



Special Immigrant Visa

CALL FOR COOPERATIVE ACTION



In response to the recent Executive Order by President Joseph R. Biden, Jr., we offer this report as an overview of the SIV programs, noted systemic flaws, and suggestions of priority actions necessary to ensure the timely processing of these lifesaving visas for our wartime allies.



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In 2013, Matt co-founded *No One Left Behind* (NOLB) – an award winning non-profit dedicated to ensuring the United States of America honors its promises to its wartime allies. Since 2013, NOLB has helped over 50,000 individuals gain Special Immigration Visas and resettle throughout the U.S. (providing them with housing, furnishings, transportation, food, employment, and cultural integration). Matt has worked with numerous members of Congress to keep the Special Immigration Visa program alive and functioning, helping to pass eight laws since 2013.



Co-Author KIM STAFFIERI

In October 2019, Kim created a private volunteer group called the *Association of Wartime Allies* (AWA) which offers a real time, interactive environment in which SIV applicants can ask questions about their cases and documents in an effort to reduce case denials and appeals. Over the last 17 months, this group has grown to over 9,500 members, of which 80%+ are assumed to be actual SIV applicants based on their geographical location. New membership requests currently exceed 150 per week. AWA has also allowed for early recognition of problematic patterns, which are elevated to the appropriate governmental offices and other SIV supportive organizations. For example, in August 2020, AWA recognized that infants were not added as derivatives due to COVID-19 shutdowns. Some families were forced to choose between leaving their children in Afghanistan or have their visas expire for the rest of the family. Working with the Kabul Visa team, AWA resolved these cases with all of the derivatives added, and where applicable, all families reunited.

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Executive Summary

The Special Immigrant Visa (SIV) program was created in 2006 to make certain that Iraqis and Afghans who worked as translators or interpreters, or who were employed by, or on behalf of, the U.S. government in Iraq or Afghanistan are offered protection and put on a path to lawful permanent residency and, if they choose, U.S. Citizenship. This program has been a critical tool to ensure the safety and protection of individuals who put their own lives at risk to help the United States in those two conflicts.

The Special Immigrant Visa programs represent a promise that we made to our allies. Following through on that promise is not only vital to maintaining support of the Afghan and Iraqi people, but also to completing our mission there and to U.S. national security. However, at this time, backlogs and processing delays are leaving lives the U.S. Government promised to protect at risk in their home countries. As the U.S. plans to withdraw troops from Afghanistan, and as attacks against Afghan nationals who cooperated with the U.S. military rise exponentially, action must be taken now to ensure all who have been waiting years to relocate to the United States are finally able to do so.

Since 2009, funding for the Afghan SIV program has been authorized in the National Defense Authorization Act (NDAA). There has been no additional funding for the Iraqi program since 2014. In addition, the COVID-19 pandemic has exacerbated an already strained and understaffed program. Congress and the Biden Administration must act now, or they will not only risk losing the lives of individuals who bravely supported U.S. military operations, but they will also jeopardize the U.S.' ability to recruit similar in-country support for future military actions abroad.

There are currently three SIV programs:

- 1 50 visas permanently available each year** for certain Iraqis and Afghans who worked directly with the U.S. military
- 2 An unused backlog of 350 visas are available to Iraqis** who were employed by the U.S. Government in Iraq between 2008 and 2014; yet only ~60 applicants remain in the program. The unused visas must be reallocated to other Iraqi SIVs
- 3 An unused backlog of 11,000 visas available to Afghans** employed by the U.S. Government in Afghanistan between 2009 and 2022, while there are currently over 18,000 applications.

Afghan and Iraqi SIV Programs Summary

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

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

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

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

There is a similar SIV program for certain Afghans who were employed in Afghanistan by, or on behalf of, the U.S. government or by the International Security Assistance Force during a specified period. The program was capped at 1,500 principal aliens annually for FY2009 through FY2013, with a provision to carry forward any unused numbers from one fiscal year to the next. Current statutory authority provides for the issuance of no more than 22,500 visas to principal applicants after December 19, 2014. The application period for this program remains open until Dec 31, 2022.

