



Assisting Citizens of Afghanistan

January 14, 2022

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Today's Instructors



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Webinar Agenda

- Special Immigrant Visa Holders
- Parolees
- Special Immigrant Visa Process
- Family-Based Immigration
- Asylum
- Other Forms of Relief
- Options for those Outside the U.S.

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Evacuations from Afghanistan

- August 2021: evacuation of more than 74,000 Afghans
- Since August, U.S. organized charters have evacuated several thousand more (USCs, LPRs, or SIV holders)
- Approximately 70,000 Afghans were flown to the United States and temporarily housed on military bases (safe havens)
- Majority have now been resettled around the country

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Immigrant Visa Holders

- Small percentage of Afghan evacuees entered U.S. with immigrant visas issued by embassy in Kabul
- Immigrant visa holder admitted on IV is LPR
 - Should see both IV stamp and I-551 stamp in passport that shows date of admission as LPR
 - IV holder has completed all processing and just needs to wait for green card in the mail
 - Keep address updated with USCIS through filing Form AR-11 online

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Immigrant Visa Example



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Special Immigrant Visa Applicants

- SIV program for Afghans who worked for U.S. government
- Form I-360 already submitted and approved
- Applicant paroled in with SQ/SI status
- Paroled for 2 years
- Can complete SIV process in the U.S.
- File Form I-485

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Example of SQ/SI Parole

Special Immigrant Visa and Border Protection

Most Recent I-85

Administrative Code Number: [REDACTED]
 Most Recent Date of Entry: 2021 July 20
 Class of Admission: DT
 Admit Until Date: 10/18/2023
 Status: Granted on the I-85 Information Form

Last Name: [REDACTED]
 First Name: [REDACTED]
 Birth Date: [REDACTED]
 Passport Number: [REDACTED]
 Country of Issuance: Afghanistan

See Instructions

INSTRUCTIONS: This I-85 is valid for entry into the United States for the purpose of admission as a Special Immigrant. It is not valid for admission to the United States for any other purpose. It is subject to the terms and conditions of the I-85 Information Form. It is subject to the terms and conditions of the I-85 Information Form. It is subject to the terms and conditions of the I-85 Information Form.

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Humanitarian Parole

- Majority of Afghan evacuees have entered U.S. on two-year parole
- I-94 stamped "DT" or "OAR"
- Eligible for EAD by filing Form I-765 (category (c)(11))
 - EADs completed on military bases without fee
 - Those who do not complete on base can file now **without fee**
- Parole not permanent status
- Keep address updated with USCIS through Form AR-11

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Operation Allies Refuge (OAR) Parole Stamp



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Special Immigrant Visa Process

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Starting Special Immigrant Visa Process

- First apply for Chief of Mission approval: AfghanSIVapplication@state.gov
- Detailed guidelines available at: https://travel.state.gov/content/dam/visas/SIVs/Afghan_SIV_Guidelines_and_DS157_Instructions_Oct_2021_1.pdf
- Required documents include:
 - Human Resources letter verifying employment (one year working with U.S. gov't)
 - Letter of recommendation from supervisor
 - Form DS-157, Supplemental Nonimmigrant Visa Application
 - Evidence of Afghan nationality
 - Statement of threats
 - Employee badge
 - Biographic data

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Filing I-360 After Chief of Mission Approval

- A completed [Form I-360, Petition for Amerasian, Widow\(er\), or Special Immigrant](#)
- Copy of passport or *tazkera*
- Copy of the letter of recommendation from supervisor
- Copy of COM approval
- Copy of I-94 Card
- Can be filed via email: NSCI360SIVAPP@uscis.dhs.gov



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I-485 Application after Approval of I-360

- Must wait for I-360 approval before filing I-485 application
- Some have I-94 with stamp indicating SQ/SI parole
 - Means have approved I-360 SIV and can file for adjustment of status
- Complete Form I-485 if they have not done so already at safe havens
- Even if they lack the SQ/SI parole, they may still have an approved I-360 self-petition and can file for adjustment of status

