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Iraqi and Afghan Special Immigrant Visa Programs

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Summary

Congress has enacted a series of legislative provisions since 2006 to enable certain Iraqi and Afghan nationals to become U.S. lawful permanent residents (LPRs). These provisions make certain Iraqis and Afghans who worked as translators or interpreters, or who were employed by, or on behalf of, the U.S. government in Iraq or Afghanistan, eligible for *special immigrant* visas (SIVs). Special immigrants comprise a category of permanent employment-based admissions under the Immigration and Nationality Act (INA). While the special immigrant category is unique, it does bear some similarities to other admission categories that are authorized by other sections of the INA, including refugees and Amerasian children.

To apply under the SIV programs for Iraqis or Afghans, a prospective special immigrant must submit a petition to the Department of Homeland Security; be otherwise eligible for an immigrant visa; and be otherwise admissible to the United States. An Iraqi or Afghan SIV applicant whose petition is approved and who is abroad is required to have an in-person visa interview at a U.S. embassy or consulate abroad to determine visa eligibility. Upon admission to the United States, SIV recipients are granted LPR status. Iraqi and Afghan special immigrants are eligible for the same resettlement assistance and federal public benefits as refugees.

There are three SIV programs for Iraqi and Afghan nationals. One is a permanent program for certain Iraqis and Afghans who have worked directly with U.S. Armed Forces, or under Chief of Mission authority, as translators or interpreters. This program is currently capped at 50 principal aliens (excluding spouses and children) per year.

The other two SIV programs for Iraqis and Afghans are temporary. One program is for certain Iraqis who were employed in Iraq by, or on behalf of, the U.S. government during a specified period. It was capped at 5,000 principal aliens annually for FY2008 through FY2012 and included a provision to carry forward any unused numbers from one fiscal year to the next. It expired at the end of FY2013, but was subsequently revived. Current statutory authority provides for the issuance of no more than 2,500 visas to principal applicants after January 1, 2014. Applications are no longer being accepted for this program because the application deadline has passed.

There is a similar SIV program for certain Afghans who were employed in Afghanistan by, or on behalf of, the U.S. government or by the International Security Assistance Force during a specified period. The program was capped at 1,500 principal aliens annually for FY2009 through FY2013, with a provision to carry forward any unused numbers from one fiscal year to the next. Current statutory authority provides for the issuance of no more than 22,500 visas to principal applicants after December 19, 2014. The application period for this program remains open.

Through the end of FY2019, more than 89,000 individuals were granted special immigrant status under the three SIV programs for Iraqi and Afghan nationals. Principal applicants accounted for about 28,000 of the total, and dependent spouses and children accounted for the remaining 61,000.

The Iraqi and Afghan SIV programs have faced challenges with respect to application processing, security screening, and visa availability. The structure of the SIV programs themselves, with statutory timeframes and numerical limitations, introduces additional complication.

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Introduction

> The hundreds of Iraqi interpreters who work for the U.S. military conceal their identities in distinctive ways.
>
> One wears a bulletproof Kevlar helmet and a black mask. Another wears sunglasses and a balaclava that covers his entire head.
>
> What they share is the extraordinary danger of their job. Targeted for death by insurgents, they also face suspicion from their employers and often lie to relatives for fear that word of their job will get out.[1]

This excerpt from a January 2006 article in a Michigan newspaper suggests the dangerous work that Iraqi interpreters and translators performed in support of the U.S. war effort. Other sources similarly document the work performed by Afghan interpreters and translators and the danger they face. For example, a former Afghan interpreter for the U.S. military, profiled in a January 2017 article, said that it was too dangerous for him to return from the Afghan capital to his native province because of the Taliban. According to the interpreter

> [Taliban] will stop the car and block the road, and say, 'Come here, I need you, bro' … Then hang me or shoot me.[2]

In January 2006, the 109th Congress enacted the first in a series of legislative provisions to enable certain Iraqi and Afghan nationals to become U.S. lawful permanent residents (LPRs)[3] based on their service to the U.S. government. Section 1059 of the National Defense Authorization Act (NDAA)[4] for FY2006 made certain Iraqi and Afghan nationals who had worked directly with U.S. Armed Forces as translators eligible for *special immigrant* visas (SIVs). Special immigrants comprise a category of permanent employment-based admissions under the Immigration and Nationality Act (INA).[5] Upon admission to the United States, holders of SIVs are granted LPR status. A House Judiciary Committee report on a related bill in the 109th Congress to provide special immigrant status for Iraqi and Afghan translators (H.R. 2293) described the need for the legislation, as follows:

> A number of alien translators currently working in Iraq and Afghanistan embedded with units of the U.S. Armed Forces are providing extremely valuable services. Their cooperation and close identification with the U.S. military have put these individuals and their families in danger. This danger will only escalate after U.S. forces leave or reduce their strength in Iraq and Afghanistan.[6]

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[1] "'Terps' Stick Their Necks Out; Iraqi Interpreters Put Lives on the Line to Assist War Effort," *Grand Rapids Press*, January 29, 2006, p. A14.

[2] Elise Blanchard, "Afghan Translators Hope U.S. Visas Will Arrive Before The Taliban Does," Huffington Post, January 18, 2017, https://www.huffingtonpost.com/entry/afghan-translators-us-visas-taliban_us_587fbcdae4b0c147f0bca672; see also T.A Frail, "The Tragic Fate of the Afghan Interpreters the U.S. Left Behind," Smithsonian Magazine, November 2016, https://www.smithsonianmag.com/history/tragic-fate-afghan-interpreters-left-behind-180960785/.

[3] *Lawful permanent residents*, also known as *immigrants* and *green card holders*, are noncitizens who are legally authorized to reside permanently in the United States.

[4] P.L. 109-163.

[5] Act of June 27, 1952, ch. 477, as amended, codified at 8 U.S.C. §1101 et seq.

[6] U.S. Congress, House Committee on the Judiciary, *To Provide Special Immigrant Status for Aliens Serving as Translators with the United States Armed Forces*, report to accompany H.R. 2293, 109th Cong., 1st sess., H.Rept. 109-99, May 26, 2005.

Congress subsequently broadened the special immigrant classification for translators and also authorized a second special immigrant classification for certain Iraqi and Afghan nationals who had worked for, or on behalf of, the U.S. government in Iraq or Afghanistan, respectively.

This report analyzes the SIV classifications for Iraqis and Afghans within the context of both the larger INA special immigrant category and selected other permanent admissions categories. It discusses the legislative changes to the individual Iraqi and Afghan special immigrant programs since their initial authorization, provides statistics on visa issuances, and considers challenges the programs have faced.

Legislative History of the Special Immigrant Category

The term *special immigrant* is defined in Section 101(a)(27) of the INA. The definition consists of an enumeration of classifications eligible for this category, such as LPRs who are returning from a temporary stay abroad.[7] Most special immigrant classifications are subject to an annual numerical limitation.[8]

The special immigrant category was added to the INA by a 1965 immigration law, known as the 1965 amendments.[9] The INA, as originally enacted in 1952, included a predecessor category of *nonquota immigrants*, immigrants who could be admitted to the United States without regard to numerical limitations. In the 1952 act, these nonquota immigrants included returning LPRs, natives of Western Hemisphere countries, ministers of religion, and long-serving employees of the U.S. government abroad, among other groups. The 1965 amendments redesignated the *nonquota immigrants* as *special immigrants* and made some changes to the various classifications.

The Immigration Act of 1990 further amended the special immigrant provisions in the INA.[10] It placed the special immigrant category under a revised INA section on permanent employment-based immigration[11] and imposed an overall annual numerical limitation of 10,000 on special immigrants, with exemptions for certain classifications.[12] In addition, the 1990 act amended the existing special immigrant classifications and added several new ones. A 1991 immigration act[13] changed the overall annual limitation on special immigrants from 10,000 to 7.1% of the worldwide level of employment-based immigration.[14] Subsequent laws added new special immigrant classifications.