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

The Iraqi and Afghan SIV programs have faced challenges with respect to application processing, security screening, and visa availability. The structure of the SIV programs themselves, with statutory timeframes and numerical limitations, introduces additional complication.¹

¹ Congressional Research Service Afg Iraq SIV 4.2020 Update

Why are the Special Immigrant Visa Programs Important?

U.S. involvement in Afghanistan is ongoing. We cannot complete our mission there without the Afghan translators, engineers, security guards, embassy clerks, logisticians, cultural advisors, and soldiers who stand by us. Many of these allies and their families now face death threats for their service to the United States. We gave our word to protect these allies—a promise that we have kept since 2009. That promise is now in jeopardy.

Iraqi interpreters have been left behind. The situation in Iraq is so insecure that our embassy in Baghdad cannot open for processing the few remaining SIV cases. We must complete our promise to the Iraqi interpreters and bring them to safety.

The Special Immigrant Visa programs represent a promise that we made to our allies. Following through on that promise is not only vital to maintaining support of the Afghan and Iraqi people, but also to completing our mission there and to U.S. national security.

Likewise, as the United States continues to protect its interests elsewhere around the world, it will need the continued assistance of those willing to stand with us. We must ensure that the United States is known as a country that keeps its promises and never forgets its allies.

How is the SIV Program Authorized Each Year?

Since 2009, funding for the Afghan SIV program has been authorized in the National Defense Authorization Act (NDAA). **There has been no additional funding for the Iraqi program since 2014.**

FY2021 NDAA Provisions for the Afghan Special Immigrant Visa Program:²

- An extension of the SIV program until December 31, 2022;
- An additional 4,000 available visas



² <https://www.congress.gov/bill/116th-congress/house-bill/6395>

³ Afghan-Public-Quarterly-Report-Q3-June-2020

⁴ Iraq-Public-Quarterly-Report-Q3-June-2020

The Immediate Path Forward for the Iraqi Special Immigrant Visa Program

(Refugee Crisis in Iraq Act of 2008)

Thousands of applicants remain in the pipeline as processing times slowed dramatically over the last four years.⁵ It is unconscionable that Iraqi SIV applicants remain languishing since 2014, waiting for resolution on their applications. There is a sufficient number of visas available to cover these last remaining applicants. Immediate workarounds must be put in place to finalize processing of these cases at a U.S. Embassy other than Baghdad. The Direct Access Program (DAP) is also estimated to have 100,000 or more Iraqi allies and their family members waiting in it.⁶ This program is paused while the DOJ pursues a case against three foreign nationals for stealing sensitive records from the DAP. The initial suspension is for 90 days, we must ensure it does not take longer.

The Immediate Path Forward for the Afghan Special Immigrant Visa Program

(Afghan Allies Protection Act 2009, or AAPA)

At this time, the U.S. plans to withdraw troops from Afghanistan in September 2021. The planned withdrawal requires an immediate and concerted effort on our part to ensure the safety of those SIV applicants waiting for the safe haven here in the U.S. that was promised to them for their service and sacrifice.

Targeted violent attacks against Afghan nationals that served with U.S. Military and USG projects have increased greatly, some reports saying up to a 45% increase over the course of the last few months.⁷ It is imperative that we now put in place a way to expedite the Afghan SIV processing system, and quite possibly create a plan to extradite those awaiting SIV processing to a safe haven where they can remain the final administrative processing of their SIV. The U.S. does not need another “last week in Vietnam” on our permanent record. Given the geography of Afghanistan, we can be sure we will not be anywhere near as successful as we were in the final days in Vietnam (during which we moved over a hundred thousand of our South Vietnamese allies and their families to Guam via boat) in bringing individuals to safety in such a short period of time, and therefore must immediately respond and take action.

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Very specifically, most recommended fixes rely on additional staffing at all levels of the Afghan SIV program. Since 2017, we have seen very little effort to enhance this program

⁵ Quil Lawrence “Trump Administration Has Drastically Dropped Visas for Afghan and Iraqi Interpreters” (NPR May 1, 2019) <https://www.npr.org/2019/05/01/718927688/no-visas-for-afghan-and-iraqi-interpreters>

⁶ Id.