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Documents Required for I-485 Based on Approved I-360

- [Form I-485](#) without fee
- Copy of I-360 approval notice
- Copy of a government-issued identity document with photograph
- Copy of birth certificate (or *tazkera*)
- Passport page with parole stamp and I-94 card
- Medical examination (if already completed on base, include a copy if available)
- Dispositions for arrests (if applicable)
- Proof of relationship for spouse and children

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Derivative Adjustment

- Derivative's relationship with principal must have existed at the time the principal received LPR status and continue to exist
- No need for a separate I-130 petition
- **Example:** Mariam was evacuated from Afghanistan in August 2021. She joined her husband who was granted a Special Immigrant Visa in January 2021. They were married at the time he entered the U.S., but she was unable to immigrate with him earlier because she was caring for a sick family member. Mariam can file her I-485 based on her relationship with her husband. No I-130 petition is required.

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Age Protection for Derivative Children

- Child Status Protection Act (CSPA) applies
- Biological age of child reduced by time I-360 pending
- Measure age on date petition approved or priority date current (whichever is later)
- Employment-based EB-4 category current
- One year to seek LPR status
 - File I-485
 - File I-824
 - Pay immigrant visa or affidavit of support fee to NVC

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Family-Based Immigration

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Family-Based Immigration

- USCs can file [I-130 relative petition](#) for:
 - spouse
 - parents (if U.S. citizen is 21 or older)
 - children and sons and daughters (married and unmarried)
 - siblings (if U.S. citizen is 21 or older)
- LPRs can petition for:
 - spouse
 - children and unmarried sons and daughters

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Categories of Family-Based Immigration

- Spouses and children of USCs and parents of adult USCs are called **"immediate relatives"**
- They immigrate faster, though still subject to processing delays that can take several months
- Other relatives of USCs and LPRs wait longer periods because of quotas on the number of people who can immigrate in **"preference categories"**
- Currently no backlog for spouses and children of LPRs in F-2A category

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Family-Based Preference Categories

- F-1: Adult unmarried sons and daughters of USCs
- F-2A: Spouses and children of LPRs
- F-2B: Adult unmarried sons and daughters of LPRs
- F-3: Married sons and daughters of USCs
- F-4: Siblings of USCs

Consult monthly Visa Bulletin:
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>

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Adjustment of Status v. Consular Processing

- Adjustment of status:
 - Process by which a person in U.S. obtains LPR status while here
 - INA § 245(a) and INA § 245(i)
 - If adjusting under 245(a), may be barred under INA § 245(c), which prevents adjustment of status to anyone who has failed to maintain a lawful status since entry or has worked w/o permission
 - These bars *do not* apply to immediate relatives
- Consular processing:
 - Process by which a person outside U.S. or a person ineligible for adjustment obtains immigrant visa at U.S. consulate and then enters U.S. as LPR

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Moving from Consular Processing to Adjustment of Status

- No special form required, simply file for adjustment
- Notify National Visa Center of applicant's intention to adjust status
 - Failure to contact within a year can lead NVC to terminate petition
 - NVC public inquiry form: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/ask-nvc.html>
- Include proof of underlying petition
- Pay adjustment of status fee even if already paid NVC fees
 - No fee waiver available for family-based adjustment of status

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Documents for Family-Based Adjustment

- Form I-485
- Two passport style photographs
- Government-issued identity document with photograph
- Copy of birth certificate (or tazkera)
- I-94 card and parole stamp
- I-130 petition, I-130 receipt or approval notice
- Filing fees; no fee waivers
- Form I-864, Affidavit of Support, with supporting documents
- Certified police and court records of all criminal charges
- For preference categories, proof that continuously maintained lawful status since arriving
- If derivative, proof of relationship to principal
- Medical exam (if completed on base, include a copy)

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Can Benesh and Salma Adjust Status in the U.S.?