Today the special immigrant category encompasses a hodgepodge of classifications, but there are some commonalities among the seemingly disparate groups. Many of the classifications, for example, have a humanitarian element. In another commonality, some of the classifications are

[7] INA §101(a)(27)(A). Returning LPRs are the largest special immigrant group.

[8] Returning LPRs are an exception; this special immigrant classification is not subject to a numerical limitation.

[9] P.L. 89-236.

[10] P.L. 101-649.

[11] INA §203(b). See CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[12] The 1990 act also imposed a cap of 5,000 on religious workers other than ministers within the overall annual numerical limitation of 10,000.

[13] Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (P.L. 102-232).

[14] The base worldwide limit on employment-based immigration is 140,000; using this base, the special immigrant limit of 7.1% equals 9,940. See CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

directed at individuals in certain fields of work that have a public service component. These include classifications for religious workers, graduates of foreign medical schools licensed to practice medicine in the United States, and international broadcasters.[15]

Particularly relevant for this report are special immigrant classifications that apply to individuals who have worked for the U.S. government. These include classifications for 15-year employees or former employees of the U.S. government abroad; nationals of Panama who are 15-year employees or former employees of the U.S. government in the former Canal Zone; and individuals who, after lawful enlistment abroad, have served or will serve on active duty in the U.S. Armed Forces for 12 years.[16] Some of the classifications based on U.S. government employment apply to individuals who are placed in danger because of their work. For example, there is a special immigrant classification for individuals who were employees of the Panama Canal Company or Canal Zone Government on April 1, 1979, who provided faithful service for at least five years, and "whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment."[17] As discussed in the next section, the two special immigrant classifications for Iraqis and Afghans similarly apply to individuals who performed U.S. government-related service, with one requiring the presence of a serious threat to the individual as a result of that U.S. government employment.

Special Immigrant Visas for Iraqis and Afghans

There are two special immigrant classifications specifically for nationals of Iraq and Afghanistan: one for individuals who worked as translators or interpreters and one for individuals who were employed by, or on behalf of, the U.S. government in Iraq or by, or on behalf of, the U.S. government or by the International Security Assistance Force in Afghanistan. These classifications, in their current form, are the product of a series of legislative enactments, which initially established the classifications and then amended them (see **Table 1** for a comparison of the main features of the programs within these classifications). These legislative enactments were free-standing measures; they did not amend INA Section 101(a)(27). For this reason, the special immigrant classifications for Iraqis and Afghans are *not* enumerated in INA Section 101(a)(27).[18]

Under both classifications, a prospective Iraqi or Afghan special immigrant must submit a petition; be otherwise eligible to receive an immigrant visa; and be otherwise admissible to the United States for permanent residence, as specified. Regarding this last requirement, in order to gain admission to the United States, an individual must be *admissible* under the INA. The INA sets forth various grounds of inadmissibility, which include health-related grounds, security-related grounds, and public charge (i.e., indigence). The public charge ground does not apply to

[15] INA §101(a)(27)(C), (H), (M).

[16] INA §101(a)(27)(D), (F), (K). With respect to the Panamanian nationals, in the early 1900s the United States gained rights to build and operate the Panama Canal and gained permanent rights to a Panama Canal Zone. Under the terms of the Panama Canal Treaty of 1977, the Panama Canal Zone ceased to exist in 1979 and the Canal was turned over to the Panamanians in 1999. U.S. Department of State, Office of the Historian, Milestones: 1977-1980, "The Panama Canal and the Torrijos-Carter Treaties," http://history.state.gov/milestones/1977-1980/panama-canal.

[17] INA §101(a)(27)(G). April 1, 1979, was the effective date of the exchange of instruments of ratification of the Panama Canal Treaty of 1977.

[18] The statutory provisions establishing the translator/interpreter program and the program for Afghans employed by, or on behalf of, the U.S. government are codified at 8 U.S.C. Section 1101 note. The statutory provisions establishing the program for Iraqis employed by, or on behalf of, the U.S. government are codified at 8 U.S.C. Section 1157 note.

applicants under the special immigrant programs for Iraqis and Afghans; thus, these applicants are not required to demonstrate economic self-sufficiency.

Aliens Who Worked as Translators or Interpreters

Section 1059 of the FY2006 NDAA made certain Iraqi and Afghan nationals who had worked directly with U.S. Armed Forces for at least one year as translators, and their spouses and children, eligible to be classified as special immigrants. The provision capped the number of principal aliens[19] who could become special immigrants at 50 annually and provided that these individuals would count against the overall special immigrant cap (see "Legislative History of the Special Immigrant Category").

Section 1059 was amended in 2007[20] to expand eligibility to certain Iraqi and Afghan nationals who had worked directly with U.S. Armed Forces, or under Chief of Mission authority,[21] for at least one year as translators or interpreters. To be eligible for this special immigrant classification, as amended, the alien also had to obtain a favorable written recommendation from the Chief of Mission or a general or flag officer in the relevant Armed Forces unit. The 2007 legislation temporarily increased the numerical limit on this special immigrant program (to 500 for each of FY2007 and FY2008) and provided that the classification would be exempt from the overall numerical limits on special immigrants.[22] Another 2007 amendment provided that if the numerical limits were not reached in a fiscal year any remaining numbers would be carried forward to the next year.[23]

Aliens Who Worked for the U.S. Government

A second special immigrant classification for nationals of Iraq or Afghanistan and their spouses and children was established by Section 1244 of the FY2008 NDAA (for Iraqis) and by Title VI of the Omnibus Appropriations Act, 2009 (for Afghans).[24] This classification, as subsequently amended, is for certain Iraqi and Afghan nationals who were employed by, or on behalf of, the U.S. government in Iraq or Afghanistan, respectively, as specified. The Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for FY2015[25] expanded eligibility for the Afghan program to include employees of the International Security Assistance Force who served

[19] Excluding spouses and children.

[20] P.L. 110-28, Title III, §3812; P.L. 110-36. These two public laws include many of the same provisions on special immigrant visas for Iraqi and Afghan translators and interpreters.

[21] The Chief of Mission is the principal officer in charge of a U.S. diplomatic mission abroad. An individual who worked for the U.S. Embassy in Baghdad, Iraq, or the U.S. Embassy in Kabul, Afghanistan, directly (not as a contractor) is deemed to have worked under Chief of Mission authority.

[22] In addition, the legislation authorized the Secretary of Homeland Security to adjust the status of an alien to LPR status if the alien (1) had been paroled into the country or admitted as a temporary legal resident and (2) was otherwise eligible for the special immigrant classification, even if the alien was not in a lawful immigration status, had engaged in unauthorized employment, or had otherwise violated the terms of his or her nonimmigrant visa. With some exceptions, such behavior would typically make an alien ineligible to adjust to LPR status. Parole is discretionary authority that may be exercised by DHS to allow an alien to enter the United States temporarily (without being formally admitted) for urgent humanitarian reasons or when the entry is determined to be for significant public benefit.

[23] P.L. 110-161.

[24] P.L. 110-181 (Iraqis); P.L. 111-8 (Afghans).

[25] P.L. 113-291, §1227.

as interpreters or translators while travelling off base with U.S. military personnel or who performed sensitive activities for U.S. military personnel.

To be eligible for this special immigrant classification for nationals of Iraq or Afghanistan, an alien must obtain a recommendation from a senior supervisor that documents the alien's "faithful and valuable service" as well as approval from the Chief of Mission. In addition, an applicant must have experienced "an ongoing serious threat" as a result of his or her employment.

