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Best Practices and Resources for Representing Operation Allies Welcome Parolees and Afghan Nationals

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Introduction

This guide provides an overview of the most relevant immigration pathways available to Afghan nationals who left Afghanistan after U.S. troops withdrew from Afghanistan in August 2021. This guide provides a general overview of each of these immigration pathways (including asylum, temporary protected status, and adjustment of status) as well as Frequently Asked Questions for each immigration pathway. This guide also focuses on some of the “hot topics” at play right now, including polygamy (see **Section III**), medical exams (see **Sections II, III, and IX**), terrorism related inadmissibility grounds (see **Sections I, III, and IX**), and lack of documentation (see **Sections II, III, IV, and IX**). Overall, our goal is to connect each reader with the extensive resources that are already out there in the immigration universe.

We also acknowledge that **immigration trends and guidance are continuously in flux**. As such, some of the information included in this guide may become outdated by publication or shortly thereafter. Therefore, we recommend that readers visit primary/secondary sources provided throughout this guide as references to help stay up to date on the latest changes in the immigration space.

Finally, we provide an Annex with accompanying templates and resources, including sample questionnaires, translation templates, etc. At **Annex Part A**, you will find the documents referred to throughout this guide. At **Annex Part B**, you will find additional documents that might be helpful for immigration processing.

This guide is intended for attorneys all over the country, with or without immigration experience, who are representing Afghan Nationals before the U.S. government.

The information provided in this document is general information and not a substitute for legal advice.

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Glossary

Department of Homeland Security (DHS)	DHS is a federal agency tasked with protecting U.S. national security. Customs and Border Protection (CBP), United States Citizenship and Immigration Services (USCIS), and Immigration and Customs Enforcement (ICE) are part of DHS. ¹
Customs and Border Protection (CBP)	CBP is tasked with protecting U.S. borders by combining “customs, immigration, border security, and agricultural protection into one coordinated and supportive activity.” ²
United States Citizenship and Immigration Services (USCIS)	USCIS processes immigration applications for benefits, such as work authorization, asylum, temporary protected status, and adjustment of status.
Department of State (DOS)	DOS is housed within the executive branch of the U.S. government and is responsible for foreign policy and international relations. U.S. consulates and embassies fall within the jurisdiction of the DOS.
Executive Office for Immigration Review (EOIR)	EOIR is part of the U.S. Department of Justice (DOJ) and administers the immigration court system. EOIR employs immigration judges who preside over removal and related proceedings.
Immigration and Nationality Act (INA)	The INA was passed by Congress in 1952 and has been amended many times. The INA is codified at Title 8 of the United States Code (USC).
Code of Federal Regulations (CFR)	The CFR helps interpret the INA. Title 8 of the CFR covers Aliens and Nationality.
Petitioner	Generally, a petitioner is the individual petitioning for an immigration benefit on behalf of another individual who will ultimately receive the requested immigration benefit. In the employment-based context, the petitioner is typically an employer. In the family-based context, the petitioner could be a U.S. citizen spouse, parent, child over the age of 21, or sibling. Alternatively, the petitioner could be a lawful permanent resident (green card holder) petitioning for a foreign national spouse, unmarried child under age 21, or unmarried son or daughter of any age.

¹ See Annex Part A for an organizational chart depicting DHS hierarchy.

² U.S. Customs and Border Protection, *About CBP*, <https://www.cbp.gov/about> (last modified September 23, 2022).

Beneficiary	The beneficiary is the individual receiving the immigration benefit. In the employment-based context, this is typically the employee. In the family-based context, the beneficiary is usually the foreign national spouse/child/parent that is being sponsored by the U.S. citizen or lawful permanent resident family member. In the humanitarian parole context, the beneficiary resides outside of the United States and is requesting to be paroled into the United States.
Derivative	The term derivative (or derivative beneficiary) often refers to the child or spouse of a foreign national applying for an immigration benefit.
Child	Generally speaking, a child is an individual under 21 years of age who remains unmarried.
Spouse	Generally speaking, U.S. immigration law will honor marriages that were legal in the place they were celebrated. However, U.S. immigration law does not recognize polygamous marriages, marriages that contradict strong public policy in the couple's state of residence, relationships entered into solely for the purpose of an immigration benefit, proxy marriages, or domestic partnerships/civil unions that are not recognized as marriages in the place of celebration. ³
Form I-94	The Form I-94 documents a foreign national's admission into and exit from the United States. The Form I-94 captures an Admission Record Number; the date of admission; immigration status when admitted; duration of the admission; and legal name, birth date, and nationality of the person seeking admission. The Form I-94 also captures the time and place of exit from the United States. Beginning in April 2013, CBP started issuing electronic I-94s through their website: https://i94.cbp.dhs.gov/I94/#/home . However, prior to April 2013, most foreign nationals received paper copies of their Form I-94. Lawful permanent residents and U.S. citizens do not receive Form I-94. See Annex Part A for an example of an I-94 admission document.

³ USCIS Policy Manual, *Volume 12 – Citizenship and Naturalization, Part G – Spouses of U.S. Citizens, Chapter 2 – Marriage and Marital Union for Naturalization*, <https://www.uscis.gov/policy-manual/volume-12-part-g-chapter-2> (current as of October 19, 2022).

Form G-28	Form G-28 allows an attorney or accredited representative to enter an appearance on behalf of an applicant before USCIS, CBP, and/or ICE. Each applicant requires a Form G-28 for each represented matter. Without a Form G-28, USCIS/CBP/ICE will assume the applicant does not have an attorney and that the applicant is appearing pro se (without an attorney).
Biometrics	USCIS sometimes requires applicants and petitioners to undergo biometrics (fingerprint) screenings. These appointments usually accompany requests for work authorization but must also be completed in other contexts including asylum processing and adjustment of status. After filing an application, an applicant will usually receive a notice to appear at a local Application Support Center (the name of the place where a person appears for fingerprinting) so USCIS can collect biometrics.
Form Filing Fee	<p>Form filing fees are the fees associated with a particular form type. For example, Forms I-485, I-130, and I-131 all have filing fees based on who the filing is prepared for. Certain filing fees will include fees to cover biometrics. For example, in most cases, the Form I-485 requires a form fee of \$1,140 and a biometric services fee of \$85 for applicants aged 14-78. Filing fees are available on each form’s home page. For example, the filing fees for Form I-485 are available on Form I-485 homepage under the Form Details section called “Filing Fee.”</p> <p>Certain forms are eligible for a fee waiver through Form I-912, “Request for Fee Waiver.” In order to qualify for a fee waiver for filing fees, the applicant must generally meet one (or more) of three criteria:</p> <ul style="list-style-type: none"> (i) Applicant, applicant’s spouse, or head of household is receiving a means-tested benefit; (ii) Household income at or below 150% of the Federal Poverty Guidelines; and/or (iii) Financial hardship <p>Please see here and Form I-912 instructions for additional details.</p> <p>Only certain forms are eligible for a fee waiver application. See Form I-912 instructions for a list of fee waiver eligible applications.</p>

	On November 22, 2022, USCIS announced expanded and extended filing fee exemptions for certain Afghan nationals filing Forms I-765, I-485, I-601, I-130, I-824, and I-551 under certain circumstances. ⁴
Lawful Permanent Resident	A lawful permanent resident (LPR) is sometimes referred to as a “green card holder.” An LPR is not a citizen of the United States. Typically, an individual must be an LPR for anywhere between 3-5 years before they are eligible to apply for naturalization/citizenship. Once naturalized, the applicant may apply for a U.S. passport.
Dari and Pashto	Dari and Pashto are two of the main languages spoken in Afghanistan. Visit Tarjimly for interpretation and translation services. Please keep in mind there is a distinction between Dari spoken in Afghanistan and Farsi spoken in Iran.
Tazkera	A Tazkera is a form of national identification in Afghanistan. Unlike in the United States, many Afghan nationals do not receive birth certificates or passports. Instead, individuals receive Tazkeras which often function as passports. Tazkeras most often appear in the form of a plastic card that looks like a driver’s license. However, individuals might also have hand-written, long-form Tazkeras which contain more than just an individual’s name, date of birth, and country of birth. See Annex Part A for an example of a Tazkera.
OAW	OAW stands for Operation Allies Welcome. USCIS may refer to individuals who were paroled into the United States after the U.S. withdrawal of troops in Afghanistan in August 2021 as OAW parolees. OAW parolees may be entitled to specific benefits including expedited processing of certain immigration benefits, including asylum, and exemption from certain USCIS filing fees.

⁴ USCIS, *USCIS Extends and Expands Fee Exemptions and Expedited Processing for Afghan Nationals*, <https://www.uscis.gov/newsroom/alerts/uscis-extends-and-expands-fee-exemptions-and-expedited-processing-for-afghan-nationals> (last updated November 22, 2022).

I. Affirmative Asylum

Overview

Affirmative asylum⁵ is an immigration benefit provided to individuals physically present in the United States who meet the definition of a refugee as outlined at INA § 101(a)(42) (8 U.S.C § 1101(a)(42)):

Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that 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.

Affirmative asylum applications (Form I-589) are adjudicated by asylum officers within USCIS. If an affirmative asylum applicant is found eligible for asylum, the applicant may continue forward on a pathway toward LPR status. If the applicant is found ineligible for asylum, the applicant will receive a denial or a referral to Immigration Court.⁶

The INA at section 208(a) (8 U.S.C. § 1158(a)) requires that each affirmative asylum applicant file an asylum application within one year of entry into the United States. The applicant must prove that they meet the filing deadline by clear and convincing evidence. The INA and CFR carve out exceptions to the one-year filing deadline, including changed and/or extraordinary circumstances. In fact, the regulations at 8 CFR § 208.4(a)(5) clearly state that maintaining “. . . Temporary Protected Status, lawful immigrant or nonimmigrant status, or [those] given parole . . .” qualifies as an extraordinary circumstance exempting an individual from the one-year filing deadline, so long as the delay to filing is reasonable. Courts have routinely held that six months is a presumptively reasonable period of time. The USCIS echoes the INA and CFR on its Afghan OAW homepage, stating:

Generally, maintaining valid status or parole until a reasonable period before the filing of the asylum application will be considered an extraordinary circumstance. If you were granted valid status or parole within one year of the date of your last arrival in the United States and you applied for asylum within a reasonable period of time of the expiration of your valid status or parole, generally this exception would apply to you.⁷

⁵ Please note the distinction between an asylum seeker and a refugee: a refugee is an individual who qualifies for refugee status per INA § 101(a)(42) (8 U.S.C. § 1101(a)(42)) but who is outside of the United States and seeking admission as a refugee. An asylum seeker, in contrast, is an individual seeking asylum from within the United States.

⁶ If the applicant is in some sort of valid status (including Temporary Protected Status (TPS) or parole) at the time he or she is found ineligible for asylum, the applicant will receive a denial notice and can remain in the United States through the duration of status/TPS/parole. If the applicant does not hold some sort of status at the time the applicant is found ineligible for asylum, the applicant will be referred to Immigration Court for proceedings before an immigration judge.

⁷ USCIS, *Afghan Operation Allies Welcome (OAW) Parolee Asylum-Related Frequently Asked Questions*, <https://www.uscis.gov/humanitarian/information-for-afghan-nationals/afghan-operation-allies-welcome-oaw-parolee-asylum-related-frequently-asked-questions> (last updated June 30, 2022); see also USCIS, *Information for Afghan Nationals*, <https://www.uscis.gov/humanitarian/information-for-afghan-nationals> (last updated October 25, 2022) (stating “[g]enerally, maintaining valid status or parole until a reasonable period before filing the asylum application is considered an extraordinary circumstance. You may be eligible for the extraordinary circumstances exception to the 1-year filing deadline if you file for asylum while your parole is still valid . . . If you file your asylum

Even with the clearly articulated exceptions to the one-year filing deadline, many practitioners continue to file within the one-year filing deadline out of an abundance of caution. Regardless of when the application is filed, it is of paramount importance that the application and supporting evidence be complete and well-documented. Moreover, if the applicant is represented by an attorney, the attorney must submit a Form G-28 alongside Form I-589.

The Form I-589 has no filing fee. Form I-589 can be submitted online or via mail. Please note that the online filing process is relatively new and still being worked out. If an applicant files online through the USCIS portal, the applicant will typically receive a receipt notice within 24-48 hours and will most likely be scheduled for interview faster than if the application is filed on paper. In most cases, USCIS is currently taking a few months to issue receipt notices for cases that are filed on paper by mail. For those with membership to the American Immigration Lawyers Association (AILA), please visit this [link](#) for best practices when submitting the Form I-589 online.

Please refer to Form I-589 [instructions](#) for guidance on what supporting documentation to include with the initial filing. If filing on paper, each applicant should submit two copies of the asylum application as well as one passport-style photograph.

All affirmative asylum applicants must appear for an [interview](#) before the asylum office. OAW applicants should be scheduled for an interview within 45 days of USCIS receiving the asylum application.⁸ Each affirmative asylum applicant must bring all derivative applicants (spouses and children under the age of 21 at the time of filing) in the United States to the interview. Attorneys may also accompany applicants to the interview. [This](#) document has information on expectations, preparation, and what to bring to the asylum interview. Each applicant should also read the USCIS asylum interview notice for specific details on what to bring to the interview and who must appear for the interview.

Currently, USCIS is asking all OAW applicants to bring their own interpreters to the asylum interview due to a general shortage of Dari and Pashto interpreters. While applicants should endeavor to bring their own interpreters, if possible, USCIS will attempt to find an available interpreter telephonically if necessary. If USCIS is unable to secure a telephonic interpreter, the interview may be postponed or delayed. The interpreter should be over 18 years of age and cannot be a witness, legal representative, or a representative or employee of the government of the applicant's country of nationality.⁹ Some offices also preclude asylum applicants from serving as interpreters during asylum interviews.

Interviews can last anywhere from 2-8 hours, sometimes more. The principal applicant will be questioned as to the content of the I-589, including biographic information, questions about past harm and fear of return to Afghanistan, and any potential bars to asylum. Any derivatives will also be questioned as to any bars to their eligibility for derivative asylum. Once interviewed, USCIS is required to adjudicate OAW applications, barring any major issues, within 150 days of receipt of the application.¹⁰ However, in most jurisdictions processing times post-interview are longer than 150 days.

application after your parole expires, you may still qualify for an exception to the 1-year filing deadline if you filed for asylum within a reasonable period of time after your parole expired...”).

⁸ Extending Government Funding and Delivering Emergency Assistance Act, Pub. L. No. 117-43, 135 Stat. 344, 377 (September 30, 2021), <https://www.congress.gov/117/plaws/publ43/PLAW-117publ43.pdf>.

