

## **9 FAM 42.32(d)(11) NOTES**

*(CT:VISA-1171; 03-19-2009)  
(Office of Origin: CA/VO/L/R)*

### **9 FAM 42.32(d)(11) N1 BACKGROUND**

*(CT:VISA-1171; 03-19-2009)*

Section 1244 of Public Law 110-181, the National Defense Authorization Act for Fiscal Year 2008, authorizes special immigrant status (SQ1) for Iraqi nationals who have 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. Section 2 of Public Law 110-242 authorizes the Secretary of State or the Secretary of Homeland Security to convert an approved petition for *special immigrant translator or interpreter (SI1) to SQ1* under section 1059 of Public Law 109-163, the National Defense Authorization Act for Fiscal Year 2006, with respect to which a visa is not immediately available to a petition for SQ1 status under section 1244 notwithstanding the qualification criteria for SQ1 status. *Section 602(b) of Division F, Title VI, of the Omnibus Appropriations Act, 2009, Public Law 111-8, authorizes SQ1 for Afghan nationals who have been employed by or on behalf of the U.S. Government in Afghanistan on or after October 7, 2001, for a period of not less than one year.*

### **9 FAM 42.32(d)(11) N2 WHO IS ELIGIBLE FOR SPECIAL IMMIGRANT STATUS (SQ1) UNDER SECTION 1244?**

*(CT:VISA-1171; 03-19-2009)*

To obtain U.S. Citizenship and Immigration Services (USCIS) approval of a petition for special immigrant status (*SQ1*) under section 1244 of Public Law 110-181 *or section 602(b) of Division F, Title VI, of Public Law 111-8*, a self-petitioning alien must establish that he or she:

- (1) Is a national of Iraq *or Afghanistan*;
- (2) *In the case of a national of Iraq:* 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; *in the case of a national of Afghanistan: has been employed by, or on behalf of the U.S. Government in Afghanistan, on or after October 7, 2001, for a period of not less than one year;*

- (3) Has been determined by chief of mission (COM), Embassy Baghdad *or Embassy Kabul, as applicable*, or *the COM's* designee, to have provided faithful and valuable service to the *U.S.* Government, which is documented in a positive recommendation from the alien's senior supervisor as defined in 9 FAM 42.23(d)(11) N4;
- (4) Has been determined by chief of mission, Embassy Baghdad *or Embassy Kabul, as applicable*, or *the COM's* designee, to have experienced, or to be experiencing, an ongoing serious threat as a consequence of the employment by or on behalf of the *U.S.* Government;
- (5) Has cleared a background check and appropriate screening as determined by the Secretary of Homeland Security; and
- (6) Is otherwise eligible to receive an immigrant visa (IV) and is otherwise admissible to the United States for permanent residence, except that, 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.

## **9 FAM 42.32(d)(11) N3 WHAT DOES "FAITHFUL AND VALUABLE SERVICE" MEAN?**

*(CT:VISA-1171; 03-19-2009)*

- a. The COM, or his designee, must conduct an independent review of records maintained by the U.S. Government or hiring organization or entity to confirm both employment for a period of not less than one year and "faithful and valuable" service.
- b. The COM, or his designee, has primary responsibility for determining whether the alien's service has been "faithful and valuable", based on documentation outlined in 9 FAM 42.32(d)(11) N2. This is separate from the supervisor's recommendation discussed in 9 FAM 42.32(d)(11) N4, although the supervisor's recommendation is an important document to assist in making this determination.
- c. 9 FAM 42.32(d)(2) N6.2, which discusses "faithful service" in the context

of special immigrant classification under INA 101(a)(27)(D) (8 U.S.C. 1101(a)(27)(D)), notes that a record of disciplinary actions that have been taken against an employee does not automatically disqualify the employee. The COM, or his designee, must assess the gravity of the reasons for the disciplinary action and whether the record as a whole, notwithstanding the disciplinary actions, is one of faithful service. Remember, though, that aliens who qualify under INA 101(a)(27)(D) must have at least 15 years of service; aliens may qualify under *section 1244* or *section 602(b)* with only one year of service. It will generally therefore be more difficult for an employee to demonstrate faithful service over such a short period if the record reflects that disciplinary action has been taken against the employee.