LPR Nasir immigrated to the U.S. in 2016 under the SIV program. In 2017 he returned to Afghanistan and married his wife, Benesh. In 2018 their daughter Salma was born. Nasir filed I-130 petitions for Benesh and Salma in 2019. The petitions were approved and immigrant visa applications and required documents were submitted to the NVC, but an interview had not yet been scheduled.

In August 2021, Benesh and Salma were evacuated from Afghanistan and paroled into the U.S. for a two-year period. Are they eligible to adjust status?

What if Benesh and Salma had not been evacuated? What are their options?

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Public Charge

- Trump era regulations vacated and withdrawn
- 1999 Interim Field Guidance and 2021 FAM
 - Assume not public charge if able-bodied, employable
 - Totality of circumstances test
 - Five statutory factors
 - Receipt of SSI, TANF, state cash assistance
- Affidavit of support rules control
 - I-864
 - I-134

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Eligibility for Public Benefits

- Afghan evacuees eligible for wider list of programs
 - SSI
 - TANF
 - Medicaid
 - SNAP
 - CHIP
- May affect public charge determination later

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Will Azeem Have a Problem?

Azeem was evacuated from Afghanistan on August 21, 2021 and entered the U.S. on humanitarian parole with an I-94 marked OAR. He has been receiving food stamps and Medicaid for the last three months. He has recently applied for SSI due to his depression and PTSD. He hopes to get a job once he feels more settled. Meanwhile, the petition his naturalized father filed in his behalf was approved and the priority date should be current in a couple years.

- Will Azeem be eligible to apply for adjustment of status?
- Will his receipt of benefits pose a problem down the road?
- His father had filed an I-134 on his behalf. What is the effect of that?

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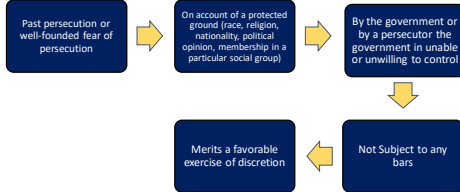
Asylum

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Asylum Requirements



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Special Considerations for Asylum Claims from Afghanistan

- Argue multiple protected grounds
 - Political opinion – can be actual or imputed (pro-western political opinion)
 - Particular social group based on gender, or work with U.S. government or international forces, or work with NGOs
 - Race or nationality claims may include persecuted ethnic groups (Hazara)
- Remember claims based on harm by private actors (domestic violence, forced marriage)

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One-Year Filing Deadline

- Application for asylum must be filed within one year after arrival in the United States, INA § 208(a)(2)(B) and 8 CFR § 208.4
- 2 exceptions – 8 CFR §§ 208.4(a)(4), (5)
 - Changed circumstances that **materially affect eligibility** for asylum
 - Extraordinary circumstances **relating to delay** in filing application
 - Applicant maintained Temporary Protected Status, lawful immigrant or nonimmigrant status, **or was given parole**, until a **reasonable period** before the filing of the asylum application
 - “Reasonable period” – generally less than six months.
 - Matter of T-M-H- & S-W-C-, 25 I&N Dec. 193 (BIA 2010).

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I-589 Filing Process

- Instructions are on USCIS website, <https://www.uscis.gov/i-589>
- File with Service Center (depending on individual’s location in U.S.)
- Service Center will issue receipt and biometrics notice and will transfer to local asylum office for interview
- Asylum office may approve, deny (if maintaining valid parole status), or refer to court (if no longer in valid parole status)
- USCIS has announced “streamlined” processing of I-589s based on language in the continuing resolution

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Does Hussaini Have an Asylum Claim?

You meet Hussaini, a citizen of Afghanistan, who was evacuated in August 2021. He has been granted a two-year parole, until August 2023. He tells you that he worked for several months as an interpreter for the U.S. armed forces three years ago. He quit after he received death threats for his work. He did not suffer any further problems in Afghanistan after he quit, but he has heard that Taliban members are looking for anyone who worked with the U.S. military. He also tells you that he is Hazara, a historically persecuted ethnic group in Afghanistan. When the Taliban first took over Afghanistan in the 1990s, he and his family fled to Pakistan where they lived for many years. He returned in the early 2000s.

