

Memorandum

To: IRAP
From: Sylvia Chi
Date: September 15, 2010
Re: Special Immigrant Visas for Iraqis: Eligibility and Procedures

I. Introduction

The purpose of this memorandum is to provide information on Special Immigrant Visas for Iraqis who worked for the U.S. government in Iraq, including discussion of the legal framework, eligibility requirements, and procedures for application.

II. Background

The Immigration and Nationality Act (“INA”) authorizes Special Immigrant Visas (“SIVs”) to allow certain aliens to immigrate to the United States.¹ Recognizing the need to provide prompt protection to Iraqis who provide vital assistance to the U.S. government,² Congress has made two types of SIVs available to Iraqis: (1) SIVs authorized by the National Defense Authorization Act for FY 2006, targeting Iraqis and Afghans who served as military translators for the U.S. military; and (2) the superseding “Kennedy SIVs,” authorized by the National Defense Authorization Act for FY 2008, for a broader category of Iraqis who worked for the U.S. government.

Both SIV programs extend the primary applicant’s special immigration status to their spouses and children. In addition, all Iraqis approved for SIVs are eligible for resettlement assistance and other refugee benefits provided by INA § 207 (8 U.S.C. § 1157).³

A. Section 1059 interpreter/translator SIVs

Section 1059 of the 2006 Defense Authorization Act provided up to 50 SIVs annually for Iraqi or Afghan military translators. This was amended in the FY 2007 Defense Authorization Act, expanding the number to 500 SIVs a year for FY 2007 and FY 2008 and including translators who worked under Chief of Mission (“COM”) authority.

Applicants who were approved for a § 1059 SIV but did not receive a visa (for example due to numerical limitations) are automatically eligible for a visa under the Kennedy SIV program, although eligibility is to be substantively determined according to § 1059 requirements.⁴

¹ INA § 101(a)(27), 8 U.S.C. § 1101(a)(27).

² See H. Rep. 110-158 (May 21, 2007).

³ Pub.L. 110-181 § 1244 (g), 122 Stat. 398 (2008), as amended by Pub.L. 111-118 § 8120, 123 Stat. 3457 (2009).

⁴ U.S. Citizenship and Immigration Services (“USCIS”), Adjudicator’s Field Manual (“AFM”) § 22.3(t)(7).

B. Section 1244 Kennedy SIVs

The current SIV program for Iraqis is established by section 1244 of the 2008 National Defense Authorization Act, as part of the Refugee Crisis in the Iraq Act of 2007, also known as “the Kennedy bill,” in honor of the legislation’s chief sponsor, Senator Edward Kennedy.⁵ The Kennedy bill expanded the number of Iraqis who could qualify for entry into the United States via SIVs by creating a new special immigrant category for Iraqis who worked for the U.S. government in Iraq. 5,000 SIVs are available annually from FY 2008 through FY 2013, and un-awarded SIVs may be rolled over into successive years through FY 2013.⁶

C. SIVs vs. refugee status

SIVs confer lawful permanent residency upon arrival in the United States, and are eligible for citizenship after residing in the U.S. for five years. Once in the U.S., refugee resettlement benefits, including travel loans, are available to SIV holders to the same extent and for the same period of time that they are available to refugees, with eligibility beginning on the date of arrival.⁷

In contrast, the refugee application procedure may impose fewer initial procedural requirements and is available to more Iraqis, but entails an additional application to adjust status.⁸ The eligibility requirements of the U.S. Refugee Assistance Program (“USRAP”) are broader than those of the SIV program, and the program extends to Iraqis who worked for multinational forces, U.S. media organizations and non-governmental organizations in Iraq, as well as the parents and siblings of Iraqis eligible for refugee status or the SIV program.⁹ To apply for refugee status, Iraqis must only provide proof of eligible employment or family relationship, and do not necessarily need a “G” series passport to travel to the U.S.¹⁰ Refugees must wait one year after arrival in the U.S. as a refugee before filing an I-485 form to adjust status; however, fees associated with the I-485 form are waived for those admitted to the U.S. as refugees.¹¹ Refugees may apply for citizenship after five years of permanent residence in the U.S., as calculated from the date of arrival.

