



Adjustment of Status for Afghan Nationals

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Presenters



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Agenda

- Considerations for individuals who are eligible to adjust status based on an asylum grant or an approved SIV petition
- Applicability of the Terrorism-Related Inadmissibility Grounds (TRIG) at the adjustment stage
- How to address polygamy and non-biological children
- I-485 Derivatives
- Travel

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SIV vs Asylee Adjustment of Status

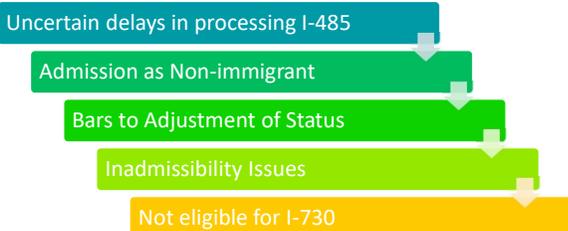
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SIV Adjustment of Status Requirements

 Who is eligible? U.S. Armed Forces Translators, or Employed by or on behalf of the U.S government or in the ISAF	 Key Eligibility Requirements Inspection and Admission Not subject to any bars to adjustment of status Admissible or eligible for waiver of inadmissibility
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SIV AOS Key Challenges



- Uncertain delays in processing I-485
- Admission as Non-immigrant
- Bars to Adjustment of Status
- Inadmissibility Issues
- Not eligible for I-730

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SIV AOS
Key Benefits

- Fee exempt (extended until 9/30/2024)
- No restrictions on travel
- Client Perception
- Faster processing time **
- Eligible for P3

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Asylee Adjustment of Status Requirements

- Who is eligible?**
 - Asylees approved
 - One year requirement
- Key Eligibility Requirements**
 - One Year Rule
 - Maintain Asylee Status
 - Admissibility Issues

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Asylee AOS
Key Challenges

- Maintaining Asylee Status
- Application Fee
- One Year Rule
- Client Perceptions

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**Asylee AOS
Key Benefits**

- No Bars to Adjustment of Status
- Waiving Inadmissibility Issues
- Posted Processing Times
- Benefits

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Additional Considerations

- Timing
- Status
- Fees
- Perceptions

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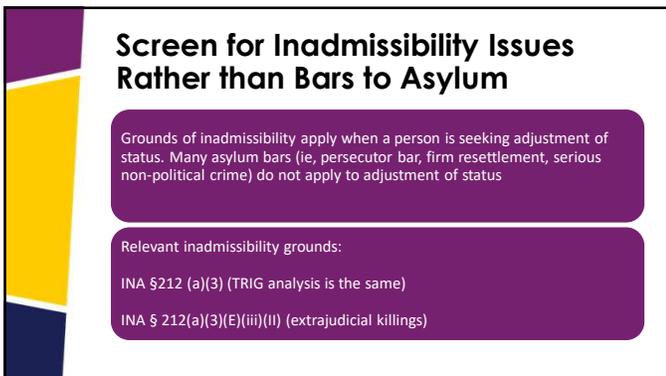
Question for the Chat!

When are you deciding to file your clients' asylee AOS applications?

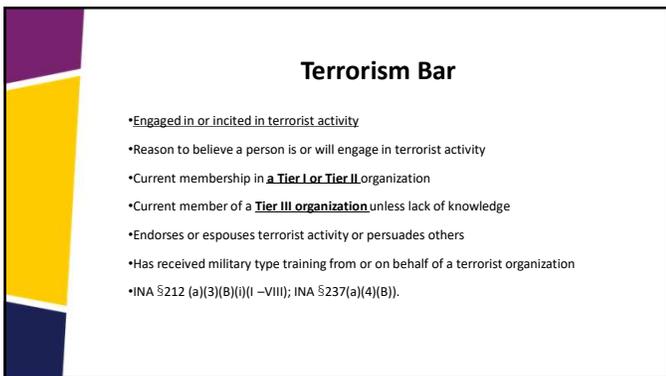
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Was it Material Support?

- “An alien who affords **material support** for the commission of a terrorist activity to a terrorist organization, or to an individual who has committed or plans to commit a terrorist activity.” . . .
- There must be knowledge
- includes safe house, transportation, communications, funds, transfer of funds, or other material financial benefit, false documentation etc. INA §212(a)(3)(B)(iv)(VI).
- Consider: amount of support (de minimus is enough); to whom; use of support and intent (irrelevant).

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Very Limited Exceptions!