⁹ 8 CFR § 208.9(g)-(h).

¹⁰ Extending Government Funding and Delivering Emergency Assistance Act, Pub. L. No. 117-43, 135 Stat. 344, 377 (September 30, 2021), <https://www.congress.gov/117/plaws/publ43/PLAW-117publ43.pdf>.

Certain asylum offices are trying to expedite cases for Afghans who did not enter through OAW; however, priority will still be given to OAW Afghans. For all other affirmative asylum applicants, processing times can range upwards of six months and well into the multi-year mark.

All affirmative asylum applicants are eligible to apply for an Employment Authorization Document (EAD)/work permit pursuant to their pending asylum application 150 days after the applicant files for asylum. However, the applicant is not eligible to receive the EAD until the asylum application has been pending for a total of 180 days. Per USCIS, “[t]he 150-day waiting period and the 180-day eligibility period, commonly referred to as the 180-Day Asylum EAD Clock, do not include delays that you request or cause while your asylum application is pending with an asylum office or with the immigration court.”¹¹ All EAD applicants must request an EAD via Form [I-765](#). There is no fee for the first time an asylum seeker files for work authorization. Submitting Form I-765 does not grant work authorization. The applicant must have the EAD in hand to be considered work authorized. As of January 23, 2023, asylum applicants can file asylum-based work permit applications online or through the mail.

Children and spouses of primary asylum applicants may be granted the same status as the primary applicant if accompanying the primary applicant and physically present in the United States. If the primary applicant’s children and spouse are outside of the United States and wish to join the primary applicant in the United States, the primary applicant should file a Form I-730, Refugee/Asylee Relative Petition, within two years of being granted asylum. See Form I-730 and Instructions [here](#). There is no fee for this petition. Learn more about family reunification for Afghans through the U.S. State Department’s [program](#) and through the resources in Annex Part B.

Prior to February 2, 2023, asylees were eligible to file for adjustment of status one year after being granted asylum. On February 2, 2023, USCIS provided updated guidance indicating that asylees “must have been physically present in the United States for one year when we adjudicate their Form I-485, Application to Register Permanent Residence or Adjust Status, rather than at the time they file their adjustment of status application.”¹² In practical terms, this means that asylees can apply for adjustment of status immediately upon being granted asylum, so long as they accrue one year of physical presence before the adjustment of status application is finally adjudicated (and assuming they are otherwise eligible to file for adjustment). Practitioners continue to think through how this clarification impacts the asylee adjustment and naturalization processes.

¹¹ USCIS, *USCIS Stopped Applying June 2020 Rules Pursuant to Court Order in Asylumworks v. Mayorkas* (September 21, 2022), <https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notices-and-agreements/uscis-stops-applying-certain-ead-provisions-for-asylum-applicants#:~:text=You%20may%20file%20a%20Form,a%20total%20of%20180%20days>.

¹² USCIS, *USCIS Clarifies Physical Presence Guidance for Asylees and Refugees Applying for Adjustment of Status*, <https://www.uscis.gov/newsroom/alerts/uscis-clarifies-physical-presence-guidance-for-asylees-and-refugees-applying-for-adjustment-of> (last updated February 02, 2023).

Frequently Asked Questions

Q. What are the processing times?

- A. As explained above, per section 2502(c) of the Extending Government Funding and Delivering Emergency Assistance Act, OAW affirmative asylum applications are on an expedited processing timeline and should be scheduled for interview within 45 days of USCIS receiving the asylum application.¹³ After interview, USCIS should make a final decision on the application, barring any material issues, within 150 days of receipt of the application by USCIS. In many jurisdictions, USCIS has exceeded the 150-day time frame for OAW applicants.

See [here](#) (Asylum Section) for more information on how to expedite the asylum application per the Extending Government Funding and Delivering Emergency Assistance Act.

Non-OAW Afghan nationals applying for asylum are not automatically subject to this expedited processing. However, some asylum jurisdictions are trying to expedite these asylum applications, too. Affirmative asylum applications that are not subject to expedited processing may be pending for well over six months (and perhaps years) before being scheduled for an interview and final adjudication. Non-OAW Afghan nationals may request expedited processing directly with the asylum office, which typically expedites processing for individuals who can show that 1) they have derivative family members in danger in the home country, or 2) they suffer from a medical/mental health condition that is exacerbated by the delay.

Applicants should also be aware that Form I-730, follow-to-join process (spouses and children who remain abroad), can be lengthy. The USCIS provides general processing times for Form I-730 [here](#). At the time of this writing, the Texas Service Center was processing Form I-730 in 22.5 months and the Nebraska Service Center was processing Form I-730 in 14.5 months. Once approved, Form I-730 must be transferred to the National Visa Center and then on to the nearest consulate for further adjudication and interview. This latter half of the process can take at least several months to complete. Please see CLINIC's [guide](#) on I-730 processing for more information on this matter.

As with any application before USCIS, applicants may request that the I-730 be expedited based on one or more of the criteria found [here](#). Decisions to approve or deny expedite requests are completely discretionary.

In 2022, the Department of State outlined family reunification options for Afghan Nationals [here](#). Importantly, this page now covers information about family reunification for parolees and TPS recipients (initiated through [DS-4317](#)). See Annex Part B for more information and resources.

Q. What documents should the applicant submit with Form I-589?

- A. Please review Form I-589 [instructions](#) for a list of required documents. Applicants do not need to submit a declaration or country conditions information with the initial asylum application; however, applicants must submit corroborating evidence before the interview. As a best practice, submit any additional documents at least one week prior to the interview. Send all additional documents through the mail to the asylum office where the application is pending.

¹³ Extending Government Funding and Delivering Emergency Assistance Act, Pub. L. No. 117-43, 135 Stat. 344, 377 (September 30, 2021), <https://www.congress.gov/117/plaws/publ43/PLAW-117publ43.pdf>.

In determining whether to submit a “skeletal” filing containing minimal documents or a more robust filing with a declaration, corroborating evidence, etc., consider that some asylum offices are scheduling OAW applicants for interview within days of receiving the applicant’s asylum application.

Please also see **Section IX** for best practices when an applicant is missing documentation including a birth certificate, marriage certificate, etc.

Q. What are country conditions reports and why are they so helpful?

A. An asylum applicant is required to submit “reasonably corroborative evidence showing the general conditions in the country from which [he or she] is seeking asylum.”¹⁴ Relevant sources for country conditions reports include:

- **VECINA:** <https://docs.google.com/document/d/13hoYfZDXEmcVBZps7RPcwIhKmYK0lkjal4W8xiB1wqo/edit#>
- **ASYLOS:** <https://www.asylos.eu/afghanistan>
- **IRAP:** <https://www.clearygottlieb.com/about-us/pro-bono/irap>
- **U.S. State Department Human Rights Reports:** <https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/>
- **RefWorld:** <https://www.refworld.org/>
- **UNHCR:** <https://www.unhcr.org/en-us/country-reports.html>

Q. Can the applicant travel abroad with a pending asylum application?

A. Generally speaking, international travel is not recommended for OAW asylum applicants. Recent trends indicate that the length of time between initial submission of the asylum application and being scheduled for interview can be extremely short and international travel could jeopardize the timing of the interview and the overall application. If the applicant must travel, the applicant must first receive an [advance parole](#) document (via Form I-131) prior to departure. If the applicant leaves the United States without first obtaining advance parole, USCIS will assume that the applicant has abandoned the asylum application and the applicant may not be able to re-enter the United States. Additionally, departing the country violates the terms of OAW parole status and invalidates the initial parole grant.

If the applicant has been granted asylum and is currently in asylee status, the applicant must apply for a [refugee travel document](#) to travel abroad. The applicant can apply for a refugee travel document by filing Form I-131, along with the appropriate fee. The USCIS processing time for travel document applications as of January 2023 is currently more than a year. The Form I-131 must be approved by USCIS prior to travel outside of the United States.

Please review the adjustment of status guidelines [here](#) before traveling internationally. In particular, consider how returning to the feared country of origin impacts a bona fide (valid) asylum claim at the next stage in the process, which is adjustment of status.

¹⁴ USCIS, *I-589, Application for Asylum and for Withholding of Removal*, <https://www.uscis.gov/i-589> (last updated September 19, 2022).

Q. What are the bars to asylum?

A. An applicant may be barred from receiving asylum in the following circumstances:

The applicant cannot prove by clear and convincing evidence that they filed their asylum application [Form I-589, Application for Asylum and for Withholding of Removal](#), within one year of their last arrival in the United States or April 1, 1997, whichever is later; the applicant had a previous asylum application denied by an immigration judge or the Board of Immigration Appeals; the applicant can be removed to a safe third country under a two-party or multi-party agreement between the United States and other countries.¹⁵

There are exceptions to the one-year filing deadline including maintaining lawful status, which includes parole and Temporary Protected Status, until a reasonable period before the filing of the application.¹⁶

Applicants can also be barred from receiving asylum and/or declared inadmissible if USCIS finds that the applicant:

- Ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion
- Has been convicted of a “particularly serious crime” such that you are a danger to the United States
- Committed a “serious nonpolitical crime” outside the United States
- Poses a danger to the security of the United States
- Has been firmly resettled in another country before arriving in the United States (meaning they received an offer equivalent to U.S. permanent residence in another country)
- Engaged in terrorist activity
- Engaged in or is likely to engage after entry in any terrorist activity
- Incited terrorist activity
- Is a representative of a foreign terrorist organization
- Is a member of a terrorist organization
- Has persuaded others to support terrorist activity or a terrorist organization
- Has received military-type training from or on behalf of any organization that, at the time the training was received, was a terrorist organization
- Is the spouse or child of an individual who is inadmissible for any of the above within the last 5 years¹⁷

Q. What is the persecutor bar?

A. An individual is not eligible for a grant of asylum if he or she has participated in the persecution of others. As outlined in the INA “[t]he term ‘refugee’ does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race,

¹⁵ USCIS, *Asylum Bars* <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/asylum-bars> (last updated May 31, 2022).

¹⁶ 8 C.F.R. § 208.4(a)(5)(iv).

¹⁷ USCIS, *Asylum Bars* <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/asylum-bars> (last updated May 31, 2022).

religion, nationality, membership in a particular social group, or political opinion.”¹⁸ See Annex Part B for additional information on the persecutor bar and how it might relate to Afghan asylum cases.

Q. What’s TRIG?

- A. TRIG stands for the Terrorism Related Inadmissibility Grounds (TRIG), all of which are mentioned directly above and found at INA § 212(a)(3) (8 U.S.C. § 1182(a)(3)). TRIG issues may come to light during preparation of an asylum matter or during an asylum interview. If discovered during an asylum interview, the officer will most likely go into “Sworn Statement” mode which means that the officer will take word-for-word notes on how the applicant answers any TRIG related questions. The applicant will then be asked to sign the notes declaring that everything is correct. See **Section IX** for a more comprehensive understanding of TRIG, including recent exemptions (June 2022) for Afghan nationals.

Q. What happens after Form I-589 is filed?

- A. Each applicant will receive a receipt notice indicating that the application has been received and is pending. Each applicant will then be scheduled for an interview with an asylum officer. After the interview, the applicant will either be granted asylum, issued a Notice of Intent to Deny (NOID), or found ineligible for asylum. Further information is available [here](#).

As previously explained, OAW parolees should be interviewed within 45 days of submitting Form I-589 and Form I-589 should be adjudicated within 150 days of receipt, absent “exceptional circumstances.”¹⁹

If the applicant is in valid status (including parole and TPS) and found ineligible for asylum, the applicant will be issued a NOID. Once the applicant receives the NOID, the applicant may submit a rebuttal, including additional evidence, to overcome the NOID. If the applicant is unable to overcome the NOID, the asylum office will issue a denial, finding the applicant ineligible for asylum.

If the applicant is in lawful status at the time of denial, consider filing a motion to reconsider using [Form I-290B](#), alleging an incorrect application of law or policy.

If the applicant is out of status at the time he/she is found ineligible for asylum and is referred to immigration court, check [here](#) for some helpful tips about how to prepare for court proceedings. It is also possible to file a motion to rescind the Notice to Appear with the asylum office.²⁰

¹⁸ INA § 101(a)(42), 8 U.S.C. § 1101(a)(42); INA § 208(b)(2)(A)(i), 8 U.S.C. § 1158(b)(2)(A)(i).

¹⁹ Extending Government Funding and Delivering Emergency Assistance Act, Pub. L. No. 117-43, 135 Stat. 344, 377 (September 30, 2021), <https://www.congress.gov/117/plaws/publ43/PLAW-117publ43.pdf>.

²⁰ USCIS, Asylum Division, *Affirmative Asylum Procedures Manual* at 68, (May 2016), <https://www.uscis.gov/sites/default/files/document/guides/AAPM-2016.pdf> (permitting the asylum office to rescind the Notice to Appear in immigration court due to an “egregious error.”).

Q. If the applicant has TPS or is a parolee and found ineligible for asylum, will they be denied or placed in removal proceedings?

A. If the applicant is in valid status at the time the applicant is found ineligible for asylum, the asylum office will issue a denial notice instead of a referral to immigration court and the individual will be allowed to remain in the United States through the duration of his/her status/parole. Note that even though TPS and parole are not considered types of lawful status (rather they treat a person as lawfully present, which is different), the asylum office still considers TPS and parole as types of valid status for purposes of processing asylum decisions.

Q. Are there exceptions to the one-year filing deadline for Afghans who were paroled into the United States after the U.S. withdrawal of troops in August 2021?

A. As described above, by statute, every asylum applicant must prove that they applied for asylum within one year of entering the United States by clear and convincing evidence.²¹ A person can request an exception to the one-year filing deadline based on an extraordinary and/or changed circumstance.²² This may include maintaining “Temporary Protected Status, lawful immigrant or nonimmigrant status, or [being] given parole, until a reasonable period before the filing of the asylum application.”²³ As previously discussed, most courts have found a six-month period to be reasonable.

Q. After the applicant is granted asylum, how long until the applicant becomes a lawful permanent resident and U.S. citizen?

A. See the USCIS’ recent clarification on eligibility requirements for asylee adjustment of status and naturalization [here](#).

Note that most asylee green cards are backdated a year from the time of the adjustment of status grant. Practically speaking, this means that asylees are eligible to naturalize four years after they receive their green cards. Some practitioners have received asylee green cards that have not been backdated by a year from the date of the adjustment of status grant, but have nevertheless successfully filed for naturalization four years after the asylee received their green card.