Both the SIV and refugee programs entail long processing times and may be pursued simultaneously.

⁵ Pub.L. 110-181 §§ 1241-1249, 122 Stat. 395-401 (January 28, 2008), as amended by Pub.L. 110-242, 122 Stat. 1567-8 (June 3, 2008).

⁶ AFM § 22.3(a).

⁷ U.S. Department of Health and Human Services (“HHS”), Office of Refugee Resettlement (“ORR”), State Letter #10-02, “Afghan and Iraqi Special Immigrants Are Now Eligible for ORR Benefits and Services to the Same Extent and for the Same Time Periods of Time as Refugees,” <http://www.acf.hhs.gov/programs/orr/policy/sl10-02.htm>.

⁸ Department of Homeland Security (“DHS”), Citizenship and Immigration Services Ombudsman, “Annual Report 2010,” June 30, 2010, http://www.dhs.gov/xlibrary/assets/cisomb_2010_annual_report_to_congress.pdf.

⁹ Department of State, “Refugee Resettlement Program for Iraqis in Jordan, Egypt and Iraq with U.S. Affiliations,” (February 3, 2009) <http://www.state.gov/g/prm/rls/115888.htm>.

¹⁰ Department of State, U.S. Embassy Baghdad, “SIV & Refugee Program Summary,” <http://iraq.usembassy.gov/root/pdfs/siv-vs-usrap.pdf>.

¹¹ INA § 209, 8 U.S.C. § 1159. See also HHS, ORR, State Letter #09-24, “Required Adjustment of Status to Lawful Permanent Resident by Refugees after One Year in U.S. in Refugee Status; Travel Abroad by Refugees and Requirement for Refugee Travel Document; Required Notification by Refugee of Change of Address,” <http://www.acf.hhs.gov/programs/orr/policy/sl09-24.htm>.

III. Kennedy SIV Eligibility Requirements

In addition to meeting general eligibility requirements for immigration and admission, in order to be eligible for a Kennedy SIV, the applicant must:

- Be an Iraqi citizen or national;
- Have worked with or on behalf of the U.S. government for a period of at least 12 months since March 20, 2003;
- Have provided faithful and valuable service to the U.S. government; and
- Have experienced or be experiencing an ongoing serious threat as a consequence of the applicant's employment by the U.S. government.

These eligibility requirements must be proved through the SIV process to both USCIS and the State Department. Proof to the USCIS must be made via supporting documentation accompanying the applicant's I-360 petition. Proof to the State Department will be made in seeking the COM's approval, submitting documentation for processing to the National Visa Center, and then in person at the visa interview. These procedures are discussed in further detail in Part IV, "*Procedures*," below.

A. Iraqi nationality

To be eligible for a Kennedy SIV, the applicant must be "a citizen or national of Iraq."¹²

The Adjudicator's Field Manual ("AFM") establishes as a filing requirement that proof of nationality be submitted to USCIS along with the applicant's Form I-360 petition. Such proof of nationality may be provided in the form of "[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 applicable.¹³

In addition, the State Department "strongly encourage[s]" the applicant to submit copies of her Iraqi "G" series passport to the National Visa Center ("NVC") for processing. The State Department also specifies that Iraqis must have a "G" series passport to apply for an SIV and travel to the United States.¹⁴ However, the Secretary of State is required by statute to "make a reasonable effort to ensure that [applicants] who are issued [SIVs] are provided with the appropriate series of Iraqi passport necessary to enter the United States."¹⁵ In cases where waiting for passport issuance might be impracticable, the State Department's Foreign Affairs Manual ("FAM") notes that 22 C.F.R. § 42.2(g) permits the Secretary to waive passport requirements by individual, specific instruction.¹⁶

¹² Pub.L. 110-181 § 1244(b)(1)(A), 122 Stat. 397.

¹³ AFM § 22.3(t)(5)(B)(i).

