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*VLN is currently looking for volunteer attorneys to place with Afghan families for adjustment of status applications.*

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This Tip of the Month examines issues specific to Afghan adjustment applications and instructs on how to best address them. Completing these applications as a volunteer attorney is easier than you may think. By pairing this Afghan-specific resource with already existing general guidance on adjustment applications, you will be ready to submit an Afghan adjustment application in no time - **even with little or no immigration experience!**

Since August 2022, VLN's Afghan Legal Project has been providing free legal assistance to Afghan evacuees that worked for the United States in Afghanistan and relocated to Minnesota in the aftermath of the Taliban's 2021 takeover. Many families are now eligible for lawful permanent residence (also called "green cards", "adjustment of status", "AOS, or "LPR") in the United States based on a Special Immigrant Visa ("SIV") due to work for the United States during its 20 years in Afghanistan.

The last step to obtaining legal permanency in the US is to apply to adjust status to lawful permanent resident.<sup>1</sup> Afghan Evacuees are at different points in this legal journey. Some are ready to take this last step, and others will soon be eligible. The evacuees left their homes under the impression that they and their families (not all have family with them) would easily be able to secure permanent residence in the United States. But the process is complicated to navigate. VLN needs volunteer lawyers to help clients obtain lawful permanent status.

## WHO CAN APPLY?

First, it is important to understand who can and cannot apply for a green card based on the principal applicant's work with the U.S. in Afghanistan. The principal applicant (the person whose employment in Afghanistan made them SIV eligible), their unmarried children under the age of 21, and spouse<sup>2</sup> are all eligible to apply for adjustment at the same time IF they are all

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<sup>1</sup> The process to obtain legal permanency in the US began with issuance of two-year temporary parole to all Afghan Evacuees. This status expires in 2023 and it is unknown, to date, if it will be extended. The second step is to apply for another legal status that would lead to permanent status. For some, that will be through the asylum process. For others, this is through the Special Immigrant Visa (SIV) process. Part of the SIV process is to obtain proof that they are eligible to receive Special Immigrant status through a "Chief of Mission" approval letter. The COM process has stalled without decisions for longer than the program was designed. Those that have finally received an approval of their COM application need assistance applying for permanent residence before their two-year parole expires at the end of this summer.

<sup>2</sup> Note that if the principal applicant has more than one spouse, it is likely that only the first marriage will count for immigration purposes. Applicants will be screened in advance for this issue, but volunteers should still be aware that there is a small chance this could occur.

currently present in the United States. If a principal applicant has unmarried children under 21 or a spouse abroad, those family members are eligible use a different process to join their family in the USA.<sup>3</sup> VLN helps clients with the Adjustment of Status application for persons in the USA only.

## **INADMISSIBILITY & BARS TO ADJUSTMENT**

Screening for and flagging potential inadmissibility issues (legal reasons the application could be denied) and ensuring questions related to them on the application form are correctly answered is very important. There are some grounds of inadmissibility that may come up more in Afghan SIV cases, however, there are exemptions specific to Afghans or “Afghan Allies” (SIV eligible Afghans). The most common grounds of inadmissibility and Afghan-specific exemptions are addressed below.

*\*VLN staff screens all principal applicants for the below inadmissibility issues prior to placement to ensure each volunteer is receiving a case that they are comfortable representing\**

### **a. Terrorism Related Inadmissibility Grounds (“TRIG”)**

TRIG is one of the more complicated areas of inadmissibility and one of the most pertinent to Afghan SIV applicants. TRIG prohibits individuals that are a member of a “terrorist organization” or have engaged in “terrorism-related activity” from being admissible. While this sounds simple, both those terms are defined extremely broadly. First, a terrorist activity can encompass something as broad as the use of firearms or other dangerous devices. Second, providing “material support” to someone engaging in this broad definition of terrorist activity can also be a terrorist activity. Material support is further defined as assisting a terrorist organization in nearly any conceivable way. Lastly, “terrorist organization” is defined broadly enough that even two people with weapons could be counted as a terrorist group.

To overcome this ground of inadmissibility, given the special circumstances, a situational exemption has been created for “Afghan Allies”. Afghan Allies are individuals that engaged in resistance activities in promotion of U.S. interests, which, will include all SIV applicants that were directly employed by the U.S. However, the exemption is discretionary, not categorical, so it is still important for volunteers to note and explain all potential TRIG issues on each applicants’ application. Most of this work should fit within the legal exemption, however, because these issues vary greatly from case-to-case, VLN staff closely screens all cases prior to placement and will provide more in-depth discussion and training on TRIG to volunteers.

### **b. Other Exemptions**

#### **i. Unlawful Presence & Working Without Authorization**

It is best practice to submit an adjustment application prior the applicants two-year parole expiring to avoid accrual of Unlawful Presence even though Afghan evacuees who do not remain in lawful status after the expiration of their two-year parole are exempt from accruing unlawful presence and thus are not barred from adjustment on this ground. Unlawful presence begins to

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<sup>3</sup> For certain family members outside of the USA, the petitioner must submit an “Action on an Approved Application or Petition” (I-824). This form will begin the consular processing process for the family members. VLN does not provide help with this process, however, applicants that have family abroad should be notified of this process and that they must complete these forms within one year of their adjustment application being submitted.