Q. Where can the applicant learn more about unaccompanied minors/children and asylum procedures unique to minors/children?

A. More information on unaccompanied minors/children (definition and asylum procedures) can be found [here](#), [here](#), and [here](#).

²¹ INA § 208(a)(2)(B), 8 U.S.C. § 1158(a)(2)(B); 8 C.F.R. § 208.4(a).

²² *Id.*

²³ 8 C.F.R. § 208.4(a)(5)(iv); *see also* USCIS, *Information for Afghan Nationals*, <https://www.uscis.gov/humanitarian/information-for-afghan-nationals> (last updated October 25, 2022) (echoing the INA and CFR by stating “[g]enerally, maintaining valid status or parole until a reasonable period before filing the asylum application is considered an extraordinary circumstance. You may be eligible for the extraordinary circumstances exception to the 1-year filing deadline if you file for asylum while your parole is still valid . . . If you file your asylum application after your parole expires, you may still qualify for an exception to the 1-year filing deadline if you filed for asylum within a reasonable period of time after your parole expired . . .”).

Q. Where will the asylum interview be held?

- A. Check on your local asylum office [here](#). Additionally, USCIS will conduct OAW asylum interviews in certain circuit ride locations. A complete list of those locations is available [here](#).

Additional Resources

Video on the asylum process available from the [ABA](#).

The [ABA](#)'s multi-part video trainings on asylum.

VECINA's full course on representing affirmative Afghan asylum applicants is available [here](#).

VECINA's recorded sessions about the asylum interview, created for Afghan applicants, are available here in English, Dari, and Pashto.

[Immigration Justice](#) provides additional resources about the asylum process.

HIAS/ABA Asylum [Toolkit](#).

HRF's Training on Gender-Based Afghan Asylum Claims is available [here](#).

HRF's Resource Library is available [here](#).

The State Department provides information on asylum in [English](#), [Dari](#), and [Pashto](#).

Information on Asylee Benefits available [here](#) (see appendix).

II. Special Immigrant Visa (SIV) – Afghan Nationals

Overview

Section 602(b) of the Afghan Allies Protection Act of 2009, as amended, is a special immigrant program which authorizes the issuance of special immigrant visas to Afghan nationals who were employed in Afghanistan during a particular time. This process is often referred to as the Special Immigrant Visa process or SIV process, for short. An Afghan national may qualify for this type of immigration benefit if he or she provides evidence of the following:

1. Afghan nationality;
2. Employment in Afghanistan for a period of at least one year between October 7, 2001, and December 31, 2023:
 - a. by, or on behalf of, the U.S. government; or
 - b. by the International Security Assistance Force (ISAF), or a [successor mission](#) in a capacity that required the applicant (1) to serve as an interpreter or translator for U.S. military personnel while traveling off-base with U.S. military personnel stationed at ISAF, or a successor mission, or (2) to perform activities for U.S. military personnel stationed at ISAF, or a successor mission;
3. Faithful and valuable service to the U.S. government, or ISAF, or a successor mission, as applicable, which is documented in a positive letter of recommendation or evaluation from a senior supervisor or the person currently occupying that position, or a more senior person, if the senior supervisor has left the employer or has left Afghanistan; and
4. Experienced or be experiencing an ongoing serious threat as a consequence of such employment.²⁴

As of July 20, 2022,²⁵ the SIV process includes two main steps: (i) the Chief of Mission (COM) application and a [DS-157](#) and (ii) the application for permanent residency, the procedure for which varies depending on whether the applicant is located inside or outside the United States. The applicant should file Form DS-157 at the same time as the COM application. Once the applicant receives COM approval, the applicant can file Form I-485 with USCIS (if within the United States) or begin the immigrant visa process from abroad.

²⁴ U.S. Department of State, *Special Immigrant Visas for Afghans – Who Were Employed by/on Behalf of the U.S. Government*, <https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immg-visa-afghans-employed-us-gov.html> (last visited July 06, 2022).

²⁵ *Id.* Prior to July 20, 2022, each Afghan SIV applicant was required to apply for COM approval with DOS using the DS-157 form. Once approved, the applicant had to file Form I-360 with USCIS and receive approval of the I-360 before applying for lawful permanent residence. For COM approvals on or after July 20, 2022, the Afghan SIV applicant can proceed directly to the I-485 stage without being required to file an I-360. Applicants with COM approvals prior to July 20, 2022 must still file the Form I-360 first.

Frequently Asked Questions

Q. What is the Chief of Mission application?

A. The COM application is the first piece of the SIV process and requires each applicant to prove that they possess the employment experience required for the SIV process. A COM application requires the following:

1. Verification of Employment in Afghanistan
2. Letter of Recommendation from a supervisor or senior person
3. Evidence of Afghan Nationality
4. Biographic Data
5. Statement of Threats Received as a Consequence of Your Employment
6. Employee Badge

The State Department provides detailed guidance on the process and required documents [here](#).

Please note that only the primary applicant needs to apply for COM approval. Derivative applicants, including spouses and children, do not need to separately apply for COM approval. Derivative applicants will be identified as part of the primary applicant's family but will not be "added" to the application process until the primary applicant begins the adjustment of status or immigrant visa consular process.

As of July 2022, each primary applicant must submit the Form DS-157 along with the COM application.

The COM application and Form DS-157 are submitted electronically to AfghanSIVApplication@state.gov.

Once submitted, the National Visa Center (NVC) will review all documentation for completeness and then send on to COM for review.

Q. How long do NVC and COM take to review?

A. For the fourth quarter of fiscal year 2022 (July to September 2022), the NVC spent about 253 days reviewing documents for completeness and COM staff took about 108 days to review the COM application and DS-157 petition. See [here](#) for more details.

Q. Can the applicant expedite the Chief of Mission application adjudication process?

A. There is no formal mechanism to request that the application be expedited; however, each applicant is free to explain any urgent circumstances surrounding the application in a cover letter. Whether or not the Chief of Mission honors the expedite request is completely discretionary.

Q. What happens after the applicant submits the Chief of Mission application?

A. Once approved, the applicant can apply for LPR status either through an immigrant visa application for overseas processing, or by submitting an I-485 if located within the United States.

If more evidence is requested for the COM application, the applicant should respond within the requested timeframe.

If the application is denied, the applicant will have 120 days to appeal the denial. Once the 120-day period expires with no action, an applicant may submit a new COM application. More information on the denial and appeal process is available [here](#). Those who receive denials at the COM stage may also consider the Afghan Priority 2 (P-2) refugee program.

Q. What if the applicant received COM approval prior to July 20, 2022? Does the applicant still need to file the I-360?

A. The State Department provides guidance on next steps in light of the July 2022 process change [here](#).

Q. What should the applicant submit alongside Form I-360 if required?

A. This [website](#) provides Form I-360 instruction page and a link to a short checklist of required initial evidence. In general, each applicant must provide the following:

- A copy of the applicant's passport, birth certificate, or national identification card showing Afghan nationality;
- A positive recommendation from a senior supervisor or the person currently occupying that position (or a more senior person if your senior supervisor has left the employer or has left Afghanistan) confirming employment of at least 1 year between Oct. 7, 2001 and Dec. 31, 2023;
- A copy of Chief of Mission's approval; and,
- A Form I-94, Arrival/Departure Record, if physically present in the United States.

Documents such as passports, birth certificates, or identification records must be in English or have an attached certified English translation at the time of submission.

See Annex Part A for an example of an I-360 approval notice for an SIV applicant from Afghanistan.

Q. Does the applicant need a Form I-360 per family member?

A. No, just one for the main applicant.

Q. Can the applicant file Form I-360 at the same time as Form I-485?

A. No. The applicant must wait until Form I-360 is approved before submitting Form I-485.

Q. How much does it cost to file Form I-360?

A. At this time, nothing for Afghan nationals. Check filing fees [here](#).

Q. How long does it take to get an approved I-360?

A. About 36 days. Processing time is based on Fiscal Year 2022, Fourth Quarter information available [here](#).

Q. How does the applicant file Form I-485?

- A. Check [here](#) for the current edition of the Form I-485 as well as instructions on how to file. Please be sure to pay particular attention to the correct edition for the Form I-485 (and all other forms for that matter). If an applicant submits an incorrect edition of a form, USCIS will reject the form and require a re-filing. Form editions can be found on each form's homepage on the [USCIS website](#) under the "Form Details" section. The form edition is indicated on the bottom, left-hand corner of each form.

At this time, all Form I-485s must be submitted by mail.

Q. Should the applicant file one Form I-485 for each family member?

- A. Yes.

Q. How much does it cost to file Form I-485?

- A. Form I-485 is currently free for Afghan Nationals who were paroled into the United States and are now applying under the SIV category. Check Form I-485 Form Details, [Filing Fee](#) section, before filing to ensure the correct fees are being provided at the time of filing. Alternatively, check the [USCIS Fee Calculator](#).

Q. What should the applicant include with Form I-485?

- A. Generally speaking, **each** I-485 applicant must submit a filing fee, medical exam on form I-693 in a **sealed** envelope, and two passport photos along with the signed Form I-485 and supporting documents.

As described above, the filing fee for Afghan nationals paroled into the United States and applying for adjustment of status based on an approved SIV petition is currently \$0. Moreover, although medical exams are not required to submit the I-485 adjustment of status application, many people provide medical exams up-front since an immigration officer will eventually ask for them before making a final decision on particular adjustment applications. If an applicant decides to obtain a medical exam and provide the results at the time of filing, please ensure that the applicant obtains the medical exam from a [designated civil surgeon](#) (a doctor approved by the U.S. government) and that the results remain sealed at the time of filing. Only USCIS can open the sealed envelope. If the applicant, attorney, or anybody else opens the sealed envelope prior to USCIS, the results are void and the applicant will need to re-take the medical exam and provide a new, sealed envelope for the filing. Note that each medical exam costs hundreds of dollars per person and each I-485 applicant requires a separate medical exam. Please see **Section IX** for a more detailed discussion on the medical exam requirement.

Note that not all adjustment applicants are required to submit medical exams. For example, refugees that were subject to a medical exam before entering the United States do not need to undergo a medical examination again. The same is true for derivative asylees and certain OAW applicants

that completed medicals while at Safe Havens.²⁶ Check [here](#) and [here](#) for the most up to date guidance on whether an applicant needs to obtain medicals.

Finally, the Form I-485 instructions explain in detail the passport photo requirement (color, dimension, quantity, instructions, etc.).

Each applicant may also submit a Form I-765 (application for work authorization) and Form I-131 (application for advance parole/international travel) with Form I-485. There is no additional fee to submit these forms alongside Form I-485. If the applicant decides to submit these forms with Form I-485, please provide two additional passport photos for each Form I-765 and two additional passport photos for each Form I-131.

Q. How should the applicant fill out Form I-485?

A. See Form I-485 instructions for information on how to fill out this form out.

Q. What's the difference between adjustment of status and consular processing?

A. Adjustment of status is a process by which somebody physically present in the United States adjusts, or changes their immigration status to that of a lawful permanent resident. The process occurs through Form I-485 and is decided by USCIS.

Consular processing is usually used by individuals who are pursuing lawful permanent residence from abroad. The consular process begins with the DS-260 (Immigrant Visa Electronic Application) and is overseen by the National Visa Center and the Department of State.

Q. What if the applicant is missing documents like a Tazkera, birth certificate, or marriage certificate?

A. Each applicant is required to submit certain civil documents as part of their immigration application/petition with USCIS or the consulate. Some of these civil documents include items such as a birth certificate, marriage certificate, or police records. The State Department's Reciprocity [Page](#) typically provides detailed information about how to obtain these civil documents from the applicant's country of origin or nationality, and what to do if these primary documents aren't available. Unfortunately, the Reciprocity Schedule for Afghanistan has not been updated to reflect the particular issues surrounding documentation requirements for Afghan nationals. See **Section IX** for more details on missing documents and what to provide in lieu of required primary documents.

Q. Will each applicant be interviewed? If so, at what stage in the process?

A. Neither the COM nor the I-360 process requires an interview for the primary applicant or derivatives. The adjustment of status process may require an interview for each applicant. The consular immigrant visa process will require an interview for each applicant.

²⁶ OAW parolees who were guests at Save Havens in the United States may request copies of their health information through a record request process. Please see Annex Part A for a PowerPoint presentation that outlines the record request process.

Q. How should each applicant prepare for the consular interview?

A. The primary applicant and each family member applying for an immigrant visa will be required to attend an interview at a U.S. embassy or consulate. While there, each applicant will be fingerprinted. For more information on what to bring and the interview process, in general, please see this [website](#).

Please note that attorneys are not allowed to represent individuals during the consular interview.

Q. Are SIV recipients eligible for resettlement benefits once they arrive in the United States?

A. Potentially. Check [here](#) for more information.

Q. What happens when the SIV-eligible person dies?

A. In some circumstances, spouses and children may still be eligible for an SIV even if the SIV-eligible individual has died. See CLINIC's resource on this issue [here](#).

Q. Can primary applicants bring their family members?

A. Generally, the primary applicant's spouse, as well as unmarried children younger than 21, may be granted SIVs, and may travel with the primary applicant or may follow-to-join after the applicant has been admitted to the United States. Note that derivative family members may only follow-to-join at the adjustment of status stage, not before. IRAP's [guide](#) on adding a spouse or child to an SIV application while overseas is helpful. For more information on family reunification for Afghans, please visit the U.S. Department of State's [website](#) on family reunification for Afghans and Annex Part B.

Q. If the principal applicant is applying for I-485 adjustment of status and the spouse / children are overseas, how can the applicant start the application for the family members' immigrant visa?

A. To initiate the follow-to-join procedure, [Form I-824](#) must be submitted to USCIS; the I-824 is used by USCIS to notify DOS of the primary applicant's adjustment of status. The I-824 can be submitted concurrently with the I-485, and like the I-485, there is currently no I-824 filing fee for Afghan nationals who were paroled into the United States and are now applying for adjustment of status based on SIV.

Q. What happens if the applicant's child is soon turning 21 or already over 21?

A. In most immigration proceedings, children may only remain dependents on their parents' applications if they are under the age of 21 and remain unmarried. If the child turns 21 during the immigration process, he or she may be able to remain a derivative for purposes of immigration proceedings based on the [Child Status Protection Act](#) (CSPA). In short, CSPA may allow a child applying for adjustment of status to subtract the number of days a petition was pending from the child's age at the time of adjustment to prove that the child's age, per CSPA, is under 21 at the time of filing for adjustment.

However, if the child turns 21 before any immigration matter is open, he or she may be out of luck and may need to separately apply for their own immigration benefit (SIV, asylum, TPS, etc.).