Iraqi Program

The Section 1244 program for Iraqis who were employed by, or on behalf of, the U.S. government in Iraq requires not less than one year of employment on or after March 20, 2003. The law that originally established the program did not specify an end date for the employment period. The Iraqi program was initially capped at 5,000 principal aliens annually for five years (later specified as FY2008-FY2012)[26] with a provision to carry forward any unused numbers from one fiscal year to the next, including from FY2012 to FY2013. This program expired for principal aliens at the end of FY2013.[27]

At the beginning of FY2014, however, the 113th Congress approved a short-term extension of the program in P.L. 113-42.[28] For FY2014, P.L. 113-42 provided for the approval of cases that were pending when the program expired on September 30, 2013, as well as 2,000 new cases, as long as the principal aliens in the new cases completed the required one-year period of employment by September 30, 2013, and filed an application with the Chief of Mission in Iraq by December 31, 2013. The NDAA for FY2014[29] rewrote the extension language in P.L. 113-42 to provide for the issuance of no more than 2,500 visas to principal applicants after January 1, 2014, and to extend the application deadline to September 30, 2014 (for an overview of the application process, see "Iraqi and Afghan Special Immigrant Visa Application Process"). No changes to the numerical cap or application deadline have been made since then.

Afghan Program

A similar SIV program for Afghans who were employed by, or on behalf of, the U.S. government in Afghanistan, as originally enacted, required not less than one year of employment on or after October 7, 2001. It was initially capped at 1,500 principal aliens annually for FY2009 through FY2013 with a provision to carry forward any unused numbers from one fiscal year to the next, including from FY2013 to FY2014.

Several laws passed by the 113th Congress amended the Afghan program's numerical limitations to provide for additional visas. The FY2014 Consolidated Appropriations Act[30] provided for the granting of special immigrant status to up to 3,000 principal aliens for FY2014 and the carrying forward and use of any unused balance for FY2014 through the end of FY2015. This law required the one-year employment period to end by December 31, 2014, and required principal aliens to

[26] P.L. 110-242.

[27] At the time, USCIS maintained that "the authority to grant derivative [special immigrant visa] status to spouses and children of principal Iraqi SIVs did not sunset on Sept. 30, 2013." USCIS, "Special Immigrant Visa Program for Iraqi Nationals Who Worked For or On Behalf Of the U.S. Government Extended," news alert, http://www.uscis.gov/news/alerts/special-immigrant-visa-program-iraqi-nationals-who-worked-or-behalf-us-government-extended.

[28] §1.

[29] P.L. 113-66, §1218.

[30] P.L. 113-76, Div. K, §7034(o).

file an application with the Chief of Mission in Afghanistan by September 30, 2014 (see "Iraqi and Afghan Special Immigrant Visa Application Process"). The Emergency Afghan Allies Extension Act of 2014[31] provided that an additional 1,000 principal aliens could be granted special immigrant status by December 31, 2014. This language required principal aliens to apply to the Chief of Mission no later than the same December 31, 2014, date.

Making further changes to the Afghan program's numerical limitations, the FY2015 NDAA provided that an additional 4,000 principal aliens could obtain special immigrant status from the enactment date (December 19, 2014) through September 30, 2016. For purposes of obtaining special immigrant status under the new provision, the law set the termination date for the required one-year employment period at September 30, 2015, the deadline to apply to the Chief of Mission at December 31, 2015, and the expiration date for the visa issuance authority at March 31, 2017.

Legislation passed in the 114th Congress further amended the Afghan SIV program. The NDAA for FY2016[32] increased from 4,000 to 7,000 the number of additional special immigrant visas available for issuance after December 19, 2014, and provided that these visas would remain available until used. The act also modified the employment requirements for certain applicants, requiring no less than two years of employment for those filing petitions after September 30, 2015, and extended both the employment period for eligibility and the application deadline until December 31, 2016. Regarding the future of the Afghan SIV program, the act included the following provision:

> It is the sense of Congress that the necessity of providing special immigrant status under this subsection should be assessed at regular intervals by the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, taking into account the scope of the current and planned presence of United States troops in Afghanistan, the current and prospective numbers of citizens and nationals of Afghanistan employed ... and the security climate in Afghanistan.

The NDAA for FY2017[33] increased the number of additional special immigrant visas to 8,500 and extended both the employment eligibility period and the application deadline to December 31, 2020. At the same time, it placed restrictions on qualifying employment for, or on behalf of, the U.S. government for visa issuance purposes for applications filed after the law's date of enactment (December 23, 2016), which mirrored existing requirements for employees of the International Security Assistance Force. For applications filed after December 23, 2016, it limited eligibility to Afghans employed in Afghanistan (1) to serve as interpreters and translators, particularly while traveling away from U.S. embassies and consulates with personnel of the Department of State (DOS) or the U.S. Agency for International Development, or traveling off base with U.S. military personnel; or (2) to perform sensitive activities for the U.S. government in Afghanistan.

In the 115th Congress, the FY2017 Consolidated Appropriations Act[34] increased the number of additional visas available under the SIV program for Afghans who were employed by, or on behalf of, the U.S. government from 8,500 to 11,000. The NDAA for FY2018[35] provided 3,500 additional visas under this program, for a total of 14,500 visas available for issuance after

[31] P.L. 113-160, §1.

[32] P.L. 114-92, §1216.

[33] P.L. 114-328, §1214.

[34] P.L. 115-31, Div. J, §7083.

[35] P.L. 115-91, §1213.

December 19, 2014. The employment termination date and the application deadline remained unchanged at December 31, 2020.

In the 116th Congress, the FY2019 Consolidated Appropriations Act[36] makes an additional 4,000 visas available under the SIV program for Afghans who were employed by, or on behalf of, the U.S. government, and leaves the employment termination date and the application deadline at December 31, 2020. This law also makes the funding for the additional 4,000 visas conditional on the Secretary of State developing a system for prioritizing the processing of Afghan SIV applications and submitting specified reports, including a report on processing improvements that was required under the NDAA for FY2019[37] (see "Application Processing").

The FY2020 NDAA authorizes additional visas and makes other changes to the SIV program for Afghans who were employed by, or on behalf of, the U.S. government.[38] It provides 4,000 additional visas, bringing the total number of such visas available for issuance to 22,500. It also extends the employment termination date and application deadline to December 31, 2021. In addition, the Afghan SIV provision modifies the program's eligibility criteria by eliminating certain employment requirements that were added by the FY2017 NDAA. As noted above, in the case of applications filed after December 23, 2016, the FY2017 NDAA limited eligibility based on U.S. government employment to Afghans who were employed as interpreters and translators or to perform sensitive activities. The FY2020 NDAA provision restores the more general requirement of employment by, or on behalf of, the U.S. government. It does not change the eligibility requirements applicable to employment for the International Security Assistance Force.

A separate provision in the FY2020 NDAA institutes reporting requirements related to the Afghan and Iraqi SIV programs.[39] It directs the DOS Inspector General to submit a report to specified congressional committees that "evaluate[s] the obstacles to effective protection of Afghan and Iraqi allies through the special immigrant visa programs" and suggests improvements for future programs.

Conversion of Petitions

As noted, since FY2009, the annual numerical limit on the Section 1059 program for translators and interpreters has been 50, well below the numerical limits on the programs for Iraqis and Afghans who were employed by, or on behalf of, the U.S. government in Iraq or Afghanistan, respectively. A 2008 law[40] authorized the Secretary of Homeland Security or the Secretary of State to convert an approved special immigrant petition under the former program (filed before October 1, 2008) for which a visa was not immediately available to an approved petition under the latter program and subject to the numerical limits of that latter program.

[36] P.L. 116-6, Div. F, §7076.

[37] P.L. 115-232, §1222.

[38] P.L. 116-92, §1219.

[39] P.L. 116-92, §1215.

[40] P.L. 110-242.

Table 1. Comparison of Iraqi and Afghan Special Immigrant Visa Programs

	Iraqis and Afghans Who Worked as Translators or Interpreters	Iraqis Who Worked for or on Behalf of the U.S. Government	Afghans Who Worked for or on Behalf of the U.S. Government or for the International Security Assistance Force
Nature/duration of Program	Permanent	Temporary (until all visas issued)	Temporary (until all visas issued)
Required work period for eligibility	At least 1 year	At least 1 year between 3/20/2003 and 9/30/2013	At least 1 year (or at least 2 years if petition filed after 9/30/15) between 10/7/2001 and 12/31/2021
Ability of spouse/children to accompany	Yes	Yes	Yes
Application deadline	None	9/30/2014	12/31/2021
Current numerical cap	50 per year	2,500 after 1/1/2014	22,500 after 12/19/2014
Eligibility for refugee benefits	Yes	Yes	Yes

Source: P.L. 109-163, §1059, as amended, 8 U.S.C. §1101 note; P.L. 110-181, §1244, as amended, 8 U.S.C. §1157 note: P.L. 111-8, §602, as amended, 8 U.S.C. §1101 note.