¹⁴ Department of State, "Frequently Asked Questions for Iraqi Special Immigrant Visa Applicants," ("State SIV FAQs") http://travel.state.gov/visa/immigrants/info/info_4172.html.

¹⁵ Pub.L. 110-181 § 1244(d), 122 Stat. 398.

¹⁶ 9 FAM 42.32(d)(11) N11, <http://www.state.gov/m/a/dir/regs/fam/09fam/index.htm>.

B. Employment criteria

Kennedy SIVs are available to Iraqis who are or were “employed by or on behalf of the United States Government in Iraq, on or after March 20, 2003, for not less than one year.”¹⁷

Proof of employment must be made to the satisfaction of the COM.¹⁸ COM requests that applicants submit a letter from their employer’s human resources department, or a copy of the employment contract with the U.S. government, confirming that the applicant meets the eligibility criteria for employment.¹⁹

USCIS requires that the I-360 petition be filed along with a positive recommendation from a U.S. citizen supervisor confirming that the applicant satisfies the required employment period.²⁰

There is no indication in the statutes or regulations that the period of employment must be continuous. Thus, an applicant may still be eligible for an SIV if he was employed by the U.S. government in a series of shorter periods as long as the times of employment add up to a total time of one year.

In addition, applicants need not have worked directly for the U.S. government to be eligible for an SIV; employment with government contractors will suffice. If the supervisor is not a U.S. citizen, then the recommendation letter submitted to both USCIS and the COM must be co-signed by a U.S. citizen who is responsible for contracting with the supervisor, along with the co-signer’s contact information.²¹

C. Faithful and valuable service

An Iraqi may be eligible for a Kennedy SIV if he “provided faithful and valuable service to the United States Government in Iraq, which is documented in a positive recommendation or evaluation ...from the employee’s senior supervisor.”²²

The FAM provides that the COM has “primary responsibility for determining whether the alien’s service has been ‘faithful and valuable.’”²³ This determination is to be made on the basis of documentation in the form of a positive recommendation from the applicant’s supervisor, which is distinguished from the letter verifying 12 months of employment, described under “*Employment criteria*,” above.²⁴ This letter must certify that the 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.”²⁵ The State Department advises that the letter provide a description of (1) the

¹⁷ Pub.L. 110-181 § 1244(b)(1)(B), 122 Stat. 397.

¹⁸ 9 FAM 42.32(d)(11) N3.

¹⁹ Department of State, Program Embassy of the United States of America Baghdad, Iraq, “How to Apply for Chief of Mission (COM) Approval for the Special Immigrant Visa (SIV),” (“COM SIV Guidelines”) <http://iraq.usembassy.gov/root/pdfs/sivguidelinesenglish2009.pdf>.

²⁰ AFM § 22.3(t)(5)(B)(ii).

²¹ 9 FAM 42.32(d)(11) N3 and AFM § 22.3(t)(5)(B)(ii).

²² Pub.L. 110-181 § 1244(b)(1)(C), 122 Stat. 397.

²³ 9 FAM 42.32(d)(11) N3.

²⁴ *Id.*

²⁵ 9 FAM 42.32(d)(11) N4.

applicant's "faithful service," (2) the applicant's duties, and (3) any special clearances held by the applicant.²⁶

Any evidence of disciplinary action taken against the applicant is not an absolute bar to SIV eligibility.²⁷ Rather, the COM is to assess the applicant's record as a whole to determine whether service was "faithful." However, the FAM notes that "[i]t will generally... be more difficult for an employee to demonstrate faithful service over such a short period [one year] if the record reflects that disciplinary action has been taken against the employee."²⁸

In addition, USCIS requires that applicant submit along with her I-360 petition proof that the COM conducted an "independent review" of the supervisor's positive recommendation, based on records maintained by the U.S. government or contractor, "to confirm employment and faithful and valuable service."²⁹ This proof of independent review will be furnished as part of the COM's Approval Form.