## **9 FAM 42.32(d)(11) N4 WHO QUALIFIES AS A SUPERVISOR?**

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The supervisor should normally be the *U.S.* citizen who directly supervises the alien, or supervises the company for which the alien is employed. In all cases, before offering a recommendation for the employee for purposes of obtaining a Special Immigrant Visa (SIV) for the employee, the supervisor must have met the employee and must certify, in writing, that the referred applicant is personally known to the supervisor and, to the best of the supervisor's knowledge, presents no threat to the national security or safety of the United States. If it is not possible for a contract or subcontract employee to obtain this certification from a *U.S.* citizen supervisor, then post may accept a letter from a non-U.S. citizen supervisor, provided the U.S. citizen responsible for the contract or subcontract co-signs the letter and indicates that based on his or her relationship with the contract or subcontract supervisor, he or she is confident that the information provided is correct and also certifies that to the best of his or her knowledge, the employee presents no threat to the national security or safety of the United States. The recommendation must also contain the supervisor's e-mail address, and if the supervisor is not a U.S. citizen, the U.S. citizen's co-signer's e-mail address so he or she may be contacted if additional information is needed.

## **9 FAM 42.32(d)(11) N5 WHAT DOES "HAS EXPERIENCED OR IS EXPERIENCING AN ONGOING SERIOUS THREAT" MEAN?**

*(CT:VISA-1171; 03-19-2009)*

To qualify for a visa under *section 1244 or section 602(b)*, an alien must have experienced, or be experiencing, an ongoing serious threat as a consequence of his or her employment by, or on behalf of, the *U.S. Government*. This determination must be made *by* the *chief of mission, Embassy Baghdad or Embassy Kabul, as applicable, or the COM's* designee (see 9 FAM 42.32(d)(11) N8 (a)(1)). Applicants must submit information to demonstrate that they are experiencing an ongoing serious threat, which may include statements from their employer, personal statements, or statements from community leaders.

## **9 FAM 42.32(d)(11) N6 ARE THERE NUMERICAL LIMITATIONS ON VISA ISSUANCE?**

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- a. The total number of principal aliens *of Iraqi nationality* who may be provided special immigrant status (*SQ1*) under *section 1244* may not exceed 5,000 per year for 5 successive fiscal years beginning with Fiscal Year 2008.
- b. The total number of principal aliens of Afghan nationality who may be provided SQ1 under section 602(b) may not exceed 1,500 per year for 5 successive fiscal years beginning with Fiscal Year 2009.*
- c. If the numerical limitation for nationals of the particular country is not reached during a given fiscal year, the numerical limit for that nationality for the following fiscal year shall be increased by the amount of numbers that were unused. Any unused numbers out of the amount allocated for that nationality for the last of the 5 successive fiscal years will carry forward into the sixth fiscal year (Fiscal Year 2013, for Iraqis; Fiscal Year 2014, for Afghans), but any such numbers remaining unused after the sixth fiscal year will not carry forward into the seventh fiscal year.*

## **9 FAM 42.32(d)(11) N7 ARE SPOUSES AND CHILDREN QUALIFIED?**

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- a. The derivative spouse and minor, unmarried children of the principal

applicant may be included in the case and do not count against the cap of *special immigrant visas (SQ1s) for that nationality* each fiscal year. They may accompany the principal applicant or follow-to-join the principal.

- b. A spouse or child is also eligible if the principal alien had a petition approved by the Secretary of Homeland Security, but the petition was revoked or terminated after its approval due to the death of the petitioning alien.

## **9 FAM 42.32(d)(11) N8 HOW ARE PETITIONS FILED?**

*(CT:VISA-1171; 03-19-2009)*

- a. The elements below must be established by approval of the chief of mission, Embassy Baghdad *or Embassy Kabul, as applicable*, or *the COM's* designee before the petition can be forwarded to U.S. Citizenship and Immigration Services (*USCIS*):
  - (1) Risk assessment of the alien 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; and
  - (2) An independent review of records maintained by the *U.S.* Government or the hiring organization or entity that confirms the alien's employment and faithful and valuable service to the *U.S.* Government.
- b. Applicants must file the petition directly with the U.S. Citizenship and Immigration Services (USCIS) Nebraska Service Center for adjudication along with all required evidence. USCIS will contact the applicant directly should any questions or need for further documentation be required. Posts have no authority to adjudicate these petitions. The approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant will be sent through the National Visa Center (NVC) to designated posts for adjudication.