Additional information on CSPA eligibility is available in the [USCIS Policy Manual](#) and this [article](#).

The State Department recently clarified that Form DS-157 and COM application will be considered a special immigrant petition moving forward.²⁷ As such, moving forward, applicants can use the date of COM application for purposes of the CSPA analysis.

Q. How should the applicant follow up on applications?

- A. To follow up on a COM application, email NVCSIV@state.gov or call 1-603-334-0828 and be prepared to provide case number, full name, and date of birth of the applicant.

An applicant can check any form filed with USCIS using a Receipt Number here: <https://egov.uscis.gov/casestatus/landing.do>. The Receipt Number can be found on the top left-hand corner of the Receipt Notice (Form I-797C Notice of Action) received from USCIS.

An applicant can check the status of an immigrant visa application here: <https://ceac.state.gov/ceacstatracker/status.aspx>.

Q. How does an applicant prove qualifying employment for the COM application and overall SIV process?

- A. Generally speaking, to qualify for the SIV process, an applicant must have been employed in Afghanistan for at least one year by, or on behalf of, the U.S. government or by the ISAF or a successor mission. Often times, applicants are unclear on who employed them in Afghanistan, or they don't have the evidence required to prove employment by, or on behalf of, the U.S. government. To that end, establishing eligibility and following up for the required employment verification and recommendation letters can be extremely difficult and confusing.

Here are a few websites and resources to help navigate this issue:

- a. Department of State, How to Apply for Chief of Mission Approval: https://travel.state.gov/content/dam/visas/SIVs/Afghan_SIV_Guidelines_and_DS157_Instructions_Oct_2021_1.pdf.
- b. The International Refugee Assistance Project:
 - i. <https://refugeerights.org/news-resources/irap-database-of-u-s-government-contracts-provides-vital-tool-for-siv-applicants>.
 - ii. <https://support.iraplegalinfo.org/hc/en-us/articles/360056580672-How-can-I-find-a-former-employer-or-supervisor-for-my-SIV-application->.
 - iii. <https://support.iraplegalinfo.org/hc/en-us/articles/360056580772-How-do-I-find-contract-information-for-my-SIV-application>.

²⁷ U.S. State Department, *Special Immigrant Visas for Afghans – Who Were Employed by/on Behalf of the U.S. Government*, <https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immig-visa-afghans-employed-us-gov.html> (last accessed November 03, 2022).

- iv. <https://support.iraplegalinfo.org/hc/en-us/articles/360057038291-I-worked-for-the-U-S-government-in-Iraq-or-Afghanistan-Am-I-eligible-for-an-SIV->.

Q. Why is it important to know whether the applicant was employed through a U.S. government contract as opposed to a U.S. government grant, award, or other agreement?

A. An SIV applicant who's only qualifying employment was funded by the U.S. government through a grant, award, or cooperative agreement will not be eligible for the SIV process.

Q. Does employment with other entities such as the Afghan government or the United Nations qualify an applicant for the SIV process?

A. No, an applicant cannot use employment with the Afghan government or the United Nations to qualify for the SIV process.

Q. Does an applicant need to re-apply for COM approval if they move countries?

A. No.

Q. Why is a working email address so important?

A. Most of the COM process occurs via email. As such, it's important that the applicant use an email account that they have access to and will continue to have access to throughout the COM process. If the applicant has already started the COM process, double check that the email address they used to submit the initial COM request is still accessible. If the applicant needs to update their email address for the COM process, the applicant can submit a request via email to: AfghanSIVapplication@state.gov. The applicant should include in the email their relevant biographical data (name, date of birth, A#) and their case number if available.

Q. Can the applicant apply for the SIV process as a parolee?

A. Yes.

Q. Can the applicant apply for the SIV process with a pending asylum case?

A. Some immigration attorneys believe that SIV-eligible Afghans who are granted asylum are no longer eligible to adjust status based on an approved SIV petition. There are reports, however, that this hasn't been an issue in certain cases. Practitioners are eagerly waiting for USCIS to provide clarification on this issue so that they can advise clients accordingly.

Q. For individuals that complete the SIV process from abroad and enter the United States as lawful permanent residents, when do they get their green cards?

A. Applicants receive their green cards in the mail after entry into the United States. Typically, the green card is sent to the U.S. mailing address listed on the DS-260 and confirmed during the consular interview. Currently, green cards are taking several months to arrive at the U.S. mailing address.

Additional Resources

[Green Card for an Afghan Who Was Employed by or on Behalf of the U.S. Government](#)

[USCIS Policy Manual](#)

[Foreign Affairs Manual](#)

IRAP and VECINA's course curriculum for the SIV process can be found [here](#).

For additional FAQs on the SIV process, look [here](#).

III. Adjustment of Status

Overview

[Adjustment of Status \(AOS\)](#) refers to the process of adjusting from one immigration status to that of a lawful permanent resident, or green card holder. Applicants may adjust status under several provisions of the INA including INA § 245(a), INA § 245(i), and INA § 209(b).²⁸ Each adjustment framework brings its own set of rules and regulations. As such, it's important to first identify which INA provision the applicant is adjusting under. Most employment, family, and SIV-based applicants will file for adjustment under INA § 245(a). Asylees file for adjustment under INA § 209(b). To file for adjustment of status under any provision, the applicant must be in the United States on the date of filing the adjustment application through the date of receipt by USCIS (generally a few days).

All adjustment applicants must be eligible to receive an immigrant visa, which is typically obtained through an immigrant petition. In the family-based context, the immigrant petition is the Form I-130. In the employment-based context, the immigrant petition is Form I-140. In the SIV process, the immigrant petition is Form I-360 or the COM application (if applying after July 2022). In the asylum process, an applicant must be granted asylum through Form I-589, first.

When filing Form I-485, each applicant may also concurrently file a Form I-765 and Form I-131 without an additional fee. Form I-765 is an application for work authorization. Once approved and once the applicant has the actual work permit in hand (see Annex Part A for an example of a work permit), the applicant may work anywhere in the United States. Form I-131 is used to apply for an Advance Parole document that allows the applicant to travel internationally while Form I-485 is pending. If the applicant leaves the United States without a valid Advance Parole document and does not have any underlying non-immigrant status (such as H-1B or L status that allows international travel while an adjustment application is pending), the applicant's adjustment of status application will be considered abandoned, and the applicant may not be able to re-enter the United States.²⁹

The filing fee for Form I-485 can be found [here](#), and the filing address for Form I-485 can be found [here](#). Please note that the filing fee and mailing address will differ based on the underlying petition type and overall method of seeking adjustment of status.

At the time of filing, each applicant must submit two passport photos for each Form I-485, I-765 and I-131. So, an applicant submitting Form I-485, I-765, and I-131 will have six passport photos in total. Please see Form I-485 instructions for additional guidance on passport photo requirements.

At the time of filing, each applicant may provide a Form I-693, Report of Medical Examination and Vaccination Record, completed by the applicant and a doctor who is designated as a civil surgeon by USCIS. The medical exam is not required at filing but is required before the green card application can be approved. The purpose of the medical exam is to ensure that the applicant does not have any communicable diseases that would render the applicant inadmissible to the United States. Once a medical exam is obtained, it is only valid for a certain period of time. As such, time the medical exam strategically with the date of

²⁸ Relevant sections of the U.S. Code include: 8 U.S.C. § 1255(a); 8 U.S.C. § 1255(i); and, 8 U.S.C. § 1159(b), respectively.

²⁹ Certain nonimmigrant visas are considered single-intent visas, meaning an individual cannot have an intention to work, study, or visit temporarily in the United States on the nonimmigrant visa, yet also intend to permanently remain in the United States at the same time. The F-1 and B visa types, for example, are single-intent nonimmigrant visas.

filing. Depending on the applicant’s medical history, the medical exam can take anywhere between a few days to several weeks to obtain. The medical exam will arrive in a sealed envelope. If the envelope is opened before it arrives at USCIS, the applicant will have to re-take the exam, which can cost hundreds of dollars per person. USCIS policy surrounding medical exams is constantly in flux, so please check [here](#) and [here](#) for the most up to date information on whether a medical exam is required in the applicant’s particular situation.³⁰ If unsure of what to do, an applicant can always submit the I-485 application without the medical exam and wait for a Request for Evidence (RFE) that asks for the medical exam. An RFE isn’t a “bad” thing, but it does mean the case is paused until the applicant responds to the RFE with the necessary documents. Given that certain adjustment applicants are not scheduled for interview before final adjudication of their green cards (most employment-based applicants are not interviewed), some attorneys don’t want to hold up the process with an RFE and choose to submit medicals up-front when the I-485 is filed.

Effective October 1, 2021, “[a]pplicants subject to the immigration medical examination must complete the COVID-19 vaccine series before the civil surgeon can complete an immigration medical examination and sign Form I-693, Report of Medical Examination and Vaccination Record.”³¹

Please see **Section IX** for a more detailed explanation of when medical exams are required for Afghan Nationals.

Each person in a family requires their own Form I-485. If children are under the age of 14, they still need their own Form I-485, but a parent can sign all forms on their behalf.

³⁰ Not all adjustment applicants are required to undergo medical exams. For example, refugees and derivative asylees who have undergone medical processing abroad do not need to undergo a medical examination in the United States again. In addition to the link provided above, see [Chapter 3](#) of the USCIS Policy Manual for more information on who, specifically, is required to provide a medical examination in order to adjust status.

³¹ USCIS, *COVID-19 Vaccination Required for Immigration Medical Examinations*, <https://www.uscis.gov/newsroom/alerts/covid-19-vaccination-required-for-immigration-medical-examinations#:~:text=1%2C%202021%2C%20applicants%20subject%20to,Medical%20Examination%20and%20Vaccination%20Record> (last updated December 7, 2021).

Frequently Asked Questions

Q. What documents are required for the adjustment of status application?

A. Form I-485 instructions are extremely helpful in identifying which documents are required for specific adjustment of status applications. In general, the following are required for adjustment of status applications:

- Two passport-style photographs;
- A copy of a government-issued identity document with photograph;
- A copy of the applicant's birth certificate;
- Inspection and admission, or inspection and parole documentation;
- Documentation of immigrant category, such as a copy of Form I-797, Approval or Receipt Notice, for the immigrant petition (Form I-360, I-130, or I-140 approval notice, unless filing concurrently);
- If the applicant has extended or changed nonimmigrant status since entering the U.S., I-797 notices showing that the applicant has maintained lawful status since arrival; and,
- Marriage and divorce certificates.

More information on required documents for different types of adjustment applications can be found [here](#). Note that all documents must be in English or accompanied by a certified English translation.

Q. What happens if the applicant is missing documents?

A. Most Afghan nationals do not have birth or marriage certificates. Some also lack a CBP issued I-94. In situations where these primary documents are unavailable, an applicant can provide secondary evidence in lieu of primary evidence. Please see **Section IX** for best practices when primary documents are missing.

Q. What are the bars (barriers) to adjustment of status?

A. A list of the bars to adjustment can be found [here](#). Note that exceptions apply to certain categories of applicants. For example, certain bars to adjustment do not apply to immediate relatives of U.S. citizens (spouses, unmarried children under age 21, and parents of U.S. citizens over 21), Violence Against Women Act (VAWA)-based applicants, or certain employment-based categories.

Q. What makes someone inadmissible (restricted from adjustment)?

- A. In addition to ensuring that someone is not barred from adjustment of status, attorneys should also ensure that each applicant is admissible to the United States. The inadmissibility grounds are found at INA § 212(a) (8 U.S.C. § 1182(a)). As described by USCIS:

Individuals who are inadmissible are not permitted by law to enter or remain in the United States. The Immigration and Nationality Act sets forth grounds for inadmissibility. The general categories of inadmissibility include health, criminal activity, national security, public charge, lack of labor certification (if required), fraud and misrepresentation, prior removals, unlawful presence in the United States, and several miscellaneous categories. For certain grounds of inadmissibility, it may be possible for a person to obtain a waiver of that inadmissibility. In some cases, exceptions are written into the law and no waiver is required to overcome the inadmissibility because the inadmissibility does not apply if the individual meets the exception. Examples include exceptions for aliens who have been battered, abused or subjected to extreme cruelty, who are victims of severe forms of trafficking, and who are minors.³²

Q. What is TRIG?

- A. TRIG stands for Terrorism Related Inadmissibility Grounds (TRIG). See **Section IX** for an in-depth discussion of TRIG.

Q. Does polygamy matter?

- A. Yes. Pursuant to the INA, USCIS cannot honor polygamous marriages. Further, coming to the United States to practice polygamy is a ground of inadmissibility as outlined at INA § 212(a)(10)(A) (8 U.S.C § 1182(a)(10)(A)).

As such, USCIS will only consider the “first marriage of a polygamous marriage valid for immigration purposes.”³³ Accordingly, if the applicant’s first spouse is in the United States, the applicant need only provide a marriage certificate evidencing the relationship to the first spouse. If the second or subsequent spouse is in the United States, the applicant must divorce the first spouse and re-marry the second or subsequent spouse. In this situation, if the first spouse is in the United States, divorce is possible. If the first wife is in Afghanistan, however, divorce may not be possible, and the second spouse must separately apply for asylum or another immigration benefit.

Overall, we continue to wait for USCIS to issue clear guidance on the matter.

³² USCIS, *Inadmissibility and Waivers*, https://www.uscis.gov/sites/default/files/document/foia/Inadmissibility_and_Waivers.pdf (last accessed July 06, 2022).

³³ USCIS, *Information for Afghan Nationals - Polygamy*, <https://www.uscis.gov/humanitarian/information-for-afghan-nationals> (last updated October 25, 2022).

Q. Does the bride’s age at the time of marriage matter? What about marriage to a family member?

A. It depends. As previously explained, under U.S. immigration law, USCIS will honor marriages that were legal in the place where the marriage was celebrated, except for:

- Polygamous marriages;
- Certain marriages that violate the strong public policy of the state of residence of the couple;
- Civil unions, domestic partnerships, or other such relationships not recognized as marriages in the place of celebration;
- Relationships where one party is not present during the marriage ceremony (proxy marriages) unless the marriage has been consummated;
- Relationships entered into for purposes of evading immigration laws of the United States.³⁴

Attorneys continue to encounter situations where first cousins are married to first cousins. In some states this is legal and in other states not. We continue to wait for guidance from USCIS on how to interpret marriages for couples who reside in states where marriage to a first cousin is illegal. Some attorneys interpret case law to support this marriage, so long as the marriage was legal in the place where the marriage was originally celebrated, *i.e.*, Afghanistan.³⁵ Other attorneys interpret previous guidance and case law as requiring the marriage be valid in the state where the couple intends to live. This issue is far from settled and we have yet to see how it will play out with USCIS.