Iraqi and Afghan Special Immigrant Visa Application Process

The process of applying for an Iraqi or Afghan special immigrant visa has multiple steps. The application process described in this section is for Iraqis and Afghans who are abroad, who represent the vast majority of applicants.[41] (An applicant in the United States whose petition for classification as a special immigrant is approved under the process described below could then submit an application to adjust status[42] along with supporting documentation; applicants in the United States do not go through the visa process.)

The first step under the programs for Iraqis and Afghans who worked for or on behalf of the United States is to apply for Chief of Mission approval. To apply, the principal applicant must submit documentation to DOS, including, among other required information, a letter from the applicant's employer confirming employment; a letter of recommendation from the applicant's direct U.S. citizen supervisor; and a statement from the applicant describing the threats he or she received as a result of his or her U.S. government employment. If approval is granted, the applicant receives a Chief of Mission approval letter.

The next step for applicants under the special immigrant programs for Iraqis and Afghans who worked for, or on behalf of, the United States—and the first step for applicants under the program

[41] For additional information on the application process, see U.S. Department of State, Bureau of Consular Affairs, *Special Immigrant Visas (SIVs) for Iraqi and Afghan Translators/Interpreters*; U.S. Department of State, Bureau of Consular Affairs, *Special Immigrant Visas for Iraqis - Who Were Employed by/on Behalf of the U.S. Government*; and U.S. Department of State, Bureau of Consular Affairs, *Special Immigrant Visas for Afghans - Who Were Employed by/on Behalf of the U.S. Government*, all available through https://travel.state.gov/content/visas/en/immigrate.html.

[42] *Adjustment of status* is the process of obtaining LPR status from within the United States.

for translators and interpreters—is to file a petition with the Department of Homeland Security's U.S. Citizenship and Immigration Services (DHS/USCIS) along with accompanying documents. In the case of the program for those who worked for, or on behalf of, the United States, the required documents include copies of the Chief of Mission approval letter and of the letter of recommendation from the direct supervisor. In the case of the program for translators or interpreters, the required documents include evidence of qualifying employment, a letter of recommendation from the Chief of Mission or a general or flag officer in the relevant U.S. Armed Forces unit, and evidence of a background check and screening by the Chief of Mission or the U.S. Armed Forces.

A petition for classification as an Iraqi or Afghan special immigrant that is approved by USCIS is forwarded to DOS's National Visa Center (NVC), which contacts the applicant to advise him or her to begin collecting required documents. The applicant must submit forms and documents for all family members applying for visas to the NVC. In addition to the immigrant visa application, these materials include copies of passport biodata pages, birth certificates, and civil documents; police certificates, if applicable;[43] and a refugee benefits election form, indicating whether the applicant, if approved to receive a special immigrant visa, would like to participate in DOS's Reception and Placement program and receive associated benefits (see "Resettlement Assistance and Federal Public Benefits").

The NVC schedules an in-person visa interview for the principal applicant and any family members at a U.S. embassy or consulate abroad. The interview is required to determine eligibility for a visa. Applicants' fingerprints are taken at the time of the interview. Applicants are also required to have a medical examination at their own cost. After the interview, the consular office informs the applicant about any missing documentation and about any problems with the case that may prevent issuance of a visa. Many cases require additional "administrative processing" after the interview.

Applicants who are issued visas and who have elected to participate in DOS's resettlement program must have their travel to the United States arranged by the International Organization for Migration. Visa recipients who have elected not to participate in DOS's resettlement program are responsible for making their own travel arrangements. Upon admission to the United States, SIV recipients obtain LPR status.

Comparison of Special Immigrants to Other Selected Admissions Categories

Special immigrant classifications have been established to provide for the permanent admission to the United States of specific populations. As noted, special immigrants comprise a subcategory of permanent employment-based immigrants in the INA, although they are not, in fact, admitted for employment purposes.[44] While the special immigrant category is unique, it does bear similarities to other admission categories that are authorized by other sections of the INA.

[43] A police certificate is required for residents of Iraq. Applicants from Iraq or Afghanistan who have lived in another country for more than 12 months after age 16 must submit a police certificate from that locality. A police certificate is not otherwise required for residents of Afghanistan.

[44] For a general discussion of the permanent immigration system, including employment-based immigration, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

Refugees

Unlike special immigrants, refugees comprise a category of humanitarian admissions under the INA.[45] As defined in the INA, a refugee is a person who is unwilling or unable to return to his or her home country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[46] Refugees accepted for admission to the United States can be accompanied by their spouses and children. The admissions process for refugees is separate from and different than the process for immigrants. After one year in refugee status, they are required to apply to adjust to LPR status.[47] By contrast, special immigrants, like immigrants generally, are granted LPR status upon admission to the United States.

Despite the definitional and procedural differences, there is overlap between the refugee category and the special immigrant category, particularly the special immigrant classifications for Iraqis and Afghans. And the same individuals may be eligible to apply for both refugee status and for classification under one of the Iraqi or Afghan special immigrant programs. Unlike the refugee category, the special immigrant classifications for Iraqis and Afghans do not require a showing of persecution. At the same time, the statutory definitions of an eligible alien for the special immigrant programs for Iraqis and Afghans who worked for, or on behalf of, the United States include the following: "has experienced or is experiencing an ongoing serious threat as a consequence of the alien's employment by the United States Government."[48]

Another similarity between the special immigrant and refugee categories concerns the element of having a connection to the United States. As noted in the preceding legislative history discussion, U.S. government service is a common feature in special immigrant classifications, including those for Iraqis and Afghans. A U.S. connection also may facilitate access to the U.S. refugee admissions program. Overseas refugee processing is conducted through a system of three priorities for admission. The priorities provide access to U.S. resettlement consideration. Priority 1, which covers refugees for whom resettlement seems to be the appropriate durable solution, applies to all nationalities and requires no connection to the United States. A U.S. connection, however, is a factor under Priorities 2 and 3, which provide more direct access to the U.S. refugee admissions program. Priority 2 covers specified groups of special humanitarian concern to the United States, which may be defined by their nationalities, clans, ethnicities, or other characteristics. A U.S. connection is a required element for some Priority 2 groups, such as Iraqis associated with the United States. Priority 3, which is limited to designated nationalities, covers family reunification cases and requires the prospective refugee to have an eligible relative in the United States.

[45] The refugee admissions process is set forth in INA Section 207.

[46] INA §101(a)(42).

[47] See CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

[48] P.L. 110-181, §1244(b)(1)(D), 8 U.S.C. 1157 note (Iraqis); P.L. 111-8, §602(b)(2)(A)(iv), 8 U.S.C. 1101 note (Afghans). No such requirement exists for applicants under the special immigrant program for translators and interpreters. For further discussion of the relationship between the refugee and Iraqi and Afghan SIV programs, see Testimony of USCIS Refugee Affairs Division Chief Barbara Strack, U.S. Congress, House Committee on Homeland Security, *Terrorist Exploitation of Refugee Program*, hearing, 112th Cong., 2nd sess., December 4, 2012, (Washington, DC: GPO, 2013), pp. 21-22 (hereinafter cited as Testimony of Barbara Strack at House hearing, December 4, 2012).