⁷ UN News “‘Disturbing spike’ in Afghan civilian casualties after peace talks began: UN report” (UN News, February 23, 2021) <https://news.un.org/en/story/2021/02/1085442>

to a level of functionality. Between January 2017 until March 2020, there was no Senior Coordinating Official (Special Immigrant Visa Coordinator) in place to oversee the coordination, efficiency, or study (and request budgeting for) staffing needs for the Afghan SIV program.

The Office of the Inspector General (OIG) filed a report in June 2020 on the Afghan Special Immigrant Visa Program.⁸ This report notes that there has been no significant increase in general staffing for the Afghan SIV program since 2016, even though the number of applicants has increased by roughly 50% (and showed continued growth in Q3 of 2020). At this time, we request a thorough examination of the Afghan SIV Program to see which (if any) of these OIG recommendations have been met, and to what level they have been met.

In June 2020, IRAP released their report “Recommendations on the Reform of the Special Immigrant Visa Program for U.S. Wartime Partners”.⁹ We fully agree with the recommendations expressed in this detailed, comprehensive report.

In addition to the recommendations of the OIG and IRAP, the negative impact on SIV processing due to COVID-19 delays, and other problematic areas that have been uncovered by the work of the AWA, we respectfully note the following as areas of immediate concern that require action to relieve/eliminate yet another significant backlog in the program:

- Due to COVID-19 delays, we are now experiencing a very large, significant backlog of applicants awaiting conditional approval and then interview (mainly) at the Embassy in Kabul.
- In Q3 2020, it was reported that 560 cases were given Chief of Mission (COM) approval. If the same applies in Q4 2020 (still awaiting report) we can estimate close to 1,000 cases will be awaiting conditional approval from U.S. Citizenship and Immigration Services (USCIS). In Q3, USCIS reports adjudication of only 118 cases which now await a scheduled interview. (We would expect the Q4 number to be higher than this due to the easing of some COVID-19 restrictions at USCIS.)
- The Embassy Kabul has reopened to offer a limited number of in-person interviews, commencing in February 2021. With the health and safety of all as the utmost concern, such efforts MUST be expanded on swiftly and without further delay, in order to process the very large backlog of SIVs and protect the lives of those who served with and for the U.S.
- From Dec 23, 2016 until Dec 20, 2019, eligibility requirements for the Afghan SIV program were restricted solely to Interpreters/Translators for DOS, USAID, U.S. Military or those who had performed “sensitive and trusted activities” for the USG.
- The office of COM recently processed widespread denials to all applicants who applied during this time frame for not meeting these eligibility requirements – an unjust application of the law, as it comes down to a matter of the timing of the submission of application rather than work performed. The same applicants, with the very same work history, could have applied prior to Dec 23, 2016 *OR* after Dec 20, 2019 and would meet COM eligibility requirements. All cases denied for this reason should be reopened and processing resumed/prioritized as of the date of initial submission of the application.

⁸ OIG Review of the Afghan Special Immigrant Visa Program June 2020

⁹ https://refugeerights.org/wp-content/uploads/2020/06/IRAP_SIV_Report_2020.pdf

- All U.S. visas require a current medical examination, normally done prior to the Interview stage. Due to the length of time it takes for Administrative Processing (security checks and additional vetting) to be completed, the Afghan SIV program allows for medical exams to be delayed up until Administrative Processing is completed. Medical exams have a term of 6 months of validity. It is very common to see medical exams expire due to additional/extended Administrative Processing. For many SIV families, the cost of second (or third) medical exams for their families is prohibitive.
- Afghan SIV program Q3 2020 report states that Administrative Processing averages 298 days due to poor coordination and interagency cooperation in regards to security checks and additional vetting. A fix must be found that prevents applicants from needlessly undergoing multiple medical exams because their security clearance took longer than mandated.