## **9 FAM 42.32(d)(11) N9 APPROVAL OF PETITION UNDER INA 204**

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The approval of a petition under INA 204 (8 U.S.C. 1154) is considered to establish prima facie entitlement to status, and the qualifications of the alien beneficiary are presumed to exist. Unless you have specific, substantial evidence of either misrepresentation in the petition process or facts unknown to USCIS at the time of petition approval or to *the* chief of mission, Embassy Baghdad *or Embassy Kabul, as applicable*, at the time of the approval described in 9 FAM 42.32(d)(11) N8 *a*, you generally would have no reason to return the petition to USCIS. If posts have further questions, contact the Post Liaison Division (CA/VO/F/P).

## **9 FAM 42.32(d)(11) N10 IMMEDIATE INTENT TO IMMIGRATE**

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Special immigrant status (*SQ1*) was not designed for use as an “insurance policy” to protect an alien against the possibility of political or economic vicissitudes in the future. Nor was it the intent of Congress that the principal alien obtain *SQ1* solely to facilitate the entry of dependents into the United States when it is the principal alien’s intent to return abroad to resume employment with the U.S. Government. *Visas issued under section 1244 (except for conversion cases discussed in 9 FAM 42.32(d)(11) N12, below) or section 602(b) should have a validity period of three months.* Before issuing a visa, you must require that the applicant submit a letter indicating that he or she plans to resign the position he or she holds, plans to permanently separate from her or his position abroad, and intends to immigrate to the United States within the three month validity of the immigrant visa (*IV*). If the applicant does not intend to permanently resign his or her position and immigrate to the United States to reside, return the petition to USCIS for revocation.

## **9 FAM 42.32(d)(11) N11 SPECIAL PROVISIONS**

*(CT:VISA-1171; 03-19-2009)*

- a. Section 1244(d) of Public Law 110-181 *and section 602(b)(4) of Division F, Title VI, of Public Law 111-8 provide* that neither the Secretary of State nor the Secretary of Homeland Security may charge an alien who meets the criteria in 9 FAM 42.32(d)(11) N2 any U.S. Government fee in connection with an application for, or issuance of, a special immigrant visa (*SIV*). Note that an alien whose SIV status is based on conversion of

a petition from SI1 to SQ1 status (see 9 FAM 42.32(d)(11) *N12*) **must** pay such fees.

- b. Section 1244(d) *and section 602(b)(4)* further *provide* that the Secretary of State must make a reasonable effort to ensure that aliens who are issued *SIVs* under *either* section 1244 *or section 602(b)* are provided with the appropriate series Iraqi *or Afghan passport, as applicable*, necessary to enter the United States. Posts are reminded of the waiver provisions of 22 CFR 42.2(g), and are encouraged to contact CA/VO/F/P if it is not practical for an applicant to await passport issuance.

## **9 FAM 42.32(d)(11) N12 CASES CONVERTED FROM SPECIAL IMMIGRANT TRANSLATOR OR INTERPRETER (SI1) TO SPECIAL IMMIGRANT STATUS (SQ1)**

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You may encounter a visa application for a principal alien whose approved petition for SI1 status under section 1059 of Public Law 109-163, as amended, has been converted to an approved petition for SQ1 status under section 1244 of Public Law 110-181, as amended. In authorizing the conversion of these petitions when a visa is not immediately available with respect to SI1 status, Congress exempted the self-petitioning alien from the qualification requirements for SQ1 status other than the numerical limitations. In reviewing the qualifications of a principal alien whose petition has been converted from SI1 to SQ1, you **must** consider the criteria outlined in 9 FAM 42.32(d)(10) N2, not those found in 9 FAM 42.32(d)(11) N2, to the extent that they differ. Unless you have specific, substantial evidence of either misrepresentation in the petition process or facts unknown to USCIS at the time of petition approval indicating that the alien does not meet the criteria for SI1 status listed in 9 FAM 42.32(d)(10) N2, you generally would have no reason to return the petition to USCIS. Note that, in the case of a national of Afghanistan whose petition has been converted from SI1 to SQ1 status, you may not return the petition to USCIS based only on a lack of Iraqi nationality or citizenship since Afghan nationality is a qualification ground listed in 9 FAM 42.32(d)(10) N2. The conversion provision **did not** authorize a fee waiver. An individual whose case is converted from 1059 to 1244 must pay all required fees. *SQ1 visas issued in converted cases are to be valid for six months.*