Resettlement Assistance and Federal Public Benefits

Iraqi and Afghan special immigrants are treated like refugees for purposes of federal public benefits. Under the refugee provisions in the INA, some inadmissibility grounds are not applicable to refugees.[49] The inapplicable grounds include public charge, as is the case with Iraqi and Afghan special immigrants. Relatedly, needy refugees are eligible for resettlement assistance through programs administered by DOS and the Department of Health and Human Services' Office of Refugee Resettlement (HHS/ORR).[50] Under DOS's Reception and Placement program, public and private, nonprofit entities provide new arrivals with initial resettlement services and referrals to other services, as needed. ORR's refugee resettlement programs provide transitional assistance to refugees and other designated groups. Refugees are also subject to special rules with respect to federal public benefits, such as Medicaid and Supplemental Security Income (SSI) for the Aged, Blind and Disabled.[51]

While Iraqi and Afghan special immigrants are now eligible for the same federal public assistance as refugees, this was not always the case. The original law establishing the special immigrant program for Iraqi and Afghan translators included no language on eligibility for resettlement support. Subsequent laws on the Iraqi and Afghan special immigrant programs made Iraqis and Afghans eligible for refugee assistance and benefits on a time-limited basis.[52] With the enactment of the NDAA for FY2010, special immigrants from Iraq and Afghanistan became eligible for the same resettlement assistance, entitlement programs, and other benefits as refugees and for the same periods of time.[53]

Amerasian Children

Amerasian children, like Iraqis and Afghans who have assisted the U.S. government, are the subject of special permanent admissions provisions in the INA. The Amerasian provisions have a humanitarian component, but, like the special immigrant provisions, are not a category of humanitarian admissions. Instead, Amerasian children are admitted to the United States under the permanent family-based immigration provisions of the INA (as opposed to the employment-based provisions under which special immigrants are admitted).[54] A law enacted in 1982 amended the INA to provide for the admission to the United States as family-based immigrants of individuals born in Korea, Vietnam, Laos, Kampuchea (Cambodia), or Thailand between 1950 and 1982 with U.S. citizen fathers. An immigrant petition could be filed by the eligible individual or by another person on behalf of an eligible individual. Beneficiaries could not be accompanied to the United States by their mothers or other relatives. In the case of minors, the 1982 law required the mother or guardian to sign a written release and provided for placement of the child with a U.S. citizen or LPR sponsor.

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[49] In order to gain admission to the United States, an individual must be admissible under the INA. INA §212(a) sets forth various grounds of inadmissibility, which include health-related grounds, security-related grounds, and public charge (i.e., indigence).

[50] For additional information, see U.S. Government Accountability Office, *Afghan and Iraqi Special Immigrants: More Information on Their Resettlement Outcomes Would Be Beneficial*, GAO-18-107, February 2018.

[51] See CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

[52] P.L. 110-161, Div. G, §525 (Iraqi and Afghan eligibility for up to six months); P.L. 110-181, §1244(g), January 28, 2008 (Iraqi eligibility for up to eight months); P.L. 111-8, Div. F, §602(b)(8) (Afghan eligibility for up to eight months).

[53] P.L. 111-118, §207.

[54] See CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

A subsequent law enacted in 1987, as amended, eliminated some of restrictions on the immigration of Amerasian children. The 1987 law, which provided for the admission to the United States as immigrants of Vietnamese nationals born in Vietnam between 1962 and 1976 and fathered by a U.S. citizen, permitted the beneficiary to be accompanied by a mother, a spouse, and children. The 1987 law, as amended, also made the public charge ground of inadmissibility inapplicable to these aliens and made them eligible for benefits under the refugee provisions of the INA. With these changes, the treatment of this group became more similar to that of refugees and today's Iraqi and Afghan special immigrants.

Special Immigrant Visa Statistics

Through the end of FY2019, more than 89,000 individuals had been issued special immigrant visas abroad, or been adjusted to LPR status in the United States, under the special immigrant classifications for Iraqi and Afghan nationals. Principal applicants accounted for about 28,000 of the total; dependent spouses and children accounted for the remaining 61,000. **Table 2** provides data on the special immigrant classification for Iraqi and Afghan translators and interpreters. **Table 3** provides data on the special immigrant classification for Iraqis and Afghans who were employed by, or on behalf of, the U.S. government in Iraq or Afghanistan, respectively. As shown in **Table 3** and as discussed in the next section, there was a significant drop in visa issuances from FY2017 to FY2018. The tables are mutually exclusive; an individual appears in only one table.[55] (The **Appendix** contains separate tables for Iraqis and Afghans for each special immigrant classification.)[56]

Table 2. Special Immigrant Visas for Iraqi and Afghan Translators and Interpreters

Fiscal Year	Principals	Dependents	Total
2007	537	466	1,003
2008	559	557	1,116
2009	51	69	120
2010	43	84	127
2011	42	85	127
2012	64	91	155
2013	32	80	112
2014	45	131	176
2015	44	146	190
2016	58	165	223
2017	51	171	222
2018	50	147	197
2019	21	57	78
Totals	**1,597**	**2,249**	**3,846**

[55] As indicated in the table notes, **Table 3** includes individuals with approved petitions under the translator/interpreter program whose cases were converted as provided for in P.L. 110-242; however, any such individuals would not be included in **Table 2**.

[56] Special immigrant visa statistics are available from the DOS Bureau of Consular Affairs, http://travel.state.gov/content/visas/english/law-and-policy/statistics/immigrant-visas.html.

Source: U.S. Department of State, Bureau of Consular Affairs.

Notes: The data include individuals classified as special immigrants who adjusted to LPR status in the United States.

Table 3. Special Immigrant Visas for Iraqis and Afghans Who Worked for the U.S. Government

Fiscal Year	Principals	Dependents	Total
2008	371	334	705
2009	1,680	1,736	3,416
2010	947	1,103	2,050
2011	320	392	712
2012	1,724	2,320	4,044
2013	1,992	3,116	5,108
2014	3,876	6,805	10,681
2015	2,636	5,299	7,935
2016	4,283	10,100	14,383
2017	4,677	13,713	18,390
2018	1,801	6,025	7,826
2019	2,416	7,640	10,056
Totals	**26,723**	**58,583**	**85,306**

Source: U.S. Department of State, Bureau of Consular Affairs.

Notes: The data include individuals with approved petitions under the translator/interpreter program whose cases were converted in accordance with P.L. 110-242; the data also include individuals classified as special immigrants who adjusted to LPR status in the United States.

Selected Challenges

There is a fundamental tension in the administration of the Iraqi and Afghan SIV programs between a sense of urgency to issue visas in a timely fashion to eligible individuals and a need to conduct appropriate security screening. This tension is quite sharp because on the one hand these programs are aimed at individuals who assisted the United States and face danger because of it, and on the other hand there are serious concerns that this population may pose security threats.[57] Overlaying this dynamic is the structure of the SIV programs themselves, with statutory timeframes and numerical limitations.

[57] For example, a 2008 DOS Inspector General report on the SIV program for interpreters and translators stated, "The due diligence of officials involved in the security and background screening of applicants resulted in several SIV candidates being ruled ineligible due to their personal activities or conditions." The report also highlighted some "cases of concern," which included "[f]ormer Saddam-era military personnel, including Republican Guard officers, a chemical warfare specialist, a former fighter pilot who flew against U.S. military forces, and a commander of the national air defense center." U.S. Department of State and the Broadcasting Board of Governors, Office of Inspector General, Middle East Regional Office, *Status of Iraqi Special Immigrant Visa Programs*, Report Number MERO-IQO-08-01, July 2008, pp. 7, 10.

