



HQ DOMO 70/6.1.7
AFM Update AD08-17

Interoffice Memorandum

TO: Field Leadership

FROM: Donald Neufeld /s/
Acting Associate Director, Domestic Operations

DATE: July 7, 2008

SUBJECT: Special Immigrant Visas for Certain Iraqis under Section 1244 of Public Law 110-181, the National Defense Authorization Act for Fiscal Year 2008, as amended.

Revisions to *Adjudicator's Field Manual (AFM)* Chapter 22.3
(AFM Update AD08-17)

This memorandum revises the *Adjudicator's Field Manual (AFM)* by adding new guidance on adjudicating Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, for persons claiming special immigrant status under Section 1244 of Public Law 110-181, the National Defense Authorization Act for Fiscal Year 2008, as amended by Public Law 110-242. An alien is classifiable under INA 203(b)(4) as a special immigrant described in section 1244 of Public Law 110-181, as amended, 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 email through the appropriate supervisory channels to David Tu, 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 to Section (a):

(a) **General**.

- A limit of 5,000 per year for 5 successive fiscal years beginning with Fiscal Year 2008 on the

Page 2

number of Iraqi nationals who worked for on or on behalf of the U.S. Government in Iraq. If the numerical limitation is not reached during a given fiscal year, the numerical limit for the following fiscal year shall be increased by the amount of numbers that were unused; unused numbers from Fiscal Year 2012 may be used in Fiscal Year 2013.

2. Chapter 22.3 of the *AFM* is amended to add section (t) as follows:

(t) Iraqi Nationals Who Worked for or on Behalf of the U.S. Government in Iraq.

(1) General.

Section 1244 of Public Law 110-181, National Defense Authorization Act for Fiscal Year 2008, as amended by Public Law 110-242, 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 Iraqi nationals who worked for or on behalf of the U.S. government in Iraq.

(2) Background.

The Defense Authorization Act for Fiscal Year 2008, Public Law 110-181 was signed into law on January 28, 2008. Section 1244 of this legislation, as amended by section 1 of Public Law 110-242, entitled “Special Immigrant Status for Certain Iraqis” authorizes 5,000 special immigrant visas for Iraqi employees and contractors each year for fiscal years 2008 through 2012. This provision creates a new category of special immigrant visas for Iraqi nationals, who have provided faithful and valuable service to the U.S. Government, while employed by or on behalf of the U.S. Government in Iraq, for not less than one year beginning on or after March 20, 2003, and who have experienced or are experiencing an ongoing serious threat as a consequence of that employment.

(3) Eligibility.

To obtain approval of a petition for special immigrant status under section 1244 of Public Law 110-181, a self-petitioning alien must establish that he or she:

- (1) is a national of Iraq;
- (2) has been employed by, or on behalf of, the U. S. Government in Iraq, on or after March 20, 2003, for a period of not less than one year;
- (3) provided faithful and valuable service to the U.S. Government, which is documented in a recommendation from the U.S. citizen or national who is the alien’s senior supervisor, or the U.S. citizen or national currently occupying that position, or a more senior U.S. citizen or national, if the alien’s senior supervisor has left the employer or left Iraq. If it is not possible to obtain a recommendation from a supervisor who is a U.S. citizen or national, from the alien’s senior supervisor, provided the U.S. citizen or national responsible for the contract co-signs the letter. 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 USG or hiring organization or entity to confirm employment and faithful and valuable service;
- (4) 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;
- (5) has cleared a background check and appropriate screening as determined by the Secretary of Homeland Security; and

Page 3

- (6) 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.

The spouse or child accompanying or following to join a principal immigrant may be accorded the same special immigrant classification as the principal alien. If the petition of the principal alien was revoked or terminated after its approval due to the death of the petitioning alien, the spouse or child is still eligible for a special immigrant visa. This provision is applicable to a petition under either section 1244 of P.L. 110-181 or section 1059 of the National Defense Authorization Act for FY 2006, as amended (P.L. 109-163; 8 U.S.C. 1101 note), which included the alien as an accompanying spouse or child, and which, due to the death of the principal alien, was revoked or terminated; but would have been a basis for visa issuance¹ if the principal alien had survived. Visas issued to derivative spouses and children do not count toward the cap of 5,000 special immigrant visas per year.

(5) Filing Requirements.

(A) General.