IRAP provides additional resources on how to address certain marriage-related issues in immigration proceedings through their [Practice Advisory](#) and [Pro Se Guide](#).

Q. What if children are about to turn 21? Can they still adjust status?

A. If Form I-485 is filed before the child turns 21, the child’s age is locked in for the remainder of the immigration process. If the child recently turned 21 and the applicant is trying to determine if the child is still eligible to file for adjustment of status as a derivative applicant, please consult the USCIS Policy Manual pertaining to the Child Status Protection Act [here](#). In some situations, the child may be able to subtract the length of time that a petition was pending from the child’s current age, such that the child’s age for purposes of the Child Status Protection Act is under 21 at the time of filing the adjustment application.

Q. What is a concurrent filing?

A. In certain situations, an immigrant petition may be filed at the same time as an adjustment of status application. This occurs when an immigrant visa is immediately available to the applicant for adjustment of status. The most common example of a concurrent filing is an immediate relative filing (U.S. citizen files a family-based petition for a foreign national spouse, for example). In these situations, the petitioner files the Form I-130, immediate relative petition, at the same time as the adjustment applicant files Form I-485 because there are always immigrant visas available for

³⁴ USCIS, *Policy Manual*, Volume 12, Part G, Chapter 2, <https://www.uscis.gov/policy-manual/volume-12-part-g-chapter-2> (last updated October 19, 2022).

³⁵ Relevant case law includes: *Matter of Lovo-Lara*, 23 I&N Dec. 746 (BIA 2005); *Matter of Zappia*, 12 I&N Dec. 439 (BIA 1967); *Matter of Da Silva*, 15 I&N Dec. 778 (BIA 1976).

immediate family members of U.S. citizens. By contrast, non-immediate relatives of U.S. citizens (siblings, for example) are subject to annual immigration quotas. As such, there likely would not be an immigrant visa immediately available to a sibling and the U.S. citizen petitioner will have to file the I-130 first and the foreign national sibling will have to wait until an immigrant visa becomes available before moving forward with Form I-485. More information on concurrent filings can be found [here](#).

Q. Is there an interview for the adjustment of status process?

A. For most cases, yes. For example, SIV and family-based applicants usually will be interviewed prior to USCIS granting the adjustment of status application. In the past, USCIS has inconsistently required interviews for employment-based applicants. In any event, if the applicant receives an interview notice, the applicant should attend. There have been indications that USCIS has only sent interview notices to the primary applicant of an SIV-based adjustment of status and not to derivative family members. If this occurs, it's best practice to ask that the main applicant and all derivative applicants attend the interview.

Q. Passport photos are expensive at CVS, Walgreens, etc. Are there cheaper alternatives?

A. Yes, there are several apps that allow an applicant to take photos on their phone and have these photos printed on photo paper.

Q. What does “public charge” mean and how does this affect the adjustment of status application?

A. The public charge inadmissibility ground is found at INA § 212(a)(4) (8 U.S.C. § 1182(a)(4)), and requires adjustment applicants to prove that they are not likely to become a “public charge” here in the United States. Although the INA does not provide a definition for the term “public charge”, the Immigration and Naturalization Service,³⁶ in its 1999 Interim Field Guidance, defined public charge as:

[A]n alien who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.³⁷

Receipt of public cash assistance benefits like Supplemental Security Income and cash assistance for Temporary Assistance programs may indicate that an applicant will be a public charge.³⁸ Receipt of non-cash benefits like housing benefits, emergency disaster relief, educational

³⁶ Predecessor to USCIS.

³⁷ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (May 26, 1999), <https://www.federalregister.gov/documents/1999/05/26/99-13202/field-guidance-on-deportability-and-inadmissibility-on-public-charge-grounds>; see also 8 CFR § 212.21 (defining “likely to become a public charge” as “likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government.”).

³⁸ 8 CFR § 212.21(b); USCIS, *Public Charge Resources*, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources#:~:text=Q%3A%20What%20is%20the%20public,to%20become%20a%20public%20charge.%E2%80%9D> (last updated December 19, 2022).

assistance, and/or job training programs will not be considered when assessing the public charge inadmissibility ground.³⁹

Importantly, asylees, refugees, Afghan and Iraqi interpreters, and Afghan and Iraqi nationals employed by or on behalf of the U.S. government are not subject to the public charge inadmissibility ground.⁴⁰

Q. What is the Afghan Adjustment Act?

A. The Afghan Adjustment Act (AAA) is a bipartisan bill that was introduced to Congress to provide a pathway to lawful permanent residency for over 86,000 Afghans who were paroled into the United States after the fall of Kabul in August 2021. The AAA would allow eligible OAWs to apply for adjustment of status without first having to apply for asylum or some sort of other immigration benefit (SIV, employment/family-based visas). The AAA would drastically reduce immigration processing times for these families, providing them with a quicker route to a more stable immigration future in the United States. The community continues to push forward with advocacy around the AAA in the hopes that it will be passed before most OAW parole expires in September 2023.

Additional Resources

Green card eligibility may be based on family relationships employment, special immigrant status, refugee/asylee status, experience as a trafficking, crime victim or a victim of abuse, selection in the diversity lottery (see **Section IX**), or through other categories. More information about each category can be found [here](#).

³⁹ USCIS, *Public Charge Resources*, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources#:~:text=Q%3A%20What%20is%20the%20public,to%20become%20a%20public%20charge.%E2%80%9D> (last updated December 19, 2022).

⁴⁰ 8 CFR § 212.23(a).

IV. Temporary Protected Status

Overview

Temporary Protected Status (TPS) was created by Congress as part of the Immigration Act of 1990 and allows the DHS Secretary to designate certain foreign countries for protection due to conditions in the country (ongoing armed conflict, environmental disaster, epidemic, or other extraordinary and temporary conditions) that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals. The USCIS may grant TPS to eligible nationals of designated countries who are already in the United States. The TPS program is codified at 8 U.S.C. § 1254a (INA § 244).

Once granted, TPS beneficiaries are deemed to be in nonimmigrant status and therefore cannot be removed from the United States. Although TPS does not automatically lead to lawful permanent residence, TPS recipients may apply for other nonimmigrant status, be identified as beneficiaries of an immigrant petition, or file for other types of immigration benefits that would lead to lawful permanent residence in the future.

Although countries are designated for TPS, applicants cannot apply for TPS until “notice of the designation is published in the Federal Register.”⁴¹ Notice of Afghanistan's TPS designation was published in the [Federal Register](#) on May 20, 2022.

Frequently Asked Questions

Q. What are the processing times for TPS?

A. Generally, more than six months.

Q. Can an applicant apply for TPS while other immigration filings are pending?

A. An application for TPS does not affect an application for asylum or any other immigration benefit and vice versa. A denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS (although the grounds of denial of that application may also be a ground for denial of TPS).

Individuals that are currently in the United States as parolees may apply for TPS. Once TPS is granted, a parolee may continue to use TPS as a mechanism of staying in the United States.

Q. How do TPS recipients maintain TPS?

A. Once granted TPS, each applicant must re-register for TPS during each subsequent re-registration period, if appropriate. USCIS should release instructions on how to re-register before the existing registration period terminates.

⁴¹ INA § 244(b)(1)(C); 8 U.S.C. § 1254a(b)(1)(C).

Q. Can applicants who have TPS adjust status based on other types of immigrant petitions, including an employment-based petition?

A. Most practitioners consider TPS to be a form of nonimmigrant status. As such, TPS recipients who were admitted to the United States with parole status should be able to adjust status based on a family or employment-based petition as long as the bars to adjustment of status do not apply. TPS recipients who entered the United States without being inspected and admitted, however, will likely not qualify for adjustment of status unless they travel on a TPS travel authorization document and are inspected and admitted into TPS upon return to the United States. We continue to wait for USCIS to issue additional guidance on this matter.

Q. What if an applicant misses the initial TPS registration period?

A. There are limited exceptions, including having a pending asylum application. Read more on late re-registration [here](#) and [here](#).

Q. Does TPS offer benefits for derivative applicants?

A. No. Each family member must apply for TPS individually. For more information on family reunification for Afghan Nationals, including TPS holders, see the U.S. State Department's [website](#) and Annex Part B.

Q. How long is TPS granted for?

A. The DHS designates a country for TPS for a specific duration. Afghanistan has been designated for TPS through November 20, 2023.⁴² As such, an applicant can be granted TPS for a period of time not exceeding November 20, 2023 (unless TPS for Afghanistan is re-designated).

Q. Are TPS recipients eligible for a Work Permit/Employment Authorization?

A. All TPS applicants may file a [Form I-765](#) to request employment authorization. Each applicant may file the I-765 concurrently with the TPS application or later once a Receipt Notice is received.

In general, practitioners are seeing an approximate six-month processing window for TPS-based work permit applications.

Q. Can a TPS recipient travel internationally?

A. Prior to July 1, 2022, all TPS applicants needed an approved Advance Parole/Travel Document (via Form I-131) to leave and re-enter the United States. However, as of July 1, 2022, USCIS “will no longer use the advance parole mechanism to authorize travel for TPS beneficiaries, but will instead provide a new TPS travel authorization document. This document will serve as evidence of

⁴² USCIS, *Temporary Protected Status Designated Country: Afghanistan*, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-afghanistan> (last updated May 20, 2022).

the prior consent for travel contemplated in INA § 244(f)(3) and serve as evidence that the bearer may be inspected and admitted into TPS . . .”⁴³ Per USCIS:

Beginning July 1, 2022, USCIS will issue a new travel authorization document to Temporary Protected Status (TPS) beneficiaries: Form I-512T, Authorization for Travel by a Noncitizen to the United States. We will no longer issue advance parole documents as evidence of our prior consent to a TPS beneficiary’s travel outside the United States.⁴⁴

More information on how to request travel authorization per the July 1, 2022 update to policy can be found [here](#).

Q. How does an applicant file for TPS?

A. Each TPS applicant should file a [Form I-821](#) with USCIS during the initial registration period. If the applicant does not file during the initial registration period and is not eligible for late registration, the applicant may not be able to file for TPS even if DHS extends the TPS designation later. As described above, an applicant may also file a Form I-765 (request for work authorization) with Form I-821.

Q. Is there a filing fee for Form I-821?

A. The filing fee for Form I-821 can be found [here](#) under the Form Details, Filing Fee section. If the applicant cannot afford the Form I-821 filing fee, the applicant may request a fee waiver in writing or through [Form I-912](#).

Q. How should the applicant submit Form I-821?

A. The application can be submitted online or through the mail. If requesting a fee waiver, you may not file online but must file paper versions of all forms by mail. If sending in the application via mail, please note that there are country specific mailing addresses. You can find each mailing address on the left-hand side [here](#).

Q. What should the applicant submit with Form I-821?

A. At the time of submission, each applicant should provide proof of identity and nationality; proof of date of entry into the United States; proof of continuous residence in the United States since the “continuous residence date” specified for the TPS designated country (except for brief, casual and innocent departures from the United States); and court disposition records related to an arrest, charge, or conviction of a criminal offense, if applicable.⁴⁵

See this [link](#) for a dropdown list (on the left-hand side) of TPS countries and their applicable continuous residence dates.

⁴³ USCIS, Policy Memorandum – *Rescission of Matter of Z-R-Z-C- as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries*, PM-602-0188 (July 1, 2022), <https://www.uscis.gov/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-.pdf>.

⁴⁴ USCIS, *Temporary Protected Status*, <https://www.uscis.gov/humanitarian/temporary-protected-status> (last updated January 26, 2023).

⁴⁵ *Id.*

Q. What if the applicant is missing core documents that are required for the TPS application?

- A. USCIS will accept the following forms of proof of identification: passport, certificate of naturalization/citizenship, birth certificate with photo ID, national identity document with photograph or fingerprint.⁴⁶

If none of these documents are available, then per 8 C.F.R. § 244.9, USCIS may accept an affidavit explaining why this evidence is unavailable, along with secondary evidence. Acceptable secondary evidence includes naturalization certificates even when no photo or fingerprint is available, baptismal certificate if it contains the nationality or parents' nationality, copies of school/medical records containing information that supports the claim to nationality, copies of other immigration documents showing nationality and identity, or affidavits from friends/family who have close personal knowledge of the date and place of the applicants birth and parents' nationality.⁴⁷ Note that the parents' nationality is important in jurisdictions where nationality is derived from parents.⁴⁸

Evidence of continuous residence may include passports/passport entries, Form I-94, employment records, rent receipts, utility bills, money order receipts for money sent in or out of the United States, birth certificates of children born in the United States, correspondence between the applicant or others demonstrating residence in the United States, Selective Service cards, Social Security cards, bank books with dated transactions, attestation of applicant's residence by churches, unions, or others, or affidavits.⁴⁹

Q. Will the asylum office place an applicant in removal proceedings if the applicant is found ineligible for asylum, but has TPS?

- A. The asylum office considers TPS a valid status for purposes of issuing a decision. As such, if the applicant holds TPS at the time the applicant is found ineligible for asylum, the asylum office will issue a denial notice instead of a referral to immigration court.

Q. What makes someone ineligible for TPS?

- A. In addition to meeting the basic eligibility requirements identified above, TPS applicants cannot be removable from the United States; must file during the initial registration or re-registration period, or qualify for enrollment during a later filing date; cannot have been convicted of any felony or two or more misdemeanors committed in the United States; must not have been found inadmissible as an immigrant under the applicable grounds of INA § 212(a) (8 U.S.C. § 1182(a)); and, must not be subject to any of the mandatory bars to asylum.⁵⁰

If the applicant is inadmissible, the applicant will need to file a [Form I-601](#), requesting that the grounds of inadmissibility be waived.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*; USCIS, *Instructions for Form I-821, Application for Temporary Protected Status* at Page 10, <https://www.uscis.gov/i-821> (last updated December 23, 2022).
Form I-821 Instructions at Page 10.

⁵⁰ USCIS, *Temporary Protected Status*, <https://www.uscis.gov/humanitarian/temporary-protected-status> (last updated January 26, 2023).

Q. What are the most important dates for the TPS application process?

- A. The designation dates for TPS for Afghanistan are May 20, 2022 to November 20, 2023.⁵¹ The registration period is also from May 20, 2022 to November 20, 2023.⁵² This means that the designation and registration period for TPS for Afghanistan is the same (18 months).