Application Processing

The Iraqi and Afghan SIV application process has been subject to much criticism over the past decade. In a 2010 assessment of the SIV program for Iraqis who worked for, or on behalf of, the U.S. government, an observer characterized the application process as a series of procedural barriers and argued that it was impossible to navigate the process without English-speaking legal assistance.[58]

DOS has acknowledged past processing problems but has also cited steps it has taken to improve the efficiency of the system. In written testimony for a July 2011 Senate hearing, Assistant Secretary of State for Consular Affairs Janice Jacobs enumerated changes DOS had made to the Iraqi and Afghan SIV programs to decrease processing times:

> We no longer require documentation that we found to be redundant; we have decreased the amount of paperwork that must be submitted by mail in favor of electronic submissions; and we have reorganized internal procedures so that the process moves faster.[59]

For its part, the Department of Homeland Security reported at a December 2012 House Homeland Security Committee hearing that it takes between 3 and 10 days, on average, to process an Iraqi or Afghan SIV petition.[60] The department indicated in response to a question following the October 2011 Senate Judiciary Committee hearing that it did not need additional resources to expedite SIV petition processing.[61]

A February 2014 PBS NewsHour piece on the SIV program for Afghans who worked for, or on behalf of, the U.S. government described ongoing challenges with this program:

> Critics describe the process of applying for a visa as opaque, prohibitively complicated and painfully slow, putting the applicant's [*sic*] lives at risk with each passing month that their visas aren't approved.[62]

At around the same time, newspapers also published anecdotal reports of years-long waits for approval, layers of bureaucracy, and unexpected denials under this program.[63]

In the PBS NewsHour piece, Jarrett Blanc, Deputy Special Representative for Afghanistan and Pakistan, asserted that processing improvements had been made to the Afghan SIV program. He identified the need to obtain approval by the Chief of Mission committee in the U.S. embassy in Kabul, Afghanistan, as a "key bottleneck at the start of the process" that has been addressed.

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[58] Brendan Rigby, "Mission Impossible: An Assessment of the Iraqi Special Immigrant Visa," Northeastern University Honors Junior/Senior Projects, May 1, 2010.

[59] Testimony of Assistant Secretary of State Janice L. Jacobs, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Ten Years After 9/11:Preventing Terrorist Travel*, hearing, 112th Cong., 1st sess., July 13, 2011, (Washington, DC: GPO, 2012), p. 522 (hereinafter cited as Testimony of Janice L. Jacobs at Senate hearing, July 13, 2011).

[60] Testimony of Barbara Strack at House hearing, December 4, 2012, p. 13.

[61] DHS further responded, "We respectfully refer you to the Department of State to comment on whether they have unmet resource needs." U.S. Congress, Senate Committee on the Judiciary, *Oversight of the U.S. Department of Homeland Security*, hearing, 112th Cong., 1st sess., October 19, 2011 (Washington, DC: GPO, 2012), p. 44 (hereinafter cited as DHS oversight hearing, October 19, 2011).

[62] P.J. Tobia, "Tongue Tied in Afghanistan," PBS NewsHour, February 19, 2014, http://www.pbs.org/newshour/updates/tongue-tied-afghanistan/ (hereinafter cited as P.J. Tobia, "Tongue Tied in Afghanistan").

[63] See, for example, Kevin Sieff, "U.S. Rejects More Visas for Afghan Interpreters," *Washington Post*, November 11, 2013, p. A1.

Blanc said that by increasing the number of committees handling cases, applications could be reviewed within two weeks of filing.[64]

Incomplete applications also present challenges. In response to questions on the SIV program for Iraqis who worked for, or on behalf of, the U.S. government following an October 2011 Senate Judiciary Committee oversight hearing, DHS referred to obstacles faced by SIV applicants in preparing their applications. The cited obstacles included difficulties obtaining a recommendation from a supervisor and a copy of the work contract.[65] In his comments on the parallel Afghan SIV program for the PBS NewsHour piece, Blanc argued that the Afghan applicants share responsibility for the processing delays by failing to submit all the necessary paperwork.[66]

The 113th Congress enacted legislation to amend the SIV programs for Afghans and Iraqis who worked for, or on behalf of, the U.S. government to address application processing-related concerns. The FY2014 NDAA established a review process for denial of Chief of Mission approval under each program. More generally, this law directed the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, to make changes to the processing of applications under each program such that "all steps ... incidental to the issuance of such visas, including required screenings and background checks, should be completed not later than 9 months after the date on which an eligible alien submits all required materials to complete an application for such visa." At the same time, the act included an exception to the nine-month limit in "high-risk cases for which satisfaction of national security concerns requires additional time."[67]

The FY2014 NDAA included reporting requirements related to application processing under the SIV programs for Afghans and Iraqis who worked for, or on behalf of, the U.S. government. It required the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, to report to Congress on the implementation of improvements to SIV application processing under both programs. The FY2019 NDAA subsequently required a new report on the implementation of SIV application processing improvements under the Afghan program. The July 2018 conference report on this legislation noted concern that "the SIV application process continues to suffer from inadequate interagency coordination which has resulted in undue delay, needless stress on applicants, and a sizable drop in SIV admissions this year."[68]

In addition to requiring a congressional report, the FY2014 NDAA provided for public reports on Iraqi and Afghan SIV application processing. It required the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, to publish quarterly reports describing improvements in efficiency in SIV application processing. The first quarterly reports on the Iraqi and Afghan SIV programs, dated April 2014, stated that the "U.S. government has devoted resources to reducing the amount of time required to complete the SIV process."[69]

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[64] P.J. Tobia, "Tongue Tied in Afghanistan."

[65] DHS oversight hearing, October 19, 2011, p. 45.

[66] P.J. Tobia, "Tongue Tied in Afghanistan."

[67] P.L. 113-66, §§1218-1219.

[68] U.S. Congress, Conference Committee, John S. McCain National Defense Authorization Act Fiscal Year 2019, conference report to accompany H.R. 5515, 115th Cong., 2nd sess., H.Rept. 115-874, July 25, 2018, p. 980.

[69] *Joint Department of State/Department of Homeland Security Report: Extension and Improvement of the Iraqi Special Immigrant Visa (SIV) Program*, April 2014, p. 1, https://travel.state.gov/content/dam/visas/Iraqi_SIVs_public_report_(05%2001%2014).pdf (hereinafter cited as Quarterly Report on the Iraqi SIV Program, April 2014); *Joint Department of State/Department of Homeland Security Report: The Implementation of Processing*

Among other data, the quarterly reports on the Iraqi and Afghan SIV programs include average total U.S. government processing time for SIV applications. This statistic excludes any steps in the application process that are the responsibility of the applicant, such as filing a petition with USCIS (see "Iraqi and Afghan Special Immigrant Visa Application Process"). In the initial April 2014 quarterly reports, average total U.S. government processing time was 239 *business* days for the Iraqi program and 287 *business* days for the Afghan program.[70] In the January 2017 reports, average total U.S. government processing time was 393 *calendar* days for the Iraqi program and 410 *calendar* days for the Afghan program.[71] In the most recent quarterly reports for October 2019, average total U.S. government processing time was 335 *calendar* days for the Iraqi program and 503 *calendar* days for the Afghan program.[72]

The FY2020 NDAA, as noted, directs the DOS Inspector General to submit a report to Congress on the Afghan and Iraqi SIV programs. Among the information to be included in the report is information relating to "means of expediting processing at all stages of the process for applicants, including consideration of reducing required forms."[73]

A lawsuit challenging the delays in processing Iraqi and Afghan SIV applications was filed in federal court in the District of Columbia in June 2018.[74] In the complaint, the plaintiffs ask the court to certify a class so the case can proceed as a class action. In September 2019, a U.S. district court judge ordered the U.S. government to submit a plan for promptly processing and adjudicating applications within 30 days of a final ruling on class certification. The judge also stated that once the court approved a plan, the government would be required to submit progress reports every 60 days.[75] In February 2020, the judge granted class certification, describing the class as all individuals who submitted applications under the SIV programs for Iraqis or Afghans

Improvements for Afghan Special Immigrant Visa (SIV) Program, April 2014, p. 1, https://travel.state.gov/content/dam/visas/Afghan_SIVs_public%20report_(05%2001%2014).pdf (hereinafter cited as Quarterly Report on the Afghan SIV Program, April 2014). Links to all the quarterly reports are available at https://travel.state.gov/content/visas/en/immigrate/iraqis-work-for-us.html (Iraqi program); and https://travel.state.gov/content/visas/en/immigrate/afghans-work-for-us.html (Afghan program).

[70] Quarterly Report on the Iraqi SIV Program, April 2014, pp. 2-3; Quarterly Report on the Afghan SIV Program, April 2014, pp. 2-3.