Another Way: The Guam Option

The U.S. has undertaken several emergency airlift operations to evacuate refugees. Between May and December 1975, the Ford administration evacuated approximately 130,000 Vietnamese refugees to the U.S. via Guam, where refugees went through an initial screening process before being flown to reception centres in the U.S. for more extensive processing and security checks. Operation New Life, as the effort was called, cost the equivalent of \$1.7 billion (in 2007 dollars). In 1999, after Serbian forces attacked Pristina (Kosovo), the U.S. airlifted around 20,000 Kosovar Albanians to Fort Dix, NJ, where their eligibility for refugee status was determined. The operation (Task Force Open Arms) cost approximately \$140 million (including \$40 million in transportation costs).

From September to April 1996, the U.S. carried out Operation Pacific Haven to airlift 6,600 Iraqi Kurds and others who had assisted American agencies in Northern Iraq and had been forced to flee incursions by Saddam Hussein's forces into the safe zone that U.S., British, and French troops had established in the region in 1991. The Iraqis completed a security screening before being airlifted to Andersen Air Force Base in Guam.

Their asylum cases were processed in 90 to 120 days, on average. The operation cost \$10 million. Its efficiency was due in large part to close collaboration among the U.S. military, federal government agencies, and non-profit organizations.

In a 2009 report, the Center for American Progress (CAP) argued that a similar airlift was needed to evacuate Iraqis who served alongside the U.S. military and who had not yet received visas through the SIV Program.¹⁰ At that time, CAP estimated that transport cost \$100 million to airlift 40,000 U.S.-affiliated Iraqis (based on the costs of the Kosovo airlift in

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¹⁰ Natalie Ondiak and Brian Katulis, "Operation Safe Haven Iraq 2009: An Action Plan for Airlifting Endangered Iraqis Linked to the United States" (Center for American Progress, January 2009), https://cdn.americanprogress.org/wp-content/uploads/issues/2009/01/pdf/iraqi_refugees.pdf.

1999). By not initiating this plan, we can clearly see it as a major humanitarian failure that led to ubiquitous attacks on American affiliated Iraqis as ISIS steamrolled the country in the wake of the American withdrawal in 2011.

The United States must rely on historical precedents and develop a similar program to avoid both a large scale loss of life and military catastrophe in Afghanistan. Based on the public information provided by the Center for American Progress on these operations, and adjusted for 2021 dollars, it would cost approximately \$10,000 per person to airlift the remaining Afghan allies to a secure location in the United States for processing. If we extrapolate that by the estimated 70,000 U.S.-affiliated Afghans who face acute threats from the Taliban for their work with the U.S. military, we arrive at a total cost of \$700,000,000.

HISTORICAL AVERAGE OF MASS EVACUATION OPERATIONS

OPERATION	COUNTRY	REFUGEES	COST [†]	YEAR	2021 COST	COST PER PERSON
Operation New Life	Vietnam	130,000	\$405,000,000	1975	\$2,173,353,624	\$16,718
Operation Pacific Haven	Iraq	6,600	\$10,000,000	1996	\$16,486,671	\$2,497
Task Force Open Arms	Kosovo	20,000	\$140,000,000	1999	\$214,577,521	\$10,728

†as reported in Center for American Progress report

ESTIMATED COST OF AN AFGHAN EVACUATION

Average cost	\$9,981.65
Afghans in waiting	70,000
Projected cost	\$698,715,765.87

The Future Beyond Afghanistan and Iraq

To date, the Special Immigration Visa program has had marked success – having fulfilled our American promise for over 89,000 individuals. But getting them to America is only one step of the process – what happens once they arrive and how they are resettled is equally important to keeping that promise. The success of the Afghan and Iraqi SIV community within the United States is thanks to the public-private partnerships formed between the government (at all levels) and various non-profit organizations. This current public-private model does not adequately address the needs of the SIV population, and leaves their resettlement at the mercy of charitable giving.

The wars in Afghanistan and Iraq will likely not be the final wars for the United States. America is going to need local allies in future conflicts – especially if it wants to mitigate American casualties to a maximum extent possible. Thus, we recommend the government build into its intragovernmental “Go-To-War” planning process (at all levels and all departments) a requirement to fund and staff a formal Special Immigration Resettlement Program for any potential overseas mission (be it combat or peacekeeping). Partnership with American forces can mean a death sentence for those brave enough to give it. Should we abandon these allies to the very people we ask them to help us against, we will condemn ourselves to a future in which we find we have little to no allies. Thus far, our enemies have murdered hundreds of our wartime allies in Afghanistan and Iraq while they awaited the American visas they had earned and hoped would save their lives¹¹. We no longer have the luxury of going to war without an exit plan for both our forces and those we bring into our fold.