An Iraqi national who has worked for or on behalf of the U.S. Government may file this petition on his/her own behalf. The petitioner 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 applicant's passport, birth certificate or national identification card showing that the applicant is a national of Iraq, along with a certified English translation, if the document is in a foreign language.
- (ii) A positive recommendation from the U.S. citizen or national who is the applicant's senior supervisor or the U.S. citizen or national occupying the supervisor's position, or a more senior U.S. citizen or national if the senior supervisor has left the employer or has left Iraq, or if it is not possible to obtain a recommendation for a supervisor who is a U.S. citizen or national, from the alien's senior supervisor, provided the U.S. citizen or national responsible for the contract co-signs the letter, confirming employment of not less than one year beginning on or after March 20, 2003.
- (iii) Proof of risk assessment conducted by the Chief of Mission, Embassy Baghdad, 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;

¹ There is an inconsistency in the statutory language between the specific reference to "a petition for classification approved [that] was revoked or terminated or otherwise rendered null" (i.e., was previously approved) and the phrasing "would have been approved" (i.e., has not been previously approved). We interpret this to mean that the petition must have been approved prior to the principal alien's death, and that it may remain a basis for visa issuance despite the principal alien's death subsequent to petition approval, if the derivative family member is otherwise eligible.

Page 4

- (iv) Proof of an independent review of (ii) above conducted by the Chief of Mission, Embassy Baghdad, 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.
- (v) If the petition is filed by an applicant in the United States, a copy of the front and back of the applicant's Form I-94, Arrival-Departure Record.

(C) Classification Requested.

Petitioners under the section 1244 category should check box l, Special Immigrant Iraq National who was employed by or on behalf of the United States Government, in Part 2 of Form I-360. If an earlier form is used, petitioners should check box k, *Other, explain*, and write "Iraqi Worker" in the space provided.

(D) Fees.

There are no filing or biometric fees associated with this petition.

(6) Number of Visas that may be Issued.

The total number of principal aliens who may be provided special immigrant status under this section may not exceed 5,000 per year for Fiscal Years 2008-2012. If the numerical limitation is not reached during a given fiscal year, the numerical limit for the following fiscal year shall be increased by the amount of numbers that were unused. If the numerical limitation for Fiscal Year 2012 is not reached, any unused numbers from that year may be used in Fiscal Year 2013. Numbers will not carry forward into Fiscal Year 2014.

(7) Automatic Conversion for Approved Translators and Interpreters.

A person with an approved petition for special immigrant status under section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (8 U.S. C. 1101 note), for whom a visa under such section is not immediately available, is eligible for special immigrant status under section 1244 of Public Law 110-181, with respect to petitions that are filed on or before September 30, 2008. In such cases, the approval will be counted against available section 1244 visa numbers, but in all substantive respects eligibility is determined under section 1059 rather than under the different eligibility requirements of section 1244.

(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. Petitioners who were/are paroled into the United States are not considered to be in lawful nonimmigrant status. Thus, an alien must have been lawfully admitted as a nonimmigrant, and must still be in lawful nonimmigrant status, in order to meet the requirement of section 245(c)(7) of the Act. The beneficiary of an approved Form I-360 filed under section 1244, as amended, who is not currently in lawful nonimmigrant status may apply for adjustment of status only if some other provision of the Act or of DHS regulations permits the alien to do so. For example, if the alien was the beneficiary of a different immigrant visa petition that was filed on or before April 30, 2001, the Form I-360 under section 1244, as amended, may qualify as a

Page 5

“grandfathered” petition for purposes of section 245(i). See March 9, 2005, Memorandum from William R. Yates, “Clarification of Certain Eligibility Requirements Pertaining to an Application to Adjust Status under Section 245(i) of the Immigration and Nationality Act.

All approved petitioners and dependents must have successfully completed any appropriate Department of Homeland Security and Department of State background and security checks prior to final issuance of an immigrant visa number. Thus, those petitioners and dependents who are eligible to apply for adjustment of status must undergo the same background and security checks as those who will be seeking immigrant visas.

(9) Immigrant Visa Classifications for Translators.

SQ-1 – Special Immigrant Iraqi Employee (Principal)

SQ-2 – Spouse of SQ-1

SQ-3 – Child of SQ-1

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

SQ-7 – Spouse of SQ-6

SQ-8 – Child of SQ-6

(end of AFM insert)

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 any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Distribution:

Regional Directors

District Directors

Field Office Directors

National Benefits Center Director

Service Center Directors

Associate Director, Refugee, Asylum and International Operations

Associate Director, National Security and Records Verification