- Duress is not an exception
- De minimus is not an exception
 - Matter of A-C-M-*, 27 I&N Dec. 303 (BIA 2018).
- Lack of knowledge is a very limited exception (demonstrate clear and convincing evidence that did not know or reasonable should not have known...).
 - Tier III (Membership, solicitation and material support)
 - All Tiers (Material support – if applicant did not know or should not have known they afforded material support)

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Possible Exemptions

- Situational Exemptions** (authority under INA §212 (d)(3)(B)(i))
 - Duress (material support, military training and solicitation – All Tiers).
 - Certain Limited Material Support
 - Insignificant Material Support
 - Afghan Civil Service
 - Afghan Allies

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Duress

*Duress has the most traffic! This exemption has been around for a long time, not specific to Afghans. Want to really prove that there was no way out actually providing the support.

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Certain Limited Material or Insignificant Support

Limited material support may include:

- Certain routine commercial transactions;
- Certain routine social transactions;
- Certain humanitarian assistance; and
- Material Support provided under substantial pressure that does not rise to the level of duress ("sub-duress pressure").

Now applies to Tiers I, II, and III

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Insignificant Material Support

*Material support is "insignificant" only if: (1) it is **minimal in amount**; and (2) the applicant reasonably believed that it would be **inconsequential in effect**. Adjudicators will evaluate whether the material support provided was minimal by considering its relative value, fungibility, quantity and volume, and duration and frequency.

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Afghan Civil Servants

Exempted the application of TRIG resulting from employment as civil servants in Afghanistan at any time from September 27, 1996 to December 22, 2001, or from August 15, 2021, or thereafter, subject to certain limitations.



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Afghan Allies – Actions or Activities

(1) Directed against the **Afghan Taliban or Afghan Taliban-affiliated militia groups**

(2) Directed against any other organization that was engaged in violent activities that targeted the United States or allied entities, including

- (a) **any entity or contractor of the United States government or any Individual**
 - employed by or on behalf of the United States government,
- (b) **the International Security Assistance Force (ISAF)** or any successor name of such force
- (c) **the United Nations**, or
- (d) **the government of the Islamic Republic of Afghanistan or the Afghan Transitional Authority** during the time period from **December 22, 2001, to August 15, 2021.**



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What is the Exemption Process?

- There is no specific exemption application.
- Rather, USCIS will affirmatively decide when adjudicating an immigration benefit whether a person may qualify for an exemption.
- The applicant must fully disclose in all relevant applications and interviews the nature and circumstances of any material support provided, as well as any contact with a terrorist organization and its members.
- Asylum grants do not indicate whether an exemption has been granted

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Best Practices for Adjustment Applications

- Disclose as appropriate on Form I-485 (questions 48-50 are getting at TRIG issues). If you know that issue was addressed at asylum stage, mention this when answering the I-485 questions.
- Take special care with *pro se* asylum applicants or those who had different representation below.
- FOIA for "A file, including asylum officer notes and assessment to grant"

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Most Courts have Found Government Can Reconsider TRIG issues at Adjustment Stage

Courts found inadmissibility and asylum determinations distinct; just because asylum granted did not mean government was barred from raising TRIG issues.

- Islam v. Dep't of Homeland Sec.*, 997 F.3d 1333, 1342 (11th Cir. 2021)
- Fofana v. Mayorkas*, 4 F.4th 668, 671 (8th Cir. 2021)
- Janjua v. Neufeld*, 933 F.3d 1061, 1067–68 (9th Cir. 2019)

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Minority View on Collateral Estoppel

Amrollah v. Napolitano, 710 F.3d 568 (5th Cir. 2013).

Issue preclusion, also known as collateral estoppel, applies when "(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; and (3) the previous determination was necessary to the decision."

"In other words, the IJ's ruling that [the plaintiff] was admissible necessarily included, *under the structure of the statute*, a finding that [plaintiff] did not provide support to an individual or organization that engaged in terrorist activities." *Amarollah*, 710 F.3d at 572.

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Polygamy and Derivative Status

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What is Polygamy?



- USCIS Policy Manual defines polygamy as “the custom of having more than one spouse at the same time.” Vol. 12, Part F, Ch. 5
- USCIS Information for Afghan Nationals: “religious practice or historical custom of having more than one spouse at the same time.”
 - <https://www.uscis.gov/humanitarian/information-for-afghan-nationals>
- FAM: Polygamy is the historical custom or religious practice of having more than one wife or husband at the same time.

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What does it mean to “practice polygamy”?