D. Ongoing threat

The Kennedy SIV program requires that the Iraqi applicant have "experienced or is experiencing an ongoing serious threat as a consequence of [his] employment by the United States Government."³⁰

The State Department advises that for the purpose of conducting the COM's risk assessment, applicants establish that they are experiencing an ongoing threat by submitting information such as "statements from their employer, personal statements, or statements from community leaders."³¹

Proof of ongoing threat must be submitted to USCIS in support of the I-360 petition in the form of the COM's risk assessment. This risk assessment should be provided by the COM following COM approval.

In addition, the Kennedy bill requires that Secretary of State make reasonable efforts to provide eligible applicants "with protection or the immediate removal from Iraq, if possible, ...if the Secretary determines after consultation that [the applicant] is in imminent danger."³² Thus, it may be possible for an applicant in particular danger to be removed from Iraq before receiving the visa, although there are no specific procedures established to implement this provision.

E. General immigrant visa eligibility

In addition to the above four eligibility criteria, the Kennedy bill also imposes the following four requirements on SIV applicants:

²⁶ State SIV FAQs, *supra* note 10.

²⁷ 9 FAM 42.32(d)(11) N3.

²⁸ *Id.*

²⁹ AFM § 22.3(t)(5)(B)(iv).

³⁰ Pub.L. 110-181 § 1244(b)(1)(D), 122 Stat. 397.

³¹ 9 FAM 42.32(d)(11) N5.

³² Pub.L. 110-181 § 1244(e), 122 Stat. 398.

1. **The applicant, or an agent acting on his behalf, must submit a petition.**³³ This petition is the USCIS I-360 form, along with its required supporting documents. Petition requirements are discussed in more detail under section IV.B, below.
2. **The applicant must be “otherwise eligible to receive an immigrant visa.”**³⁴ Essentially, the applicant will be eligible as long as he does not meet any of the inadmissibility criteria, discussed immediately below. In addition, the applicant must have the immediate intent to resign his current employment and permanently immigrate to the United States.³⁵
3. **The applicant must not be barred by the INA’s inadmissibility criteria, although the “public charge” provision does not apply.**³⁶ Thus, the applicant must not be considered ineligible for admission for criminal, security, or similar reasons.³⁷
4. **The applicant must clear a “background check and appropriate screening as determined by the Secretary of Homeland Security.”**³⁸

IV. Procedure

From petitioning for an SIV to receiving a visa and arriving in the United States, applicants face a series of procedural challenges involving various bureaucracies in the Departments of State and Homeland Security. The entire process may be separated into four main steps: (1) COM approval; (2) petition to USCIS; (3) National Visa Center processing; and (4) visa interview.

A. COM approval

COM approval is required to establish that the applicant meets the various eligibility criteria discussed above. COM guidelines (attached as **Appendix A**) require that the applicant submit all documents to the COM in one email, addressed to IraqSIVapplication@state.gov and with the primary applicant’s name in the subject line.³⁹ COM guidelines further request that applicants refrain from submitting non-required documents like certificates of appreciation, resumes, or academic transcripts. In addition to the required documents, described below, the COM may request additional information or documentation. According to the COM SIV Guidelines, the application for approval may take six to eight weeks for processing. After approval, the COM will provide further instructions on adding the applicant’s spouse and unmarried children under the age of 21. The following documents must be submitted in applying for COM approval:

³³ Pub.L. 110-181 § 1244(a)(1), 122 Stat. 397.

³⁴ Pub.L. 110-181 § 1244(a)(2), 122 Stat. 397.

³⁵ 9 FAM 42.32(d)(11) N10.

³⁶ Pub.L. 110-181 § 1244(a)(3), 122 Stat. 397. The “public charge” section makes ineligible for admission any alien who the consular officer or Attorney General finds to be “likely at any time to become a public charge.” INA § 212(a), 8 U.S.C. § 1182(a)(4).

³⁷ INA § 212(a), 8 U.S.C. § 1182(a).

³⁸ Pub.L. 110-181 § 1244(a)(4), 122 Stat. 397.

³⁹ COM SIV Guidelines.