Each TPS applicant must prove that they maintained continuous physical presence in the United States for the entire period specified in the regulations. Afghan TPS applicants must provide proof that they have been continuously physically present in the United States since May 20, 2022.⁵³

Each TPS applicant must also prove that they continuously resided in the United States for the entire period specified in the regulations. Afghan TPS applicants must provide proof that they continuously resided in the United States since March 15, 2022.⁵⁴ Therefore, unless changed by regulation, Afghan TPS applicants must have arrived in the United States by March 15, 2022.

Q. Does an individual who transitions from parolee to TPS lose benefits pursuant to the Afghanistan Supplemental Appropriations Act?

- A. An eligible person under the Afghanistan Supplemental Appropriations Act will continue to remain eligible for those benefits and services that are provided by Health and Human Services until March 31, 2023 or until the end of the individual's parole term, whichever date is later.

Q. Form I-821 and questions related to use of weapons

- A. When checking "yes" to weapons related questions on the Form I-821, considering including some of the below information to avoid a Request for Evidence.⁵⁵

(31a) military / police / vigilante:

- Type of group
- Name of squad
- Time period
- Rank or position
- Name of commanding officer
- Duties
- Training
- Combat experience
- Interrogation experience
- Whether participation was voluntary

(31b) prison / detention facilities:

- Type of facility
- Name of facility
- Location

⁵¹ USCIS, *Temporary Protected Status Designated Country: Afghanistan*, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-afghanistan> (last updated May 20, 2022).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Special thanks to AILA member, Chris Chaney, for providing this insight.

- Time period
- Rank or position
- Duties
- Training
- Type of prisoners detained at the facility
- Whether participation was voluntary

(32) member of a group which used weapons:

- Name of squad
- Type of weapons
- Time period
- Training
- Whether participation was voluntary

(33) provide / transport weapons:

- Type of weapons
- To whom
- Number of weapons
- Time period
- Purpose of the weapons
- Whether participation was voluntary

(34) military / weapons training:

- Name of squad
- Time period
- Type of weapons
- Who provided the training
- Whether you've used weapons against others
- Whether participation was voluntary

Additional Resources

Overviews of TPS are available [here](#) and [here](#), and [here](#).

Specific Q&As by USCIS [here](#).

For information on the intersection of Temporary Protected Status and Special Student Relief, see Penn State Law's Center for Immigrants' Rights Clinic's guide [here](#).

VECINA and CLINIC's online TPS course is available [here](#).

V. Family-Based Immigration

Overview

Family-based sponsorship may be a fast and efficient route to lawful permanent residence for many in the Afghan community. This is particularly true for those who have U.S. citizen immediate relatives (defined as spouses, unmarried children under age 21, or parents of a U.S. citizen over 21 years of age).⁵⁶

All other relatives of U.S. citizens (siblings, adult children, and married children, for example) are subject to visa limitations and may need to wait for visa availability before they can file their green card applications. This is also true for spouses, children, and adult unmarried children of lawful permanent residents. The petition process for family members that are not immediate relatives of U.S. citizens, called family-based preference categories, can be extremely lengthy (many years in some situations).

All family-based immigration matters (whether for immediate relatives or others) begin with a Form I-130 petition. Immediate relatives may file Form I-130 at the same time as Form I-485 (a concurrent filing) — the I-130 petition is filed by the U.S. citizen family member along with the I-485 filed by the adjustment applicant. However, those that are subject to visa limitations must file the Form I-130 first and then wait until a visa is available before filing Form I-485. The Form I-130 filing fees, mailing address, and supporting documents checklist can be found [here](#). Note that for certain family-based immigration matters, the petitioner must file Form I-130 and Form I-130A, Supplemental Information for Spouse Beneficiary. The Form I-130A can be found on the Form I-130 homepage.

All family-based matters require the petitioner to prove that the beneficiary will not be a public charge in the United States. To that end, each beneficiary must have a Form I-864 filed on their behalf. Form I-864 and accompanying instructions can be found [here](#). There are no filing fees for Form I-864. I-864 does not need to be filed with the initial Form I-130 but must be filed with Form I-485.

At the time the applicant files Form I-485, the applicant may also file [Form I-765](#) (request for work authorization) and [Form I-131](#) (request for Advance Parole/international travel).

As previously explained in **Section III**, each Form I-485 applicant must undergo a medical exam and submit Form I-693, completed by the applicant and a USCIS designated civil surgeon, in a sealed envelope. Please see **Section IX** for specific details on which Afghan nationals are exempted from the medical exam process. Moreover, please see Form I-130 instructions for specific details on who needs to provide passport photos. For example, when a U.S. citizen sponsors a spouse for lawful permanent residence, 10 passport photos are required (two passport photos for the petitioner for the Form I-130, two passport photos for the beneficiary for Form I-130, two passport photos for the applicant's Form I-485, two passport photos for the applicant's Form I-765, and two passport photos for the applicant's Form I-131).

⁵⁶ INA § 201(b); 8 U.S.C. § 1151(b).

Frequently Asked Questions

Q. What are the processing times for family-based petitions?

A. The answer to this question depends on the exact type of family-based filing but check [here](#) for general guideposts on processing times. Generally, family-based filings for immediate relatives of U.S. citizens can take anywhere from six months to two years to adjudicate. For other family-based filings, applicants are likely to wait many years before a green card/immigrant visa is issued. These processing times are likely to increase moving forward as demand increases.

Q. What type of evidence is required for Form I-130 filing?

A. The type of evidence required depends on the nature of the relationship between the petitioner and the beneficiary. In general, however, the following are required: evidence of U.S. family member-petitioner's U.S. citizenship, lawful permanent residence, or U.S. national status; and evidence of family relationship. For more detailed instructions, check [here](#).

Q. Are derivatives entitled to benefits through family-based petitions?

A. Immediate relative petitions do not allow for derivative benefits; however, family-based preference category filings may allow derivative benefits. For example, if the spouse and child of a U.S. citizen are applying for permanent residence, the U.S. citizen spouse must submit a Form I-130 for the spouse and a separate Form I-130 for the child. For the spouse and child of a lawful permanent resident, the lawful permanent resident spouse would submit an I-130 for his or her foreign national spouse and the I-130 could include their child as a derivative beneficiary.

Q. Will there be an interview?

A. Yes, in most cases.

Q. Will the applicant get a conditional green card?

A. If a U.S. citizen or LPR spouse is petitioning for a foreign national spouse and the marriage is less than two years old at the time the green card is **granted**, the beneficiary will receive a conditional green card valid for two years from the date the green card was granted. The conditional green card functions in the same exact way as a normal ten-year green card, but the petitioner and beneficiary must apply to remove the "conditions" on the green card before the two-year green card expires. To remove these conditions, the petitioner and beneficiary must file a Form I-751, Petition to Remove Conditions on Residence, before the conditional green card expires. The petitioner and beneficiary can learn more about the removal of conditions process [here](#). Note that it is possible for the beneficiary (conditional permanent resident) to apply for a waiver of the requirement to file a joint I-751 petition with the petitioner. In any event, the I-751 must be filed timely or the beneficiary risks losing lawful status in the United States.

Q. The applicant is not an immediate relative of a U.S. citizen. How does the applicant know if a visa is available so that the applicant can file a green card application?

A. Each month the U.S. State Department releases a [Visa Bulletin](#) that indicates whether, based on an applicant's country of birth and type (category) of sponsorship, the applicant is eligible to file for

adjustment of status or receive an immigrant visa if consular processing outside the United States. The Visa Bulletin changes monthly depending on how many visas were “used” the previous month for a particular category. If the Visa Bulletin shows “C” (current) for an applicant based on country of birth and type of sponsorship, the applicant may apply for a green card or receive an immigrant visa during that particular month. If the category that applies to the applicant shows a date, this means that visas are only available for individuals with a “Priority Date” **earlier** than the cutoff date shown in the box. A Priority Date is typically the day that a petitioner filed an immigrant petition (Form I-130, for example) with USCIS. The Priority Date is often displayed at the top of Form I-130 Receipt Notice.

Additionally, the Department of State posts two charts as part of the Visa Bulletin: the Final Action chart and the Dates for Filing chart. Check [here](#) to see which chart is honored for a particular month.

It can take many years for certain dates to become current. For example, the December 2022 Visa Bulletin had a final action cutoff date of September 2005 for the F4 (brothers and sisters of adult U.S. citizens) category for individuals born in India. In this scenario, it will take years for someone with an I-130 petition filing date of December 1, 2022 to become current and therefore eligible to file a green card application or receive an immigrant visa.

Q. Are there bars to adjustment in the family-based context?

A. An applicant is ineligible to apply for adjustment of status if one or more bars to adjustment listed in [section 245\(c\) of the Immigration & Nationality Act](#) apply. Importantly, some adjustment applicants are exempt from these bars.

Additional Resources

USCIS (Family-Based Immigration Petition Information for Afghan Nationals):

<https://www.uscis.gov/humanitarian/information-for-afghan-nationals>

Green Cards for Immediate Family Members:

<https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-immediate-relatives-of-us-citizen>

Green Card for Family Preference Categories:

<https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-family-preference-immigrants>

Family-Based Petition Filing Requirements for an [immediate relative](#)

U.S. Department of State – Family Reunification for Afghans: <https://www.state.gov/afghanistan-family-reunification/>

VI. Employment-Based Immigration

Overview

Foreign nationals may reside in the United States based on employment/job skills. There are [nonimmigrant employment visas](#) and [immigrant employment visas](#). See relevant legal authorities for nonimmigrant employment visas [here](#) and relevant legal authorities for employment-based immigration [here](#).

Nonimmigrant Employment Visas (Temporary Workers): Employers may petition on an individual's behalf to work temporarily in the United States. The nonimmigrant status does not qualify an individual to immigrate; however, for "[dual intent](#)" visas, the employment may be the basis for permanent residence. Notably, [H-1B](#), [L-1A](#), and [L-1B](#) visa holders are permitted to have dual intent, allowing individuals to be temporarily present in the United States with lawful nonimmigrant status (hold a visa) and have immigrant intent to remain permanently (seek lawful permanent resident status by filing green card applications). Each visa type stipulates different periods of stay and requirements. Other visa types are available [here](#).

Immigrant Employment Visas (Permanent Workers): Employers may sponsor individuals for immigrant visas. Individuals may qualify for lawful permanent residence (a green card) through employment in the United States based on employment-based preference categories, depending on certain qualifying criteria. For some categories, before the U.S. employer can submit an immigrant petition (Form I-140), they must obtain an approved [labor certification](#) from the U.S. Department of Labor.

Frequently Asked Questions

Q. Perks of recommending the employment-based route

A. If you are working with an applicant, the employment-based route might be faster than asylum or the SIV process.

Q. What are the processing times for employment-based green cards?

A. It depends on what type of employment-based sponsorship the applicant is pursuing. If the applicant is an individual of extraordinary ability or an outstanding professor or researcher, for example, he or she or the employer might be able to concurrently file Form I-140 petition requesting classification as an individual of extraordinary ability or an outstanding professor/researcher at the same time as Form I-485. If this is possible, the applicant could receive a green card within one to two years of the filing date.

Alternatively, if the applicant is a professional holding an advanced degree or a skilled worker, he or she may be required to go through the Labor Certification, or PERM, process before the I-140 petition and I-485 may be submitted. If the applicant's employer does pursue the PERM process, the applicant could receive a green card within three to four years of starting the PERM process. See [here](#) for more information on employment-based green card processing.

Q. How to screen for employment-based applicants

A. Check for any approved or pending Form I-140 immigrant petitions filed on the individual's behalf. Check if the individual is employed in the United States and holds an employment-based visa status. Ask questions about the applicant's education and professional history. Check [here](#) for more information on how someone might qualify for the employment-based immigration process.

Q. What are the steps for applying for employment-based adjustment of status?

A. Generally speaking: Labor Certification, if required; Form I-140; Form I-485.

Q. How does the Visa Bulletin impact the employment-based process?

A. If an applicant is eligible to adjust status through the employment-based process, the applicant must ensure that there is a visa available based on the applicant's country of birth and the type of employment-based sponsorship offered. An applicant cannot file a Form I-485 until the Priority Date (often the date the Form I-140 was received by the USCIS or date the labor certification was filed with the U.S. Department of Labor) is current under the Dates for Final Action or the Dates for Filing chart (whichever has been designated by USCIS for the applicable month). Check [here](#) to see which chart is honored for a particular month. Typically, because demand from India and China is so high, nationals of these countries often find their employment-based category is oversubscribed and not current. As such, Indian and Chinese foreign nationals typically file the I-140 first and wait until their Priority Date becomes current (which can sometimes take more than 7 years) to file green card applications. By contrast, individuals born in Afghanistan often have employment-based immigrant visas readily available to them because their employment-based category is often current. Therefore, they may be able to file the Form I-140 at the same time as the Form I-485.

Q. Can an applicant pursue the employment-based process as a parolee?

A. We continue to wait for guidance on this matter from USCIS; however, in the meantime, some attorneys recommend applicants apply for TPS as parolees and then adjust status based on an approved or pending employment-based petition once TPS is granted.

Additional Resources

USCIS (Working in the United States): <https://www.uscis.gov/working-in-the-united-states>

USCIS (Green Card for Employment-Based Immigrants): <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-employment-based-immigrants>

VII. Humanitarian Parole

Overview

Humanitarian Parole allows an individual, who would otherwise be inadmissible or ineligible for admission, to be in the United States for a temporary, urgent humanitarian reason or significant public benefit. Parole was created by statute at INA § 212(d)(5)(A) (8 U.S.C. § 1182(d)(5)(A)). Humanitarian Parole does not provide a pathway to lawful permanent residence or citizenship. As of September 2022, USCIS received more than 68,000 Afghan Humanitarian Parole applications.⁵⁷ More than 48,000 remain pending and only .1% of applications have been approved.⁵⁸ Processing times remain slow and exceed 12 months for the majority of applicants.⁵⁹

In general, a Form I-131 and Form I-134 must be submitted for each applicant for parole. If an attorney enters as an attorney of record, a G-28 must also be submitted for each parole application and sponsor. Form I-131 requests parole and the Form I-134 confirms that the applicant requesting parole will not be a public charge once in the United States. In other words, the Form I-134 requires a U.S.-based individual or organization to vouch for the parolee and confirm that the parolee will not rely on U.S. resources once in the United States.

If the Humanitarian Parole application is approved, USCIS will send notice to the consulate closest to where the applicant lives. Given that there is no consular presence in Afghanistan, USCIS is currently prioritizing Humanitarian Parole applications for individuals in neighboring countries such as Pakistan. Once the conditional approval notice is forwarded to the consulate, the applicant will be called in for interview and biometrics. If approved, the applicant will need to organize a method of exiting the current country of residence and must be able to secure airfare into the United States. Please note that if the applicant is undocumented in a particular country, the applicant will need to consider how that complicates the applicant's exit strategy.