- INA § 212(a)(10)(A): “[A]n immigrant who is coming to the United States *to practice polygamy* is inadmissible.” See Form I-485, Page 15, #80.
 - USCIS does not define what actions constitute “practicing polygamy.”
- Foreign Affairs Manual, 9 FAM 302.12-2:
 - Applicant must intend *actually to* practice polygamy in the U.S. to be ineligible.
 - Mere advocacy of or belief in the practice or past practice of polygamy is not sufficient.
 - To sustain an ineligibility, an officer must find that the applicant will maintain a **married relationship with more than one spouse while in the United States**. If one spouse is traveling with the applicant while the other spouse remains overseas, the applicant can only be found ineligible if the officer believes the applicant **will continue** a relationship with the left-behind spouse, **such as visiting the spouse, providing financial support, and keeping in phone contact**.
 - If an applicant is legally married to a second spouse but maintains **no active relationship** with that spouse, then that would not be practicing polygamy and would not sustain an ineligibility.
 - Remember FAM does not bind USCIS!

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Compare Third Circuit’s Broad View of “Practicing Polygamy”

Al-Hasani v. Secretary United States Department of Homeland Security, No. 22-1603 (3d Cir. 2023).

- Applies broad interpretation of “practicing polygamy” and found that a lawful permanent resident (LPR) who was married simultaneously to two women within five years before filing for naturalization practiced polygamy within the meaning of INA § 212(a)(10)(A). Thus, precluding the applicant from naturalizing for lack of good moral character.



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How Does Polygamy Impact Applications for AOS?

Asylee AOS

- Asylum applicants not subject to grounds of inadmissibility. Practicing polygamy is not a bar to asylum.
- Asylee adjustments- subject to most grounds of inadmissibility and there is a waiver for “practicing polygamy” under 209(c).

SIV AOS

- SIV/AOS applicants- subject to most grounds of inadmissibility and no waiver available for “practicing polygamy”.
- <https://refugeerights.org/news-resources/overview-of-marriage-in-u-s-immigration-law-practice-guide>.

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How Does Polygamy Impact Derivative Benefits?

- General rule that marriage is valid if valid in the place where it is performed unless there is a public policy against it (“place of celebration rule”).
- Polygamy is outlawed in the U.S. U.S. Immigration law only recognizes the spouse from the first marriage. See *Matter of H-*, 9 I&N Dec 640 (BIA 1962).
- USCIS will not recognize a polygamous marriage for purposes of derivative benefits
 - USCIS will recognize the *first* marriage.
 - USCIS will recognize a *subsequent* marriage if earlier marriages have terminated. If not terminated, there are no derivative Immigration benefits.

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Which Children Qualify to Derive Immigration Benefits?

Biological Children	Non-Biological Children
<ul style="list-style-type: none"> ✓ Whether conceived in the 1st marriage or subsequent marriage, a biological child qualifies as a child under INA 101(b)(1) and 8 U.S.C. 1101(b)(1) if unmarried and under the age of 21 (unless CSPA applies). ✓ Out-of-wedlock (Principal Father): Demonstrate a bona fide parent-child relationship. INA 101(b)(1)(D). 	<ul style="list-style-type: none"> ✓ Adopted Child: Before age 16 (under 18 if sibling) & resided w/parent at minimum 2 years. INA(b)(1)(E). <ul style="list-style-type: none"> ✓ Adoption=illegal under Islamic Law in Afghanistan. Formal Guardianship permitted. ⚠ Step-Child (e.g., of a subsequent spouse): If entered while first marriage legally valid, cannot be considered a child for immigration purposes to derive benefits. INA101(b)(1)(B).

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Options for Divorce?

- Customary divorce may be valid, even when parties to divorce do not living in the home country and did not travel to the home country for the divorce.
 - *Michael Adjel v. Alejandro Mayorkas, No. 21-1615 (4th Cir. 2023)*
- State courts may divorce a couple that was married abroad as long as one member of the couple is domiciled in the U.S. for a certain period.
- No divorce option or no desire to divorce?
 - Remember, no derivative benefits for second/subsequent spouse.
 - Second spouse could seek independent immigration benefits (TPS, asylum).



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Case Example: How would you advise Abdullah?

