

INTERIM MEMO FOR COMMENT

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Comment period ends: 10-04-2010

This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Service Center Operations Directorate (MS 2060)
Washington, DC 20529-2060



U.S. Citizenship
and Immigration
Services

HQ 70/6.1.7-P
AFM Update AD10-04

September 2, 2010

Memorandum

SUBJECT: Revisions to *Adjudicator's Field Manual (AFM)* Chapter 22.3 (*AFM* Update AD10-04): Special Immigrant Visas under Section 602(b) of the Afghan Allies Protection Act of 2009

This memorandum revises the *Adjudicator's Field Manual (AFM)* by adding new procedural guidance on adjudicating Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, for persons claiming special immigrant status under Section 602(b) of the Afghan Allies Protection Act of 2009, Pub. L. 111-8, Division F, Title VI, 123 Stat. 524, 807 (2009). An alien is classifiable under INA 203(b)(4) as a special immigrant described in the Afghan Allies Protection Act of 2009 if a petition to accord such status has been approved by the Secretary of Homeland Security.

This guidance is effective immediately. Questions regarding this memorandum may be directed by e-mail through the appropriate supervisory channels to Bryan Christian, Branch Chief of Adjustment and Naturalization, Office of Service Center Operations.

Accordingly, the *AFM* is revised as follows:

1. Chapter 22.3 of the *AFM* is amended by adding the following fifth bullet at the end of section (a):

(a) General.

* * *

- A limit of 1,500 per year for 5 successive fiscal years beginning with Fiscal Year 2009 on the number of Afghan nationals who worked for or on behalf of the U.S. Government in Afghanistan. But for each fiscal year from 2010 through 2013, the numerical limit is increased by the difference between 1500 and the number of visas actually used during the immediately prior fiscal year. If the numerical limitation for Fiscal Year 2013 is not reached, any unused numbers from that year may be used in Fiscal Year 2014. Numbers will not carry forward into Fiscal Year 2015.

2. AFM 22.3(t)(8) is revised to read as follows:

(8) Eligibility to Adjust Status in the United States. Petitioners under this category may not file for adjustment of status concurrently. Section 245(c)(7) of the Immigration and Nationality Act (INA) provides that employment-based immigrants (including special immigrants) are ineligible to adjust status unless they are in a lawful nonimmigrant status. However, section 602(b)(9) of Public Law 111-8 waives three adjustment ineligibilities – section 245(c)(2), (7) and (8) – for section 1244 and section 602(b) petitioners who were either paroled into the United States or admitted as nonimmigrants. Therefore, a paroled or admitted alien may apply for and obtain adjustment under section 602(b) even if the alien is not *currently* maintaining a lawful status and even if he or she has failed to maintain a lawful status in the past.

All approved petitioners and dependents must have successfully completed all appropriate security checks as determined by the Department of Homeland Security prior to final issuance of an immigrant visa number.

3. AFM 22.3(t)(9) is revised to read as follows:

(9) Immigrant Visa Classifications.

SQ-1 – Special Immigrant Iraqi or Afghan Employee (Principal)

SQ-2 – Spouse of SQ-1

SQ-3 – Child of SQ-1

SQ-6 – Special Immigrant Iraqi or Afghan Employee (Principal Adjusting Status in the United States)

SQ-7 – Spouse of SQ-6

SQ-8 – Child of SQ-6

4. Chapter 22.3 of the *AFM* is amended by adding a section (u) as follows:

(u) Afghan National Who Worked for or on Behalf of the U.S. Government in Afghanistan.

(1) General. Section 602(b) of the Afghan Allies Protection Act of 2009, Public Law 111-8, Division F, Title VI, creates a new special immigrant category under section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) for Afghan nationals who worked for or on behalf of the U.S. Government in Afghanistan. The President signed the Afghan Allies Protection Act of 2009 into law on March 11, 2009.

(2) Background. Section 602(b) of the Afghan Allies Protection Act of 2009 authorizes 1,500 special immigrant visas for Afghan employees and contractors each year for Fiscal Years 2009 through 2013. This provision creates a new category of special immigrant visas for Afghan nationals who meet the stated eligibility requirements.

(3) Eligibility of the Principal Alien. To obtain approval of a petition for special immigrant status under the Afghan Allies Protection Act of 2009, a self-petitioning alien must establish that he or she:

(A) Is a citizen or national of Afghanistan;

(B) Was or is employed by or on behalf of the United States Government in Afghanistan on or after October 7, 2001, for not less than one year;

(C) Provided faithful and valuable service to the United States Government, which is documented in a positive recommendation or evaluation from the alien's senior supervisor, or the individual currently occupying that position, or a more senior individual, if the alien's senior supervisor has left the employer or left Afghanistan. The recommendation must be accompanied by the approval of the Chief of Mission (COM) or designee of the COM based upon an independent review of records maintained by the U.S. Government or hiring organization or entity to confirm employment and faithful and valuable service [**Note:** Under Department of State policy as stated at 9 FAM 42.32(d)(11), the Chief of Mission will approve the recommendation only if made by a U.S. citizen or national (or endorsed by the U.S. citizen or national responsible for the contract under which the petitioner's service was provided)] ;

(D) Has experienced or is experiencing an ongoing serious threat as a consequence of the alien's employment by the U.S. Government, as documented by a risk assessment conducted by the COM or the designee of the COM;

(E) Has cleared a background check and appropriate screening as determined by the Secretary of Homeland Security; and

(F) Is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence. In the determination of such admissibility, the grounds for inadmissibility specified in INA 212(a)(4) (8 U.S.C. 1182(a)(4)) relating to "public charge" shall not apply.