1. DS-157 form

Applicants must submit to the COM a completed DS-157 form.⁴⁰ This form is called “Supplemental Nonimmigrant Visa Application” and requests information concerning, among other things, the applicant’s military experience, membership in organizations, specialized skills or training, and experience in armed conflict (either as a participant or victim). If the applicant served in the military for more than 18 months, he must also submit a copy of his military service record.

2. Verification of employment

The applicant must submit proof that she satisfies the 12-month employment eligibility criteria, either through (1) a copy of the applicant’s employment contract with the U.S. government or (2) a letter from the employer’s Human Resources department confirming the applicant’s employment by or on behalf of the United States government in Iraq for at least one year on or after March 20, 2003. The letter must contain certain information, as detailed in the COM SIV Guidelines.

3. Letter of recommendation from supervisor

The applicant must submit a letter of recommendation from his direct supervisor, who must know the applicant personally, and pertain to the same period of employment as addressed in the employment verification letter. This letter should be obtained from a U.S. citizen supervisor; if the applicant’s supervisor is not a U.S. citizen, the letter must be co-signed by a U.S. citizen responsible for the employment contract.⁴¹ The required contents of the letter are described in the COM SIV Guidelines, including a description of the applicant’s provision of faithful and valuable service to the U.S. government and the threat faced by the applicant as a consequence of employment.

4. Evidence of Iraqi nationality

The applicant should submit a copy of his Iraqi passport. If the applicant’s Iraqi passport is not available, a copy of the jensiya will suffice.

5. Biographic data

Both the principal and his spouse must provide certain biographic data, as detailed in the COM SIV Guidelines.

6. Employee badges

The applicant should submit a copy of his most recent employee identification badge, if available.

7. Statement of ongoing threat

The applicant must submit a “brief statement describing the threat ...faced as a result of... employment on behalf of the U.S. Government in Iraq.”⁴²

⁴⁰ State SIV FAQs, *supra* note 10.

⁴¹ *Id.*

⁴² COM SIV Guidelines.

B. Petition to USCIS

After COM approval, the applicant must file a petition with USCIS. This petition must be submitted by postal mail to USCIS' Nebraska Service Center ("NSC"). Filing requirements are set out in AFM § 22.3(t)(5) and also described in the State Department's SIV FAQs. The petition packet to USCIS must include the following:

1. I-360 form

The applicant must submit an original, completed I-360, bearing the applicant's original signature. If the form was prepared by IRAP, a completed G-28 form ("Notice of Entry of Appearance as Attorney") must be submitted.

2. Proof of nationality

The applicant must submit a copy of his passport, birth certificate or national identification card, along with a certified English translation.

3. Letter of recommendation from supervisor

The applicant must provide a letter of positive recommendation from his supervisor. This should be a copy of the recommendation letter furnished to COM.

4. COM approval

The applicant must submit the approval materials provided by COM. The "Chief of Mission Approval for SIV Status" should include a determination of eligibility, confirmation of independent review of records, and risk assessment.⁴³

5. I-94 form (if in the U.S.)

If the applicant is already in the U.S., he must also submit a copy of his I-94 Arrival-Departure Record.

C. National Visa Center processing

If the NSC favorably adjudicates the applicant's petition, USCIS will forward the applicant's petition to the National Visa Center ("NVC") for further processing. NVC will contact the applicant via email to advise on required documents and acquiring an Iraqi "G" series passport. Denied I-360 petitions are subject to supervisory review,⁴⁴ which follow the same review and appeal process as for other applications or petitions filed with USCIS.⁴⁵

USCIS approval of a petition "is considered to establish prima facie entitlement to status, and the qualifications of the alien beneficiary are presumed to exist."⁴⁶ Thus, the FAM instructs that an approved petition should not be returned to USCIS unless there is "specific, substantial evidence of

⁴³ State SIV FAQs, *supra* note 10, and AFM § 22.3(t)(5)(B)(iii) and (iv).

⁴⁴ USCIS, "USCIS Response to the Citizenship and Immigration Service Ombudsman's 2009 Annual Report," (October 16, 2009) at 7.

⁴⁵ See 8 C.F.R. § 103.3.