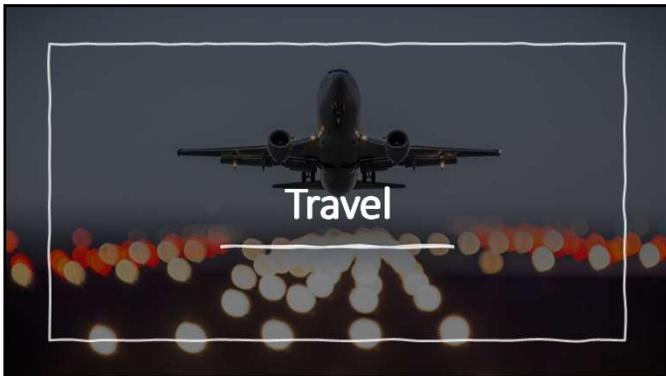
- Abdullah is a citizen of Afghanistan living in the U.S. with his wife and their 4 children.
- He is an SIV recipient preparing to apply for AOS.
- In consultation with Abdullah, you learn that he legally married a 2nd wife in Afghanistan. She and their 2 biological children are living in Afghanistan.
- Abdullah regularly sends money to his 2nd wife to support her and their children.
- He informs you that he would like to include his children abroad in his adjustment of status application.

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Question for the Chat!

Have issues of polygamy occurred in any of your clients' adjustment cases?

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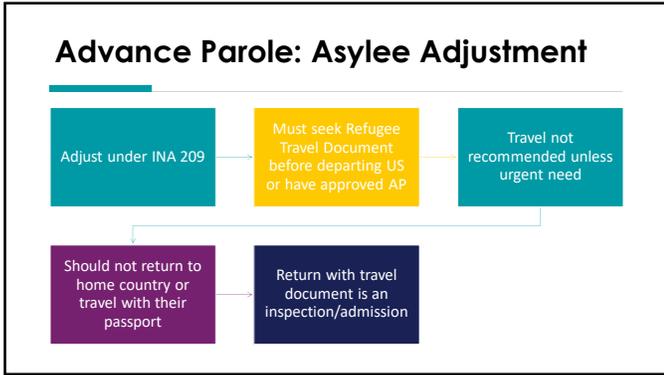
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Advance Parole

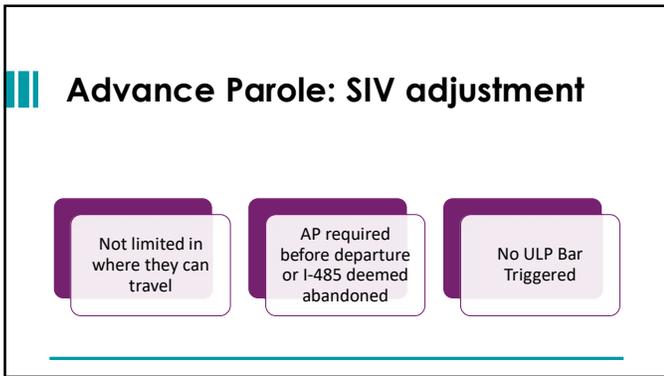
Who can request advance parole?

- Applicants for Adjustment of Status
- Asylum Applicants
- Asylees/Refugees (Refugee Travel Document)
- TPS (I-512T)
- Humanitarian Parolees

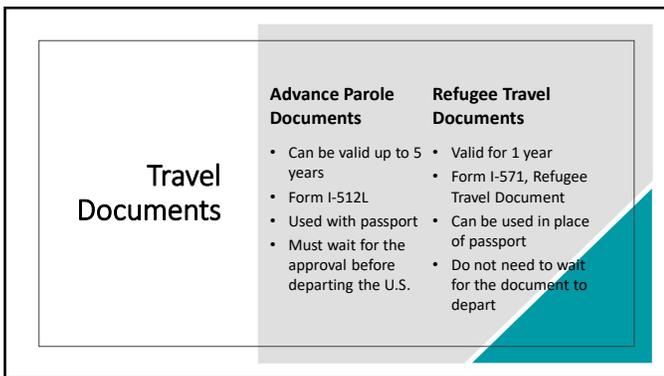
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Advance Parole Application Process



Form I-131



Fee or Fee Exemption



NO Fee Waiver if Fee Required



List: travel purpose, country(ies), number of trips, circumstances

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Helpful Resources

- https://www.cliniclegal.org/sites/default/files/2023-02/family_reunification_options_for_afghans.pdf
- <https://www.cliniclegal.org/resources/family-based-immigration-law/child-status-protection-act/age-out-rules-afghan-siv>
- [Practice Pointer: Navigating the Complexities of Polygamy in Immigration Law | Catholic Legal Immigration Network, Inc. \(CLINIC\) cliniclegal.org](#)
- <https://www.cliniclegal.org/resources/asylum-and-refugee-law/i-730-refugeeasylee-family-reunification-practice-manual>

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Embracing the Gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs.

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