- Does Hussaini have a claim for asylum? On what basis? What else do you want to know? When should Hussaini file for asylum?

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Does Laila Have an Asylum Claim?

You meet with Laila, a citizen of Afghanistan. She left Afghanistan in August 2021 and was granted a two-year parole. Laila was evacuated because her brother, Ahmad, was previously granted a Special Immigrant Visa as an interpreter. He has been in the U.S. as an LPR for several years. Laila's neighbor told her that the Taliban went to the family home. They said they would kill any family member of Ahmad if they ever return to Afghanistan. Laila also tells you that she is married and suffered severe domestic violence during her marriage.

- Does Laila have a claim for asylum? What else do you want to know?

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Other Forms of Relief

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Screen for Victim-Based or Other Humanitarian Relief

- **Special Immigrant Juvenile status:** For immigrant children who are victims of abuse, abandonment, or neglect by one or both parents. Provides a pathway to LPR status
- **U visas:** Victim of qualifying crime; substantial physical or mental abuse resulting from crime; possess information about crime; help in investigation and/or prosecution
- **VAWA:** Offshoot of family-based immigration system. Allows for self-petitioning by certain abused spouses and children of U.S. citizens or LPRs

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Options for Afghans Outside the U.S.

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Afghan Humanitarian Parole Requests

- For claims based on risk of harm, USCIS is requiring specific evidence of harm facing the individual, such as:
 - Reports or other documentation from a credible third-party source specifically naming the beneficiary and outlining the **serious and imminent harm** they face
- Evidence of a USCIS grant of a protection-based immigration benefit such as asylum, refugee or special immigrant status to an immediate family member or same-sex partner of the beneficiary, and the family member or partner:
 - Is ineligible for derivative status or
 - Risk of serious harm is so imminent they cannot wait for processing of derivative application

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Favorable Factors for Afghan Requests

- Immediate family of USC or LPR (spouse and unmarried children under 21)
- Locally employed staff of embassy Kabul and their immediate family (spouse and unmarried children under 21)
- SIV applicants whose applications have received COM approval
- Nuclear family of Afghan nationals previously evacuated to U.S.
- Individuals referred to P-1 or P-2 refugee program AND in imminent risk of return or serious, targeted harm in third country

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USCIS Decisions on Afghan Humanitarian Parole Applications

- Some approvals for those outside of Afghanistan
- Some conditional approvals for those in Afghanistan. If able to make it to a third country, should email USCIS at HumanitarianParole@uscis.dhs.gov
- Many advocates reporting denials without RFES based on failure to show imminent harm
- Consider other options for clients

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Refugee Processing

- Embassy **P-1 Referral**: U.S. government official must make referral
- **P-2 Referral**: based on work with U.S. government, U.S. media organization, or non-governmental organization
 - Organization must make the referral
- **P-3**: Provides access to members of designated nationalities (including Afghans) with immediate family members in U.S. who entered as refugees or were granted asylum
- Beneficiary must be in third country to complete refugee processing

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Immigrant Visa or I-730 Processing in Third Country

- No longer U.S. embassy operations in Afghanistan
- Limited evacuations via private groups in conjunction with DOS for SIV holders, LPRs, and USCs
- Can request case be moved to a third country for processing. Each individual consulate/embassy should have contact information on website. Send email/inquiry form with proof of ability to travel to third country.

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Helpful Government Links

- Information for Afghans: Operation Allies Welcome
<https://www.uscis.gov/humanitarian/information-for-afghans>
- File online change of address: <https://www.uscis.gov/ar-11>
- Check case status online: <https://egov.uscis.gov/casestatus/landing.do>
- Refugee processing for Afghans: <https://www.wrapsnet.org/siv-iraqi-syrian-afghan-referrals>

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Other Resources

- <https://cliniclegal.org/toolkits/assistance-afghans>
- <https://refugeerights.org/news-resources/legal-resources-for-afghans>
(Practical tips for those pursuing the SIV process from the International Refugee Assistance Project)

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