[71] *Joint Department of State/Department of Homeland Security Report: Status of the Iraqi Special Immigrant Visa (SIV) Program*, January 2017, pp. 2-3, https://travel.state.gov/content/dam/visas/SIVs/Iraqi%20SIV%20public%20report_Jan%202017.pdf; *Joint Department of State/Department of Homeland Security Report: Status of the Afghan Special Immigrant Visa Program*, January 2017, pp. 2-3, https://travel.state.gov/content/dam/visas/SIVs/Afghan%20SIV%20public%20report_Jan%202017.pdf. In the April 2014-April 2016 quarterly reports, processing times are provided in business days; beginning with the July 2016 quarterly report, processing times are provided in calendar days.

[72] *Joint Department of State/Department of Homeland Security Report: Status of the Iraqi Special Immigrant Visa Program*, October 2019, pp. 2-4, https://travel.state.gov/content/dam/visas/SIVs/Q4_Iraqi_SIV-Report_October-2019.pdf (hereinafter cited as Quarterly Report on the Iraqi SIV Program, October 2019); *Joint Department of State/Department of Homeland Security Report: Status of the Afghan Special Immigrant Visa Program*, October 2019, pp. 2-4, https://travel.state.gov/content/dam/visas/SIVs/Q4-Afghan-SIV-Report-October-2019.pdf (hereinafter cited as Quarterly Report on the Afghan SIV Program, October 2019).

[73] P.L. 116-92, §1215(b)(4).

[74] Kat Greene, "Afghan, Iraqi Allies Sue Over Visa Holdup," Law360, June 14, 2018; the article includes a link to the complaint (Class Action Complaint, Afghan and Iraqi Allies v. Pompeo, No. 18-cv-01388 (TSC) (D.D.C. June 12, 2018)).

[75] Kaitlyn Burton, "Feds Too Slow On Visas For Those Who Aided Troops: Judge," Law360, September 23, 2019, https://www.law360.com/articles/1201512/feds-too-slow-on-visas-for-those-who-aided-troops-judge; the article includes a link to the judge's opinion.

who worked for or on behalf of the U.S. government and have been waiting more than nine months for the government to act on their applications.[76]

Security Concerns

As suggested by the "high-risk cases" language cited in the preceding section, protecting U.S. national security remains a major concern about the Iraqi and Afghan SIV programs. Applicants are subject to security checks conducted by DHS and DOS, a process that involves coordination with other agencies.

Details of the security review process are not publicly available. In her written testimony for the July 2011 Senate hearing, Jacobs said, "While we cannot discuss specifics for security reasons, SIV applicants from Iraq as well as Afghanistan undergo multiple layers of review."[77]

In written responses to questions following an April 2013 Senate Foreign Relations Committee hearing, then-Secretary of State John Kerry identified the interagency security screening process as one of the "major obstacles" to the quick processing of Afghan SIV applications. Indicating that security screening "takes the most time," he offered that "the Department of State is working constantly with our interagency counterparts to streamline this comprehensive and essential process while eliminating bottlenecks."[78]

Scrutiny of the security review process for Iraqi and Afghan SIV applicants increased in 2011 following the arrest on terrorism charges of two Iraqi nationals who had entered the United States through the U.S. refugee program. The potential security risks posed by prospective refugees and special immigrants from Iraq and elsewhere were discussed at the December 2012 House hearing cited above, which was entitled *Terrorist Exploitation of Refugee Programs*. At the hearing, then-DHS Deputy Under Secretary for Analysis Dawn Scalici described U.S. government efforts to identify potential threats:

> When we look at on [*sic*] the potential in the future for terrorist groups to exploit the refugee program, we do have concerns. Hence, we have the enhanced security and vetting procedures.... I will tell you that we have intelligence-driven processes regardless of the immigration program that a terrorist actor may seek to use or just travel to the United States. We are reviewing intelligence on a regular basis, sharing that with interagency partners and developing the procedures by which we can help to identify and further [screen] individuals of concern.[79]

The quarterly reports on application processing under the SIV programs for Iraqis and Afghans who worked for, or on behalf of, the U.S. government mention security screening. For example, the October 2019 reports for both programs reference "thorough screening for national security

[76] Sarah Martinson, "Afghan, Iraqi Nationals Nab Cert. In Visa Delay Suit," Law360, February 6, 2020, https://www.law360.com/articles/1241383/afghan-iraqi-nationals-nab-cert-in-visa-delay-suit; the article includes a link to the judge's opinion. For further developments in the case, see Sarah Martinson, "Afghan, Iraqi Allies Say Gov't Can't Further Delay Visa Plan," March 3, 2020, https://www.law360.com/articles/1249588/afghan-iraqi-allies-say-gov-t-can-t-further-delay-visa-plan.

[77] Testimony of Janice L. Jacobs at Senate hearing, July 13, 2011, p. 522.

[78] U.S. Congress, Senate Committee on Foreign Relations, *National Security and Foreign Policy Priorities in the Fiscal Year 2014 International Affairs Budget*, hearing, 113th Cong., 1st sess., April 18, 2013 (Washington, DC: GPO, 2014), p. 107.

[79] Testimony of DHS Deputy Under Secretary for Analysis Dawn Scalici, U.S. Congress, House Committee on Homeland Security, *Terrorist Exploitation of Refugee Program*, hearing, 112th Cong., 2nd sess., December 4, 2012, (Washington, DC: GPO, 2013), p. 18.

concerns."[80] Neither Iraq nor Afghanistan is among the countries subject to entry restrictions or limitations under President Donald Trump's September 2017 presidential proclamation on enhanced vetting. Regarding Iraq, however, the proclamation includes a recommendation from the Secretary of Homeland Security that "nationals of Iraq who seek to enter the United States be subject to additional scrutiny to determine if they pose risks to the national security or public safety of the United States."[81]

The FY2020 NDAA, as noted, directs the DOS Inspector General to submit a report to Congress on the Afghan and Iraqi SIV programs. Among the information to be included in the report is information relating to "means to reduce delays in interagency processing and security checks."[82]

Visa Availability

The SIV program for Iraqi and Afghan translators and interpreters is ongoing, while the programs for Iraqis and Afghans who worked for, or on behalf of, the U.S. government are temporary. As of the date of this report, the temporary Afghan program and the temporary Iraqi program are scheduled to end when all the available visas are issued.

As detailed above, each of the three SIV programs has been subject to statutory numerical limitations from the start.[83] The numerical limitations language in the statutes creating the programs for Iraqis and Afghans who worked for, or on behalf of, the U.S. government also provided for the carryover of unused visas from a given fiscal year to the next during a specified period (see "Special Immigrant Visas for Iraqis and Afghans").

In the case of the program for Iraqis who worked for, or on behalf of, the U.S. government, as amended, any of the 5,000 visas made available annually for principal aliens for FY2008 through FY2012 that were not used in a given fiscal year were carried forward to the next fiscal year, with unused visas for FY2012 carried forward to FY2013. Visas that were carried forward but not used in that next fiscal year were lost. At the end of FY2013, the Iraqi program ended and any remaining visas were lost. The program was subsequently revived and new visas were authorized.

Currently, P.L. 113-66 provides for the issuance of 2,500 visas to principal aliens under the Iraqi program after January 1, 2014. This law required that applications be filed by September 30, 2014, but included no deadline for issuance of the visas. According to the October 2019 quarterly report on the Iraqi program, as of September 30, 2019, 2,082 of the allotted 2,500 visas had been issued. The report also states that there are "sufficient visa numbers remaining to meet demand from applicants in the pipeline."[84]

Under the program for Afghans who worked for, or on behalf of, the U.S. government, as originally authorized, any of the 1,500 visas made available annually for principal aliens for FY2009 through FY2013 that were not used in a given fiscal year were carried forward to the next fiscal year. P.L. 113-76 provided for the issuance of 3,000 visas to principal aliens for

[80] Quarterly Report on the Iraqi SIV Program, October 2019, p. 1; Quarterly Report on the Afghan SIV Program, October 2019, p. 1.