(4) Spouses and Children.

(A) General. The spouse or child accompanying or following to join a principal immigrant may be accorded the same special immigrant classification as the principal alien.

(B) Deceased Principal. Section 602(b)(2)(C) allows a surviving spouse and children to continue to remain eligible for special immigrant status if the principal alien described in Chapter 22.3(u)(3) had a visa petition approved under section 602(b) of the Afghan Allies Protection Act, but died after the approval. The

eligibility of the surviving spouse and children is also affected by new section 204(l) of the Act, as amended by section 568(d) of Public Law 111-83, since the surviving spouse and children are derivative beneficiaries of a petition filed under section 203(b) of the Act. In light of the interrelationship between section 602(b)(2)(C) and section 204(l):

- (i) A *pending* visa petition under section 602(b) may be approved, despite the death of the principal alien while the petition is pending; and
- (ii) After the death of the principal alien, USCIS may favorably exercise discretion to reinstate the approval of a visa petition under section 602(b).

(5) Filing Requirements.

(A) General. An Afghan citizen or national who has worked for or on behalf of the U.S. Government may file this petition on his or her own behalf. The petitioner may also file the petition through an agent acting on the petitioner's behalf. The petitioner (or agent) must file Form I-360 with the Nebraska Service Center.

(B) Supporting Documentation. Form I-360 must be filed with:

- (i) A copy of the petitioner's passport, birth certificate, or national identification card showing that the petitioner is a citizen or national of Afghanistan, along with a certified English translation, if the document is in a foreign language;
- (ii) A positive recommendation or evaluation from the petitioner's senior supervisor or the individual occupying the supervisor's position, or a more senior individual if the senior supervisor has left the employer or has left Afghanistan, confirming employment of not less than one year beginning on or after October 7, 2001 and that the petitioner has provided faithful and valuable service to the U.S. government [**Note:** Under Department of State policy as stated at 9 FAM 42.32(d)(11), the Chief of Mission will approve the recommendation only if made by a U.S. citizen or national (or endorsed by the U.S. citizen or national responsible for the contract under which the petitioner's service was provided)]
- (iii) Proof of risk assessment conducted by the Chief of Mission, Embassy Kabul, or his or her designee, establishing that the alien has experienced or is experiencing an ongoing serious threat as a consequence of his or her employment by the U.S. Government;
- (iv) Proof of an independent review conducted by the Chief of Mission, Embassy Kabul, or his or her designee, of records maintained by the U.S.

Government or hiring organization or entity, to confirm employment and faithful and valuable service to the U.S. Government; and

(v) If the petition is filed by a petitioner in the United States, a copy of the front and back of the petitioner's I-94, Arrival-Departure Record.

(C) Classification Requested. Petitioners filing under the Afghan Allies Protection Act of 2009 should check box *m*, *Other*, *explain* and write "Afghan Worker" in the space provided.

(D) Fees. By statute, there are no filing or biometric fees associated with this petition.

(6) Number of Visas That May Be Issued. Section 602(b)(3)(A) provides for a limit of 1,500 immigrant visas for principal aliens for each Fiscal Year from 2009 through 2013. But for each fiscal year from 2010 through 2013, the total number is increased by the difference between 1,500 and the number of visas actually used during the immediately prior fiscal year. If the numerical limitation for Fiscal Year 2013 is not reached, any unused numbers from that year may be used in Fiscal Year 2014. Numbers will not carry forward into Fiscal Year 2015.

(7) Eligibility to Adjust Status in the United States. Petitioners under this category may not file for adjustment of status concurrently. Section 245(c)(7) of the Immigration and Nationality Act (INA) provides that employment-based immigrants (including special immigrants) are ineligible to adjust status unless they are in a lawful nonimmigrant status. However, section 602(b)(9) of Public Law 111-8 waives three adjustment ineligibilities – sections 245(c)(2), (7), and (8) – for section 1244 and section 602(b) petitioners who were either paroled into the United States or admitted as nonimmigrants. Therefore, a paroled or admitted alien may apply for and obtain adjustment under section 602(b) even if the alien is not *currently* maintaining a lawful status and even if he or she has failed to maintain a lawful status in the past.

All approved petitioners and dependents must have successfully completed any appropriate DHS security checks prior to final issuance of an immigrant visa.

(8) Class of Admission Codes.

SQ-1 – Special Immigrant Iraqi or Afghan Employee (Principal)

SQ-2 – Spouse of SQ-1

SQ-3 – Child of SQ-1

SQ-6 – Special Immigrant Iraqi or Afghan Employee (Principal Adjusting Status in the United States)

SQ-7 – Spouse of SQ-6

SQ-8 – Child of SQ-6

6. The *AFM Transmittal Memoranda* button is revised by adding, in numerical order, the following entry:

AD 10-04 [09/02/10]	Chapter 22.3(a), (t), and (u)	Provides procedural guidance on the adjudication of Form I-360 for Special Immigrant Visas for Certain Afghans
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Use

This memorandum is intended solely for the guidance of USCIS personnel in performing their duties relative to adjudications of applications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by an individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to Headquarters Service Center Operations Directorate.

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