The “Go-To-War” planning should include consideration for the following:

- **How will we protect our local allies while they work with us abroad?** We should make every effort to prevent our allies from being identified while in U.S. employment/partnership. When necessary and possible, we should seek to internally relocate our allies to safer havens within their host nation. Should it become impossible for the allies to remain within their host nation safely, we should immediately seek to resettle them abroad (either in the U.S. or another allied nation).
- **How will we resettle our local allies outside of their host nation?** Where will they go? What process will be used to determine who gets to be resettled abroad? Which agencies will conduct the processing of applications, movement of people, and assistance upon resettlement?

By requiring the planning of the protection and potential resettlement of our local and wartime allies be done prior to operations, we will ensure that an adequate plan, infrastructure, personnel, and resources are in place and ready to go before they are needed – and not force future generations of Americans to build the airplane while they've also had to fly it (as we have since 2006).

¹¹ George Packer “A Debt of Honor” (The Atlantic, March 26, 2021) <https://amp.theatlantic.com/amp/article/618416/>

Recommendations

- **It is imperative that the Biden administration immediately reconsider the direction in the EO for another study of the ineptitude of the SIV program.** The overview given by the OIG in June 2020 is a relevant and sufficient starting point in the revitalization of this program. Given the extremely unstable situation in Afghanistan at this time, any further delays will cause otherwise preventable deaths to Afghan nationals that qualify for the SIV program
- **Remove the cap on Afghan SIV visas**, issue as many as are needed to cover all who qualify, and extend the program until U.S. forces have left Afghanistan and the program is no longer needed.
- **Create a working system of dedicated priority for Afghan SIV processing** to enable processing of these visas in the nine month window mandated by Congress in the AAPA. This would call for immediate staff increases across the board for the SIV program. As noted in the OIG June 2020 report, there has been no significant or lasting increase in staffing since 2016 as the program itself has seen an increase of approximately 50% in new applicants.
- **Ensure a Senior Coordinating Official is given the resources and authority necessary to efficiently administer the program.** Note that there was no such position staffed from January 2017 to March 2020.
- **Reopen and process cases** that were denied between December 23, 2016 and December 20, 2019, when applications were unjustly limited solely to Interpreters/ Translators for DOS, USAID, U.S. Military or those who had performed “sensitive and trusted activities” for the U.S. Government.
- **Issue guidance to adjudicators** at all posts worldwide to wait until the time of final visa interview to request the medical examination so as to not risk costly and risky medical exams expiring due to processing delays. To assist with this (and to add to the acceleration of the SIV system in its entirety), we must see a prioritized and concerted effort to coordinate the Administrative Processing which includes Security and Background checks from multiple Intelligence and Security departments in the U.S.
- **Ensure adequate funding for resettlement agencies** working with SIV recipients so as to not force them to rely solely on charitable aid once they arrive in the United States until they are able to stabilize their lives and obtain employment.
- Using the lessons learned from these two programs, **create a forward-thinking turnkey model** that includes a funded, staffed “Special Immigration Resettlement Program” for any potential future overseas missions.
- **In the event of a withdrawal of American forces, execute a mass evacuation plan** similar to historical events in Vietnam, Iraq, and Kosovo. This option will allow applicants to travel to a safe space while they await processing.
- **Open and maintain regular lines of communication** between relevant administration officials and civil society organizations, including organizations that provide direct legal services to SIV applicants

Conclusion

The SIV program has been a critical tool to ensure the safety and protection of individuals who put their own lives at risk to help the United States in those two conflicts. Congress and the Biden Administration must act now, or they will not only risk losing the lives of individuals who bravely supported U.S. military operations, but they will also jeopardize the U.S.' ability to recruit similar in-country support for future military actions abroad.

PRESS INQUIRIES

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