[81] U.S. President (Trump), Proclamation 9645 of September 24, 2017, "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats," 82 *Federal Register* 45161, September 27, 2017.

[82] P.L. 116-92, §1215(b)(8).

[83] Subsequent amendments, however, made changes to the numerical limitations provisions (see "Special Immigrant Visas for Iraqis and Afghans").

[84] Quarterly Report on the Iraqi SIV Program, October 2019, p. 1.

FY2014 and for the carrying forward of any unused balance for issuance in FY2015. As under the Iraqi program, carried-over visas that were not used in the second fiscal year were lost.

Subsequent Afghan special immigrant visa provisions enacted by the 113th Congress made additional visas available subject to specified employment periods, application deadlines, and visa issuance authority expiration dates. Legislation enacted by the 114th, 115th, and 116th Congresses made additional visas available for issuance after December 19, 2014, but provided that these visas would remain available until used. Some of these laws also extended employment termination dates and application deadlines (see "Afghan Program"). In 2014 and 2017, DOS temporarily stopped scheduling interviews for Afghan special immigrant visa applicants due to a dwindling stock of available visas. The FY2019 Consolidated Appropriations Act authorizes 4,000 additional visas under the Afghan SIV program, for a total of 18,500 visas available for issuance after December 19, 2014. According to the October 2019 quarterly report on the Afghan program, as of September 30, 2019, 13,471 of the allotted 18,500 visas had been issued.[85] As noted, the FY2020 NDAA provides for an additional 4,000 visas for principal aliens under the Afghan program.[86]

The SIV program for translators and interpreters is capped at 50 visas for principal aliens per year. It has been capped at this level for each year except for FY2007 and FY2008, when the cap stood at 500. This program did not originally include carryover provisions, but such language was later added by amendment. As under the other SIV programs, visas that are carried forward but not used in the next fiscal year are lost.

Consideration of these numerical limitation and carryover provisions, in conjunction with the visa issuance data for the SIV programs for Iraqis and Afghans who worked for, or on behalf of, the U.S. government (in **Table A-3** and **Table A-4** in the **Appendix**), indicates that thousands of visas provided for these two programs are no longer available. As shown in the tables, through FY2013, visa issuances under both programs consistently fell well below the statutory limits. Under current statutory provisions for the SIV programs for Iraqis and Afghans who worked for, or on behalf of, the U.S. government, as described above, there are no deadlines for the issuance of the visas.

Conclusion

There seems to be broad agreement that the United States should admit for permanent residence Iraqis and Afghans who assisted the U.S. government overseas, provided that they do not pose security risks. Yet implementing the SIV programs intended to accomplish this policy goal has proven difficult. Given the seeming consensus that the U.S. government should assist its Iraqi and Afghan employees in need, an ongoing question for Congress is whether the existing SIV provisions are sufficient to accomplish this, or whether further extensions of the temporary SIV programs for Iraqis and Afghans who worked for, or on behalf of, the U.S. government, or other changes to the SIV provisions are warranted.

[85] Quarterly Report on the Afghan SIV Program, October 2019, p. 1.

[86] P.L. 116-92, §1219.

Appendix. Additional Special Immigrant Data

Iraqi and Afghan Translators and Interpreters

Table 2 in the main body of the report provides data on visa issuances to Iraqis and Afghans (combined) under the special immigrant program for translators and interpreters. The tables here present visa issuance data under this program for Iraqis and Afghans separately. **Table A-1** provides data on Iraqi nationals who were issued special immigrant visas, or who adjusted to LPR status in the United States, under the special immigrant program for translators and interpreters. **Table A-2** provides comparable data for Afghan nationals. Both **Table A-1** and **Table A-2** exclude certain dependents that are included in **Table 2**. These are dependents (28 in total) who received a special immigrant visa or adjusted status under the translator/interpreter program and are Iraqi or Afghan nationals but were born in a third country. These 28 dependents account for the discrepancy between these tables and **Table 2**. The significant decreases in **Table A-1** and **Table A-2** after FY2008 reflect changes in the numerical limitations on this classification (see "Aliens Who Worked as Translators or Interpreters").

Table A-1. Special Immigrant Visas for Iraqi Translators and Interpreters

Fiscal Year	Principals	Dependents	Total
2007	437	387	824
2008	353	327	680
2009	30	38	68
2010	13	40	53
2011	8	32	40
2012	7	29	36
2013	5	11	16
2014	2	4	6
2015	1	0	1
2016	3	9	12
2017	2	2	4
2018	0	0	0
2019	4	1	5
Totals	**865**	**880**	**1,745**

Source: U.S. Department of State, Bureau of Consular Affairs.

Notes: The data include individuals classified as special immigrants who adjusted to LPR status in the United States; the data do *not* include dependents born in a country other than Iraq.

Table A-2. Special Immigrant Visas for Afghan Translators and Interpreters

Fiscal Year	Principals	Dependents	Total
2007	100	69	169
2008	206	220	426
2009	21	30	51
2010	30	43	73
2011	34	53	87
2012	57	61	118
2013	27	68	95
2014	43	127	170
2015	43	146	189
2016	55	156	211
2017	49	169	218
2018	50	144	194
2019	17	55	72
Totals	**732**	**1,341**	**2,073**

Source: U.S. Department of State, Bureau of Consular Affairs.

Notes: The data include individuals classified as special immigrants who adjusted to LPR status in the United States; the data do *not* include dependents born in a country other than Afghanistan.

Iraqis and Afghans Who Worked for the U.S. Government

Table 3 in the main body of the report provides data on visa issuances to Iraqis and Afghans (combined) under the special immigrant programs for Iraqis and Afghans who worked for the U.S. government. The tables here present visa issuance data under these programs for Iraqis and Afghans separately. **Table A-3** provides data on Iraqi nationals who were issued special immigrant visas, or who adjusted to LPR status in the United States, under the special immigrant program for Iraqis who were employed in Iraq by, or on behalf of, the U.S. government. **Table A-4** provides comparable data for Afghan nationals under the special immigrant program for Afghans who were employed in Afghanistan by, or on behalf of, the U.S. government or by the International Security Assistance Force. Both **Table A-3** and **Table A-4** exclude certain dependents that are included in **Table 3**. These are dependents (544 in total) who received a special immigrant visa or adjusted status under these programs and are Iraqi or Afghan nationals but were born in a third country. These 544 dependents account for the discrepancy between these tables and **Table 3**.

Table A-3. Special Immigrant Visas for Iraqis Who Worked for the U.S. Government

Fiscal Year	Principals	Dependents	Total
2008	172	125	297
2009	1,418	1,347	2,765
2010	940	1,051	1,991
2011	317	352	669
2012	1,661	2,209	3,870
2013	1,340	2,215	3,555
2014	435	1,075	1,510
2015	335	845	1,180
2016	657	1,593	2,250
2017	557	1,577	2,134
2018	152	372	524
2019	69	179	248
Totals	**8,053**	**12,940**	**20,993**

Source: U.S. Department of State, Bureau of Consular Affairs.

Notes: The data include individuals with approved petitions under the translators/interpreters program whose cases were converted in accordance with P.L. 110-242, June 3, 2008; the data also include individuals classified as special immigrants who adjusted to LPR status in the United States; the data do *not* include dependents born in a country other than Iraq.

Table A-4. Special Immigrant Visas for Afghans Who Worked for the U.S. Government

Fiscal Year	Principals	Dependents	Total
2008	199	195	394
2009	262	366	628
2010	7	36	43
2011	3	28	31
2012	63	62	125
2013	652	846	1,498
2014	3,441	5,666	9,107
2015	2,301	4,411	6,712
2016	3,626	8,460	12,086
2017	4,120	12,050	16,170
2018	1,649	5,585	7,234
2019	2,347	7,394	9,741
Totals	**18,670**	**45,099**	**63,769**

Source: U.S. Department of State, Bureau of Consular Affairs.

Notes: The data include individuals classified as special immigrants who adjusted to LPR status in the United States; the data do *not* include dependents born in a country other than Afghanistan.

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