig-situational-exemptions*](https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-grounds-trig/terrorism-related-inadmissibility-grounds-trig-situational-exemptions)*.  It applies to forced military training by Tier I, Tier II, or Tier III groups.  There is NOT, however, a general exemption for people who were also made to fight, even under duress, unless, for example, there is another exemption that would cover participation in combat with the particular armed group in question regardless of coercion.*

1. Can you speak to how and if these exemptions apply to the children of folks involved in these CIA-trained groups?

*AH: As I stated earlier, “child” is a term of art for INA purposes, and is defined by the INA to mean an unmarried person under the age of 21.  For any single kids under 21, their TRIG liability for the acts of their parents, whether CIA-involved or otherwise, would depend on whether (1) the activities that would cause the parent to be found inadmissible occurred within the last 5 years, (2) the child knew or reasonably should have known about those activities, and (3) the child has not renounced those activities.  Assuming the child never participated in those activities or endorsed them to begin with, “renouncing” in this context would normally mean dissociating him/herself from the acts, not approving them, etc.  The question of renunciation should not arise as a problem for children too young to have approved of their parent’s activities to start with.*

1. How do we handle a situation where our client stated he wanted to return back to Afghanistan and do military activities. This is outside the TRIG exemption, right? Thus inadmissible right?

*AH: Not necessarily!  One, not all military activities constitute “terrorist activity” under the INA.  Two, what does he mean when he says he “wants to return back to Afghanistan”?  I mean, I may want to be Secretary of Homeland Security, but is that a thing that is at all likely to happen?  Am I preparing or planning for this (for those who don’t know me, the answer to both these questions is a clear no)?  Look at the INA’s definition of “engaging in terrorist activity”—it doesn’t penalize people for dreaming of overthrowing the Taliban, or whatever your person has in mind.*

1. How do we handle the public assistance questions? Do we just say that Special Immigrant Afghans are exempt from this for public charge inadmissibility?

*AH: I would generally answer the question, just to avoid an unnecessary RFE, but public charge does not apply to SIV adjustment and you can note that on the form.  Or you can hand-write “Please see attached” under the “Yes/No” boxes on the form and attach the same explanation.*

1. When Anwen said “Let’s see what the implementation says” is this a way of saying someone who worked for CIA groups who committed acts against noncombatants may be given the OK from DHS? Is there still a duress? Didn’t Barr kill that?

*AH: For all of these exemptions it will be important to read carefully the implementation guidance, but no, that is definitely NOT what I was saying.  Not having engaged in activities that the actor knew or reasonably should have known targeted noncombatant persons has been a threshold requirement for ALL of the TRIG exemptions issued to date, including the “Afghan Allies” exemption (see text of the exemption announcement, which includes this caveat).  I do not expect this to change and would be horrified if it did.  I am not quite sure I understand the question about duress—the BIA has rejected duress as a legal defense to the material support bar, but there is discretionary authority for DHS to grant an exemption to the TRIG grounds for material support, receipt of military-type training, and solicitation of funds or members for a terrorist organization if those were done under duress.  There is not however a general duress exemption for those who actually took part in combat under coercion.*

Additional question from the chat:

1. Is payment to Taliban kidnappers material support of terrorism?

*AH: DHS would consider it so, but would also consider it to be covered by the “material support under duress” exemption.*