Upon arrival in the United States, CBP will make a final determination as to whether the applicant should be paroled into the United States. Generally, CBP will honor the State Department's and USCIS's findings. Once in the United States, the applicant will have either one or two years to secure a more permanent pathway to lawful permanent residence. If the applicant does not secure a more permanent pathway during that time, the applicant will have to leave the United States or apply for a Humanitarian Parole extension. Applying for a Humanitarian Parole extension is largely untested and given how slowly and unsuccessful many have been with first instance Humanitarian Parole applications for Afghan nationals, it's unclear how successful applying for a Humanitarian Parole extension will be.

As of November 2022, certain Afghan and Ukrainian parolees are considered employment authorized incident to status. These parolees are work authorized incident to their status for up to 90 days. After the 90-day period, parolees must present a valid work permit or appropriate evidence of work authorization. More information, including filing Form I-765 online at no cost, can be found [here](#).

⁵⁷ Project Anar, *Afghan Humanitarian Parole Checklist and Pointers*, <https://www.projectanar.org/resources/parole-checklist> (last accessed December 04, 2022).

⁵⁸ *Id.*

⁵⁹ *Id.*

In January 2023, the U.S. Department of State released guidance on the family reunification process for OAW parolees and TPS holders. See [here](#) for more information about the process, which begins with the DS-4317.

Frequently Asked Questions

Q. What are the processing times for parole applications?

A. As described above, processing times for Afghan nationals are well over the typical 90-day timeframe. As of December 2022, many Afghan nationals who applied for parole in late 2021 have yet to hear back on their applications.

Q. How does an individual apply for parole?

A. Form I-131 and Form I-134 must be filed for each Humanitarian Parole applicant. Form I-131 requests that the individual be granted Humanitarian Parole and Form I-134 states that the individual requesting Humanitarian Parole will not be a public charge once in the United States.

The Form I-131 should be submitted using the address on this [website](#).

Q. How much does it cost to file for parole?

A. If the applicant cannot afford the filing fee for Form I-131 (currently \$535 per application), the applicant may request a fee waiver through a written statement or by using [Form I-912](#).

Form I-131 along with the filing fee or fee waiver request must be filed for each family member. There are no derivative benefits for Humanitarian Parole.

Q. How does an applicant fill out Form I-131?

A. The applicant or a U.S.-based petitioner may fill out and execute Form I-131. Whoever signs Form I-131 will be tied to Form I-912, Fee Waiver. As such, deciding who will sign Form I-131 is a strategic decision. Attorneys have been successful in having either the foreign national or I-134 sponsor be the signatory on Form I-131. If the foreign national is the signatory for Form I-131, they are essentially applying on their own behalf and Form I-912, Fee Waiver, gets tied to the foreign national's income. If the Form I-134 sponsor is the Form I-131 signatory, then the Form I-134 sponsor petitions the USCIS to bring the foreign national to the United States as a parolee. Form I-134 sponsor's income will then be considered for purposes of Form I-912, Fee Waiver.

Q. What kind of evidence should the applicant submit with Form I-131 form?

A. USCIS provides guidance on the types of evidence helpful in supporting claims [here](#).

Q. Why does each application require a Form I-134?

A. USCIS requires evidence that a U.S.-based sponsor can provide financial support to the parolee in the United States. The sponsor should submit proof of their immigration status and evidence of sufficient income and resources. [This](#) document details the evidence that should be attached to

Form I-134. Additional information on the sponsorship requirements and necessary evidence is available [here](#).

Each Form I-131 requires an accompanying Form I-134. In other words, an applicant cannot submit a Form I-134 on behalf of an entire family.

Q. How to expedite a Humanitarian Parole application

- A. Before submitting the Humanitarian Parole application, write “EXPEDITE” very clearly at the top of the cover page and explain in the cover letter why an expedite is warranted. The decision to expedite the case is discretionary. Additional information on when expedites are warranted can be found [here](#).

If the Humanitarian Parole application is already pending, the applicant can still submit an expedite request by calling USCIS and explaining the need for an expedite based on the factors listed in the link directly above. More information can be found [here](#).

Q. How long is parole granted for?

- A. The vast majority of individuals paroled into the United States after U.S. troops withdrew from Afghanistan in August 2021 have been granted parole for two years.

Q. Where to send the Humanitarian Parole application

- A. The email and mailing addresses are available online [here](#) underneath the Humanitarian Parole section.

Q. Does applying for refugee processing or the SIV process mean that a parole application will be denied?

- A. Parole is not meant to be used to circumvent regular visa processing or refugee processing. To that end, if refugee processing or obtaining a visa is possible, the USCIS/DOS may deny the parole application and recommend that the applicant pursue available alternatives. However, in situations like that of the Afghan community, refugee processing takes years and there is no consular presence in Afghanistan so that an applicant might apply for a visa. As such, in this context, applying for the SIV process and/or the refugee process does not automatically lead to a parole denial.

Q. What to do if an applicant’s Humanitarian Parole application is denied

- A. If new facts emerge, consider filing a new Form I-131 and I-134 with new facts. Alternatively, consider filing Form I-290B motion to reconsider. Individuals who filed I-1290B motions in early 2022 have yet to hear back.

Q. Are there federal/state benefits for parolees?

- A. Yes. Afghan parolees may be eligible for benefits and services through the Office of Refugee Resettlement. You can find out more [here](#) ([Dari](#) and [Pashto](#) resources are available, too).

Q. Can nonprofits/organizations serve as sponsors for the purpose of Form I-134?

A. Yes. As explained by USCIS, “[o]ccasionally, a non-profit organization or medical institution may serve as a sponsor on a parole application. In those instances, if an employee of the organization cannot complete a [Form I-134, Affidavit of Support \(PDF, 540.52 KB\)](#), the petitioner should include with the parole application, a letter from the organization committing to support the beneficiary.”⁶⁰

Q. Will a parolee be referred to immigration court if found ineligible for asylum?

A. The asylum office considers parole to be a valid status for purposes of issuing asylum decisions. As such, if the applicant is a parolee at the time the applicant is found ineligible for asylum, the asylum office will issue a denial notice instead of a referral to immigration court.

Q. Can parolees apply for adjustment of status based on an employment-based petition?

A. See **Section VI** above.

Q. Is the Afghan parole process different than parole programs for Ukrainians, Venezuelans, Nicaraguans, etc.?

A. Yes. The information above is specifically relevant to Afghan parole applicants. The Uniting for Ukraine and other parole programs are drastically different.

Q. Are parolees work authorized (able to work in the United States)?

A. Most Afghan parolees that entered the United States in Fall 2021 received work permits that allowed them to work in the United States for the duration of their parole. See **Section IX** for more information on how to extend work permits to match the duration of an applicant’s I-94. In November 2022, Congress passed laws allowing certain Afghan and Ukrainian parolees to be considered work authorized incident to their status for up to 90 days. After the 90-day window, parolees must provide proof of a work permit or other acceptable proof of work authorization. See [here](#) for more information on this matter.

The U.S. Department of Justice provides resources on employment rights and alternative methods of proving work authorization [here](#).

Additional Resources

USCIS has a very broad overview of Humanitarian Parole [here](#).

A checklist of the forms, documents, and evidence needed for Humanitarian Parole applications can be found [here](#).

IRAP provides a general overview of the Humanitarian Parole application process [here](#).

A full video training on filling out a Humanitarian parole application (and SIV) is found [here](#).

The Catholic Legal Immigration Network provides an overview of Humanitarian Parole available [here](#).

⁶⁰ USCIS, *Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States – The Need for a Sponsor*, <https://www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS> (last updated September 9, 2022).

VIII. Refugee Processing

Overview

The United States has a refugee processing program that is organized and administered through USCIS. Each year the President, in consultation with Congress, identifies how many refugees the United States will accept for that fiscal year. For Fiscal Year 2022 (which began October 1, 2021 and ended on September 30, 2022), the Biden administration set the refugee admissions limit at 125,000.⁶¹

The USCIS has also established refugee processing priority categories to help “determine which of the world’s refugees are of special humanitarian concern to the United States.”⁶²

As outlined by the USCIS, current priorities include:

- **Priority 1:** Cases that are identified and referred to the program by the United Nations High Commissioner for Refugees (UNHCR), a United States Embassy, or a designated non-governmental organization (NGO).
- **Priority 2:** Groups of special humanitarian concern identified by the U.S. refugee program.
- **Priority 3:** Family reunification cases.⁶³

On August 2, 2021, the Department of State announced a new Priority 2 (P-2) program specifically for:

Afghans who do not meet the minimum time-in-service for a SIV but who work or worked as employees of contractors, locally-employed staff, interpreters/translators for the U.S. Government, United States Forces Afghanistan (USFOR-A), International Security Assistance Force (ISAF), or Resolute Support;

Afghans who work or worked for a U.S. government-funded program or project in Afghanistan supported through a U.S. government grant or cooperative agreement;

Afghans who are or were employed in Afghanistan by a U.S.-based media organization or non-governmental organization; and,

Afghans and their eligible family members (spouse and children of any age, whether married or unmarried) can be referred to the P-2 program by a U.S. government agency. For non-governmental organizations (NGO) and media organizations that were not funded by the U.S. government, but are headquartered in the United States, the senior-most U.S. citizen employee of that organization

⁶¹ The White House, *Refugee Admissions for Fiscal Year 2022* (October 08, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/08/memorandum-for-the-secretary-of-state-on-presidential-determination-on-refugee-admissions-for-fiscal-year-2022/>.

⁶² USCIS, *The United States Refugee Admission Program (USRAP) Consultation and Worldwide Processing Priorities*, <https://www.uscis.gov/humanitarian/refugees-and-asylum/usrap> (last updated August 6, 2021).

⁶³ *Id.*

may make a referral. Note: Effective January 31, 2022, 5pm Eastern, the instructions for submitting these types of referrals have changed. Please visit wrapsnet.org to review the updated instructions.⁶⁴

In January 2023, the U.S. Department of State announced a new private refugee sponsorship program, [Welcome Corps](#), aimed at supplementing ongoing refugee processing efforts. The new program allows U.S. citizens, churches, schools, etc., to privately sponsor refugees and play a leading role in resettlement initiatives. More information on the program can be found [here](#).

Frequently Asked Questions

Q. What does the refugee process look like?

A. The U.S. government explains the refugee process [here](#), [here](#), and [here](#). Additionally, IRAP provides detailed information on the specific Afghan P-2 program [here](#). Afghan Evac has an infographic on the refugee process available [here](#). Finally, more information on the new U.S. Department of State private refugee sponsorship program can be found [here](#).

Q. Are derivative family members eligible for refugee processing as well?

A. Yes, spouses and children are eligible derivatives. Please visit the U.S. Department of State's family reunification for Afghans [page](#) for more information.

Q. Can an applicant apply for refugee processing if the applicant is currently in the United States?

A. No. However there may be other immigration options to extend the applicant's stay if physically present in the United States.

Q. How long does refugee processing take?

A. Case processing is lengthy, especially with agencies experiencing backlogs resulting from COVID-19. Applicants should expect the process to take approximately 18-24 months, if not more. We look forward to seeing how quickly adjudications under the new U.S. Department of State [Welcome Corps](#) program take.

Q. Does the firm resettlement bar apply in the refugee context like in the asylum context?

A. Yes. The USCIS [Lesson Plan](#) on this topic discusses the issue in detail.

⁶⁴ U.S. Department of State, Office of the Spokesperson, *U.S. Refugee Admissions Program Priority 2 Designations for Afghan Nationals - Fact Sheet*, (August 2, 2021), <https://www.state.gov/u-s-refugee-admissions-program-priority-2-designation-for-afghan-nationals/>.

IX. Other Legal and Procedural Issues

A. Is there a brief overview of all legal avenues for Afghan nationals?

Yes, look [here](#), [here](#), [here](#), and [here](#).

B. Supporting documentation not in English

Any document that is not in English must be accompanied by a complete English language translation which the translator has certified as complete and accurate. The translation should also confirm that the translator is competent to translate from the foreign language into English. The translator does not have to be a professional translator, just a person who is competent in both languages and willing and able to sign the certificate of translation.

C. Missing required documents

The State Department's Reciprocity Schedule typically tells applicants about the type of documents they need to provide to DOS and/or USCIS to prove marriage, birth, divorce, etc. The Reciprocity Schedule for Afghanistan can be found [here](#).

Many practitioners have been unable to provide marriage and/or birth certificates to USCIS because most individuals in Afghanistan don't ordinarily receive these documents at birth or at the time of marriage. Moreover, there is no way for an Afghan national to obtain these documents without having to interface with the Taliban. As such, many practitioners ask what type of documentation they should provide to avoid a Request for Evidence (RFE) asking for more information about a specific relationship and/or identifying information.

As stated by USCIS in its Policy Manual at Volume 7, Part A, Chapter 4 - Documentation:

If an applicant has demonstrated unavailability of both a required primary and secondary document, the applicant must submit at least two affidavits, or sworn written statements, pertaining to the facts at issue. Such affidavits must be given by:

- Persons who are not parties to the underlying petition; and
- Persons who have direct personal knowledge of the events and circumstances in question.

In order for an applicant to meet his or her burden of proof, the officer must examine the evidence for its probative value and credibility. For these reasons, an affidavit should include:

- The full name, address, and contact information of the affiant (person giving the sworn statement), including his or her own date and place of birth, and relationship (if any) to the applicant;
- A copy of the affiant's government-issued identification, if available;
- Full information concerning the facts at issue; and
- An explanation of how the affiant has direct personal knowledge of the relevant events and circumstances.

Affidavits that cannot be verified carry no weight in proving the facts at issue.

Persons submitting affidavits may be relatives of the applicant and do not necessarily have to be U.S. citizens.

Further, the Refugee, Asylum, and International Operations (RAIO) division released updated guidance in February 2022 acknowledging that, in special circumstances, “a spousal relationship may exist for the purpose of obtaining derivative refugee and/or asylee status if there is evidence of an informal marriage for adjudications of Form I-589...”⁶⁵

Immigration attorneys continue to ask that the State Department update the Reciprocity Schedule for Afghanistan so that it more aptly responds to the needs of the community; however, progress has been slow. We recommend checking the State Department Reciprocity Schedule frequently and preparing the applicant for the possibility of an RFE if the applicant does not have an official marriage and/or birth certificate (or other required documentation).