“accrue” when someone is not in lawful immigration status or has not maintained a lawful status since their entry into the United States. Usually, to apply for adjustment, applicants must currently be in lawful status and have never accrued any unlawful presence. In addition to wanting to avoid any period of unauthorized stay, other benefits, such as work authorization and driver’s licenses, may be contingent on maintaining a lawful status.

Generally, unauthorized work negatively affects applicants from adjusting status to permanent residence. In the case of Afghans evacuees, this will not bar them from adjusting. Even so, to avoid working without authorization, it is best practice to submit the adjustment applications (and with it, a work authorization application) before the current work permit expires.

ii. **Public Charge**

Under INA 212(a)(4), a person who is likely to become a public charge is inadmissible. The adjustment application form, I-485, contains a large section on finances, resources, and education that is used to determine whether this ground applies. Because Afghan SIV applicants are exempt from this inadmissibility ground, all questions related to public charge on the application forms can be left blank.

c. **Polygamy**

The polygamy ground of inadmissibility is entirely prospective. An applicant must verify that they are not going to practice polygamy in the United States. If the client can truthfully answer yes to this question, this should not raise any issues - even if they previously practiced polygamy.

## **EVIDENTIARY**

Afghan SIV adjustments have generally the same evidentiary requirements as any other adjustment application. However, the nature of document availability in Afghanistan, combined with the rushed evacuation that many of the applicants underwent has resulted in some hurdles in providing the necessary documents. The most common are addressed below:

a. **Proving Identity and Nationality**

The easiest way to prove identity and nationality is with a passport and a birth certificate. But birth certificates have never been regularly issued in Afghanistan and passports only became common in the last few years before the Taliban took power. As a result, almost no evacuees have birth certificates and very few were able to receive passports.

Recognizing this, the Department of State now only requires the applicants Afghan National ID, known as a Tazkera, to be submitted for immigrant visa purposes. Attaching this document to the adjustment application will suffice if neither a passport nor birth certificate are available.

(NOTE: if an applicant has both a passport and Tazkera, both should be submitted). Between birth certificates, passports, and Tazkera’s, you may encounter documents that do not contain an English translation. In this case, a certified English translation should be obtained and submitted.

b. **Marriage Certificates**

Like passports, marriage certificates are not regularly issued in Afghanistan. Most weddings are made official by the verbal affirmation of two witnesses to the ceremony. Proving a spousal relationship can be a challenge because of this. If a volunteer works with an applicant that has no

documentation of their marriage, they should simply work with them to write an affidavit that explains the lack of marriage documentation in Afghanistan and their inability to get one issued from the now Taliban-controlled government. If the applicant has a marriage certificate, but it is not translated into English, volunteers should obtain a certified English translation.

Occasionally, Afghans may have an unofficial-looking document that verifies a marriage. These are typically an older piece of paper that was handwritten by the ceremony's witnesses verifying that the two people were married. These are unlikely to be in English and may be damaged. A volunteer should obtain an English translation **and** write an affidavit explaining what the document is.

### **c. Medical Exams**

All adjustment applicants are required to submit a medical exam. USCIS has issued guidance that Afghan applicants may use the medical exam they received on a military base in the U.S. These medical exams *should* already be contained in the immigration file of each applicant. Thus, volunteers should refer to the USCIS guidance and ask that the applicant's file is reviewed for a medical exam before a Request for Evidence (RFE) is issued.<sup>4</sup>

## **ADDITIONAL RESOURCES**

- **Afghan-Specific USCIS and Dep't of State Guidance**
  - [Green Card for an Afghan Who Was Employed by or on Behalf of the U.S. Government](#)
  - [Terrorism-Related Inadmissibility Grounds \(TRIG\)](#)
  - [Terrorism-Related Inadmissibility Grounds \(TRIG\) - Situational Exemptions](#)
  - [Afghanistan Reciprocity Schedule \(Dep't of State\)](#)
- **Afghan-Specific Adjustment Guidance**
  - [Free Online Course by Vecina on SIV Applications](#)
  - [Best Practices and Resources for Representing Operation Allies Welcome Parolees and Afghan Nationals](#) (AILA)
  - [Practice Alert: Medical Exam Waiver for Certain Afghan Special Immigrant Visa Applicants](#) (AILA)
  - [Resources from the International Refugee Assistance Project \(IRAP\)](#)
- **General Adjustment Resources**
  - [I-485 Instructions](#)
  - [USCIS I-485 Main Page](#)
  - [USCIS Policy Manual - Adjustment of Status](#)
  - [USCIS Policy Manual - Admissibility](#)

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<sup>4</sup> If the applicant is later RFE'd for a medical exam, VLN staff will work with both the volunteer and client to ensure they are able to obtain the proper exam.