

9 FAM 42.32(d)(10) NOTES

*(CT:VISA-1379; 11-25-2009)
(Office of Origin: CA/VO/L/R)*

9 FAM 42.32(d)(10) N1 BACKGROUND

(CT:VISA-1379; 11-25-2009)

Section 1059 of Public Law 109-163, the National Defense Authorization Act for Fiscal Year 2006, as amended by section 3812(b) of Public Law 110-28 and section 699J of Division J of Public Law 110-161, *modifies Immigration and Nationality Act (INA) 101(a)(27)* to authorize special immigrant status for nationals of Iraq or Afghanistan serving as translators or interpreters with the United States Armed Forces or under Chief of Mission (COM) authority ("special immigrant translator or interpreter status"). Section 2 of Public Law 110-242 provides that the Secretary of State or the Secretary of Homeland Security may convert an approved petition for special immigrant status under section 1059 with respect to which a visa is not immediately available to a petition for special immigrant status under section 1244 of Public Law 110-181, the National Defense Authorization Act for Fiscal Year 2008.

9 FAM 42.32(d)(10) N2 ELIGIBILITY FOR SPECIAL IMMIGRANT TRANSLATOR OR INTERPRETER STATUS UNDER INA 101(A)(27) (SECTION 1059 OF PUBLIC LAW 109-163)

9 FAM 42.32(d)(10) N2.1 Criteria for Status

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Applicants filing special immigrant translator or interpreter (SI1) status must meet the following criteria:

- (1) Must be a national of Iraq or Afghanistan;*

- (2) *Must have worked directly with the United States Armed Forces, or under COM authority, as a translator or interpreter for a period of at least 12 months;*
- (3) *Must have provided faithful and valuable service to the United States Armed Forces or the COM, which is documented in a favorable written recommendation from a general or flag officer in the chain of command of the United States Armed Forces unit that was supported by the alien or, if the applicant claims status based on work under COM authority, a favorable written recommendation from the COM;*
- (4) *Must have cleared a background check and screening as determined by a general or flag officer in the chain of command of the United States Armed Forces unit that was supported by the alien or by the COM; and*
- (5) *Is otherwise eligible to receive an immigrant visa (IV) and is otherwise admissible to the United States for permanent residence, except in determining 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)(10) N2.2 Additional Interview Requirements for Special Immigrants Under Section 1059

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An applicant for special immigrant translator or interpreter status must provide for his or her interview a written description of his or her position and responsibilities for translation or interpretation. Any principal applicant for status under Section 1059 (see above, 9 FAM 42.32(d)(10) N1) must be interviewed in English only. Applicants who do not meet these requirements or who occupied positions inconsistent with these requirements are not eligible for special immigrant visas (SIVs) under Section 1059. Descriptions of the positions of translators and interpreters are provided on the Visa Section of Consular Affairs' Web site. These requirements do not apply to Section 1244 applicants.

9 FAM 42.32(d)(10) N3 NUMERICAL LIMITATIONS

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- a. Except as provided in *paragraph b*, the total number of principal aliens who may be provided special immigrant translator or interpreter status during any fiscal year shall not exceed 50.
- b. If the numerical limitation is not reached during a given fiscal year, the numerical limitation for the following fiscal year will be increased by the amount of numbers that were unused.*
- c. If the numerical limitation for SI1 status has been reached during a given fiscal year and the petition was filed before October 1, 2008, an approved petition for SI1 status may be converted to an approved petition for special immigrant status under section 1244 of Public Law 110-181 (SQ1), notwithstanding the qualification criteria for SQ1 status.*

9 FAM 42.32(d)(10) N4 SPOUSES AND CHILDREN

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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 fiscal year cap for interpreters and translators. They may accompany the principal applicant or follow-to-join the principal.
- b. A surviving spouse or child is also entitled to special immigrant status 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. (Section 1244(b)(3) of Public Law 110-181 *and Section 602(b)(2)(C) of Division F of Public Law 111-8.*) *In such an instance, the approved SI petition would be converted to an approved SQ petition for special immigrant status under section 1244 of Public Law 110-181 (for the surviving spouse or child of an Iraqi national) or section 602(b) of Public Law 111-8 (for the surviving spouse or child of an Afghan national); the cap would apply to the spouse's case or, if there is no spouse, the child's case.*

9 FAM 42.32(d)(10) N5 PETITIONS

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Aliens outside the United States file the petition with the U.S. Citizenship and Immigration Services (USCIS) by sending the petition directly to the

Nebraska Service Center for adjudication. Posts have no authority to adjudicate these translator or interpreter petitions. Posts will provide a translator or interpreter under COM authority for at least 12 months who has provided the requisite faithful and valuable service to the COM and cleared the background check or screening with a favorable written recommendation or evaluation from the COM. The U.S. Armed Forces unit, not the Department of State, is the advocate on behalf of the translator or interpreter (petitioner) with the U.S. Armed Forces and his *or* her immediate family and will assist them with the required documentation. The Nebraska Service Center will send an approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant through the National Visa Center (NVC) to designated posts for adjudication.

9 FAM 42.32(d)(10) N6 APPROVAL OF PETITION UNDER INA 204

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The approval of a petition under INA 204 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 approval, you generally would have no reason to return the petition to USCIS. A large number of these beneficiaries may adjust status in the United States. If posts have further questions, contact *Post Liaison* (CA/VO/F/P).

9 FAM 42.32(d)(10) N7 CASES CONVERTED FROM SI1 TO 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 *above*, not/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 *above*, 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 on a lack of Iraqi nationality or citizenship since Afghan nationality is a qualification ground listed in 9 FAM 42.32(d)(10) N2 *above*. The conversion provision did not authorize a fee waiver. An individual whose case is converted from 1059 to 1244 must pay all required fees.