D. Finding a translator/interpreter that speaks Dari/Pashto

In general, referring agencies have resources to help locate a Dari/Pashto translator/interpreter. If you're unable to secure one through a referring agency, use the Tarjimly application (available in the Apple App Store) to facilitate conversation/translations. Here are a few links on how to download and use the Tarjimly application: [Dari](#), [Pashto](#), and [English](#).

E. Change of Address, Form AR-11

All foreign nationals (anyone who is not a U.S. citizen) in the United States are required to notify USCIS about any change in their residential address within 10 days of moving. Submit a change of address [online](#). For additional questions about the change of address process, email nbcafhancoa@uscis.dhs.gov.

F. Selective Service

Most men in the United States aged 18 to 25 must enroll in Selective Service. This includes parolees and TPS recipients. Check [here](#) for more information on Selective Service and how to register. Most men are automatically enrolled in Selective Service through the Department of Motor Vehicles. Individuals who knowingly fail to register may run into issues at the naturalization stage.

G. Are Afghans eligible for stimulus payments and do they affect taxes?

In general, an individual should consult a tax expert to identify whether the individual is eligible for stimulus payments and how that might affect taxes. [Here](#) is a guide from the IRS detailing eligibility requirements for the third stimulus payment. Here is a [guide](#) from the Afghan Placement and Assistance Program on taxes.

H. Requesting a Fee Waiver

As previously explained, an applicant may request a fee waiver for certain immigration applications. A full list of fee waiver eligible applications can be found in Form I-912 instructions [here](#). Generally speaking,

⁶⁵ Memorandum to All Refugee, Asylum and International Operations (RAIO) Employees from Ted H. Kim, Acting Associate Director Refugee, Asylum and International Operations (Feb. 14, 2022), https://www.uscis.gov/sites/default/files/document/memos/Revised_Guidance_on%20Informal_%28_Camp_%29_Marriages.pdf.

the requesting applicant must receive a means-tested public benefit, have a household income under 150% of the [federal poverty guidelines](#), and/or experience financial hardship. Please see Form I-912 instructions for additional information.

I. False claims to citizenship and accidental voting

Applicants should not identify themselves as citizens of the United States until they are citizens of the United States. Doing so before naturalization could lead to a denial of a naturalization application and put them at risk of being considered removable. Being a lawful permanent resident (or green card holder) does not equate to being a U.S. citizen.

Similarly, foreign nationals should not vote in any election (city, state, federal) where U.S. citizenship is a pre-requisite to voting. Voting in these circumstances may lead to a denial of the applicant's naturalization application or risk of being placed in removal proceedings.

J. Triggering inadmissibility issues pertaining to domestic violence

All applicants should be advised that harming another person may lead to a denial of their adjustment of status application and/or risk of removal from the United States.

K. Interactions with the FBI

Check [here](#) for Know Your Rights information that can be shared with individuals who speak Dari or Pashto.

L. Practicing cultural humility while working with newly arrived Afghans

See [here](#) and [here](#) to learn more about best practices.

M. Eligibility for federal and/or state benefits

Check [here](#) ([Dari](#) and [Pashto](#)) and [here](#) for Afghan benefits options.

N. What's an alien number?

An Alien Number (also referred to as an A number) is a six-digit number that USCIS gives each foreign national with an open immigration matter. The alien number usually presents in the following format: A-xxx-xxx-xxx. The alien number can be found on work permits and is often referred to as the "USCIS number." An applicant can also find his/her alien number on petition receipt and/or approval notices. The Alien Number helps USCIS and other agencies like CBP, DOS, and EOIR keep track of a foreign national's immigration history in the United States.

Of note, many Afghans were issued a temporary alien number by CBP. These numbers start with "A - 141." Many Afghans were subsequently issued a permanent alien number beginning with "A - 241." The second alien number beginning with "A - 241" is the controlling alien number and is the alien number that should be used on all immigration forms.

O. Multiple name variations and/or dates of birth

Most forms allow an applicant to list a primary legal name along with any aliases. The applicant should use this space to identify any legal aliases. Common nicknames should not be listed.

If the applicant has multiple dates of birth listed on different documents, use the correct date of birth as the primary date of birth on all forms and explain any discrepancies on any legal documents in the form addendum.

In instances where the applicant does not know the date of birth, some practitioners have recommended that the applicant use the date of birth on the passport and/or Tazkera.

P. Obtaining an I-94 from the CBP website

CBP provides a helpful [guide](#) on pulling an I-94 from the CBP website. The guide is available in [Dari](#) and [Pashto](#). An applicant may also consider using the [CBP One Mobile App](#) to try and obtain an I-94. Typically, an individual must enter a full name, passport number, date of birth, and country of nationality. In certain situations, for Afghan nationals, you may need to enter an Alien Number in lieu of a passport number since so many Afghan nationals entered the United States without passports.

Q. Correcting an incorrect CBP I-94

Each applicant's I-94 should contain correct biographic and admission information. To correct a name misspelling or other information on a CBP I-94, the applicant should email CBP at OAWI94ADJUSTMENTS@cbp.dhs.gov and include the following information:

- Complete name
- Date of birth
- Country of birth
- Picture of passport or photo ID (all documents must be translated to English)
- Date and location of arrival
- A# if available

The applicant should receive a response within 24-48 hours. Note that CBP is unable to modify I-94 records where no supporting documentation for the change exists.

R. How does an applicant correct information on a work permit/EAD?

In general, the applicant must return the EAD card to USCIS with supplemental information that confirms the accuracy of the new information requested. See [Afghan National Parolees – Information about Employment Authorization](#) for information on this process.

S. Terrorism-Related Grounds of Inadmissibility

As briefly touched upon in previous sections, the INA at section 212(a) (8 U.S.C. § 1182(a)), outlines the grounds of inadmissibility — behavior and activities that render an individual ineligible to adjust status. There are several inadmissibility grounds as previously discussed, but the Terrorism-Related Inadmissibility Grounds (TRIG) are of particular importance for many Afghan nationals who may have, at some point, come into contact with terrorist organizations as a result of their work with the U.S. government in Afghanistan.

The information provided in this document is general information and not a substitute for legal advice.

The USCIS defines terrorist organizations in three ways. More information on Tier I (also known as Foreign Terrorist Organizations (FTOs)), Tier II, and Tier III organizations can be found [here](#). In 2007, Congress designated the Taliban as a Tier I Foreign Terrorist Organization by statute.⁶⁶

TRIG covers those who are:

- Engaged in terrorist activity;
- Are engaged or are likely to engage in terrorist activity after entry;
- Incited terrorist activity with intent to cause serious bodily harm or death;
- Are representatives or current members of a terrorist organization;
- Endorsed or espoused terrorist activity;
- Received military-type training from or on behalf of a terrorist organization; or
- Are spouses or children of anyone who has engaged in terrorist activity within the last five years with certain exceptions.⁶⁷

Terrorist activity is defined broadly, but generally means “actions commonly associated with terrorism such as kidnapping, assassination, hijacking, nuclear, biological, or chemical agents, the use of firearms or other dangerous devices etc.”⁶⁸ Further, “[t]he INA defines terrorist activity quite expansively such that the term can apply to persons and actions not commonly thought of as terrorists and to actions not commonly thought of as terrorism.”⁶⁹

The USCIS goes on to explain that “engaging in terrorist activity” includes actions such as “planning or executing a terrorist activity, soliciting others to do so, providing material support to a terrorist organization or member of a terrorist organization, and soliciting funds or recruiting members for a terrorist organization.”⁷⁰ Further, the term “material support” is defined as “actions such as providing a safe house, transportation, counterfeit documents, or funds to a terrorist organization or its members. It also includes any action that can assist a terrorist organization or one of its members in any way, such as providing food, helping to set up tents, distributing literature, or making a small monetary contribution.”⁷¹

The DHS and DOS, in consultation with the Attorney General, may grant situational or group-based exemptions for TRIG related inadmissibility grounds. A list of the situational and group-based exemptions provided for thus far can be found [here](#). Prior to June 2022, situational exemptions including insignificant

⁶⁶ Consolidated Appropriations Act, Pub. L. 110-161, 121 Stat. 1844, 2365 (December 26, 2007), <https://www.govinfo.gov/link/plaw/110/public/161>; see also Memorandum to Associate Directors, Chief Administrative Appeals, Chief Counsel from Michael L. Aytes, Acting Deputy Director, USCIS (Jul. 28, 2008), https://www.uscis.gov/sites/default/files/document/legal-docs/07%2028%20implementation_CAA%20groups.pdf (confirming that the Consolidated Appropriations Act which was signed into law in December 2007 states that the “Taliban would be considered a Tier I terrorist organization under INA section 212(a)(3)(B)(vi)(I).”).

⁶⁷ INA § 212(a)(3)(B), 8 U.S.C. § 1182(a)(3)(B).

⁶⁸ USCIS, *Terrorism-Related Inadmissibility Grounds (TRIG)* (last updated November 19, 2019), <https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-ground-trig>; INA § 212(a)(3)(B)(iii), 8 U.S.C. § 1182(a)(3)(B)(iii).

⁶⁹ USCIS, *Terrorism-Related Inadmissibility Grounds (TRIG)* (last updated November 19, 2019), <https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-ground-trig>.

⁷⁰ USCIS, *Terrorism-Related Inadmissibility Grounds (TRIG)* (last updated November 19, 2019), <https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-ground-trig>; INA § 212(a)(3)(B)(iv), 8 U.S.C. § 1182(a)(3)(B)(iv).

⁷¹ USCIS, *Terrorism-Related Inadmissibility Grounds (TRIG)* (last updated November 19, 2019), <https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-ground-trig>; INA § 212(a)(3)(B)(iv)(VI), 8 U.S.C. § 1182(a)(3)(B)(iv)(VI).

material support and certain limited material support were available to those who provided support to **undesignated** terrorist organizations.

In June 2022, the DHS and DOS, in consultation with the Attorney General, granted specific TRIG exemptions for qualifying Afghan nationals that significantly expanded certain situational exemptions to cover activities associated with **designated** terrorist organizations (like the Taliban).⁷² The specific exemptions can be found [here](#) and are particularly helpful for cases in which applicants, for example, were required to pay the Taliban in order to pass through a check point when leaving Afghanistan in 2021.

Prior to June 2022, [Human Rights First](#) provided an in-depth training on TRIG related issues that is helpful for a big-picture overview.

T. What is discretion and why does it matter?

Most immigration decisions are what USCIS calls “discretionary.” In other words, even if the applicant provides all required information/documentation, USCIS can still exercise discretion to deny the application. Check [here](#) for a list of forms that are subject to USCIS discretion. Notably, USCIS officers may exercise discretion for Humanitarian Parole, Temporary Protected Status, and adjustment of status applications; however, officers may not exercise discretion for a petition to classify an alien as a family-based immigrant (Form I-130).

U. Does an applicant need to obtain a medical exam conducted by a designated civil surgeon (via Form I-693) before filing for adjustment of status?

The medical exam process is not a pre-requisite to filing an adjustment application, but it is a pre-requisite to the final adjudication of certain adjustment applications. It’s important to note here that not all applicants for adjustment of status require a medical exam prior to the final adjudication of their adjustment application. For example, derivative refugees and asylees are not required to undergo a medical exam if they’ve already completed one abroad. A full list of those subject to the medical exam requirement can be found [here](#).

Further, USCIS provided guidance on when medical exams are required for Afghan nationals who entered the United States through Operation Allies Welcome (OAW). Specific hypotheticals, including Afghan nationals who were paroled into the United States through OAW and received medical exams at a Safe Haven, are available [here](#) and [here](#). Applicants who completed medicals on base may request copies of their health information. Please see Annex Part A for a PowerPoint presentation provided by the Defense Health Agency that outlines how to request this information.

Please note that the USCIS information page does not provide answers to all hypotheticals. For example, many Afghan nationals who were paroled into the United States through OAW and remained at a Safe Haven underwent medical exams but have incomplete Form I-693s. Moreover, some don’t have any record of their medical exams. These issues continue to be discussed with USCIS and the community hopes to see resolution soon.

⁷² USCIS Press Release, *DHS and DOS Announce Exemptions Allowing Eligible Afghans to Qualify for Protection and Immigration Benefits* (June 14, 2022), <https://www.dhs.gov/news/2022/06/14/dhs-and-dos-announce-exemptions-allowing-eligible-afghans-qualify-protection-and>; USCIS, *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> (last updated August 29, 2022).

V. Who is eligible for U.S. Government (USG) relocation flights from Afghanistan?

Afghan Evac provides a helpful graphic [here](#).

W. Parolees granted parole for one year

CBP is extending parole for many Afghan nationals that were granted parole for one year rather than two. Check the applicant's current I-94 to see if CBP automatically extended parole by an additional year. See below for additional details.

X. Work permits (EADs) granted for less than 2 years

Email OAWEADextensions@uscis.dhs.gov and provide a copy of the applicant's Form I-94. Alternatively, email oawi94adjustments@cbp.dhs.gov.

For more information please visit the [Information for Afghan Nationals](#) webpage and the [USCIS Issuing Updated I-797C for Certain Operation Allies Welcome Parolees](#) page.

Y. What is the Diversity Visa (DV) Program?

The DV Program (also known as the Diversity Lottery) is another pathway to LPR status and U.S. citizenship. Each year, the U.S. government allows individuals from most nations around the world to apply to be a green card holder through a lottery system. If selected through the lottery, the applicant may proceed with an adjustment of status or immigrant visa application. If and when the adjustment of status or immigrant visa application is approved, the applicant becomes a green card holder and is then eligible to apply for naturalization in the future.

Certain nationals are ineligible for the diversity lottery (for DV-2024, nationals of Bangladesh, Canada, and China, among other countries, are ineligible to apply for the DV Program). Moreover, there are particular requirements (education, work, etc.) to be eligible for the DV program once selected. Finally, all applicants must have their application adjudicated within the fiscal year that they have been selected for. Please note that a DV-based adjustment of status or consular immigrant visa application will not be finally adjudicated until a visa is available to the applicant.

USCIS provides information about adjusting status based on a Diversity Visa selection letter [here](#). The U.S. Department of State provides information about the Diversity Visa program [here](#).

Z. What is CBP One?

CBP One is a mobile application intended to streamline immigration matters that fall within the purview of CBP. For example, CBP One can be used to make an inspection appointment request, apply for a provisional I-94 prior to arriving at a land border crossing, and more. Additional information on the new application can be found [here](#) and [here](#)⁷³.

⁷³ Special thanks to Taylor Levy and colleagues for distributing this free resource.