⁴⁶ 9 FAM 42.32(d)(11) N9.

either misrepresentation in the petition process or facts unknown to the USCIS at the time of petition approval or to the [COM]” at the time of COM approval.⁴⁷

The applicant must submit by email the following documents, along with their certified English translations, to NVC.⁴⁸

1. A copy of the **biodata page of each applicant’s passport**.
2. Parts 1 and 2 of **Form DS-230** (“Application for Immigrant Visa and Alien Registration”).
3. **Form DS-157** (“Supplemental Nonimmigrant Visa Application”). The applicant should already have completed and submitted a DS-157 to the COM. Presumably, a copy of the same completed form should suffice.
4. **“Family Book** (Copy of Entry 1957). Scanned copies of a birth certificate for each applicant and any other civil documents showing the relationship between the petitioner and his/her spouse or minor children (e.g., marriage and divorce certificates, adoption decrees, etc.). If no birth certificate is available, the Iraqi national identity card (bataqa shaksiya) may be used instead of a birth certificate.”
5. **Documentation of work for or on behalf of the U.S. government**. Presumably, copies of the earlier-submitted supervisor’s letter and employment verification will suffice.
6. “If the applicant lived in a different country of nationality for more than 6 months AND was 16 years old at that time, THEN the applicant needs a **police certificate** from the police authorities of that locality.”
7. **Resettlement Benefits Election Form**.
8. If the applicant elects to receive resettlement benefits, then a **Special Immigrant Visa Biodata Form** must also be submitted.
9. **Two recent photographs** of each applicant meeting the State Department’s photograph requirements.⁴⁹

D. Visa interview

Once the application is processed, NVC will arrange for an in-person interview at a U.S. embassy or consulate. The applicant should indicate to NVC which embassy or consulate is most convenient.

At the interview, consular officers will question applicants to verify the submitted information, evaluate SIV qualifications, and review security and medical clearances.⁵⁰ The State Department also advises that applicants may have to undergo medical examinations and testing.⁵¹

All accompanying family members should be present at the interview. If the visa is approved, the applicant’s spouse and unmarried children under age 21 will be eligible for immigration along with the applicant. The applicant should bring original documentary proof of the family relationship, such as

⁴⁷ *Id.*

⁴⁸ State SIV FAQs, *supra* note 10.

⁴⁹ See “Interview Preparation – Photographs,” http://travel.state.gov/visa/immigrants/info/info_3740.html.

⁵⁰ U.S. Department of State and the Broadcasting Board of Governors, Office of Inspector General, Middle East Regional Office, “Status of Iraqi Special Immigrant Visa Programs,” MERO-IQO-08-01, (July 2008) at 4.

⁵¹ State SIV FAQs, *supra* note 10.

marriage and birth certificates. All family members will be required to submit finger scans at the interview.

The applicant should bring to the interview original copies of the documents submitted via email to NVC. In particular, the applicant and each family member should obtain and bring an Iraqi “G” series passport. As discussed above, only “G” series passports are acceptable for travel to the United States, although the State Department may waive this requirement under certain circumstances. In the SIV FAQs, the State Department also advises applicants to bring “your Iraqi national identity card (bataqa shaksiya) as well as your military photo identification, civilian identification badges, and originals of any civil documents, such as marriage certificates, birth certificates or death certificates.”⁵² At the interview, the applicant will also be asked to make a written statement of his intent to immigrate promptly to the U.S.

V. Regulations and Resources

The main sources for rules governing the SIV program are as follows:

- **Department of State Foreign Affairs Manual (“FAM”):**
<http://www.state.gov/m/a/dir/regs/fam/>
- **Department of State FAQs for Iraqi SIV Applicants:**
http://travel.state.gov/visa/immigrants/info/info_4172.html
- **Department of State visa application forms:**
http://www.travel.state.gov/visa/forms/forms_1342.html
- **USCIS Adjudicator’s Field Manual (“AFM”):**
<http://www.uscis.gov/propub/DocView/afmid/1>

⁵² *Id.*