

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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AFGHAN AND IRAQI ALLIES UNDER )  
SERIOUS THREAT BECAUSE OF THEIR )  
FAITHFUL SERVICE TO THE UNITED )  
STATES, ON THEIR OWN AND ON )  
BEHALF OF OTHERS SIMILARLY )  
SITUATED, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
MICHAEL R. POMPEO, et. al, )  
) )  
Defendants. )

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Civil Action No. 18-cv-01388 (TSC)

**ORDER**

The court hereby approves and adopts the joint proposed adjudication plan,  
attached as Exhibit A.

Date: June 14, 2020

Tanya S. Chutkan  
TANYA S. CHUTKAN  
United States District Judge

# Exhibit A

**APPROVED ADJUDICATION PLAN**

**I. CLASS MEMBER IDENTIFICATION**

Class members covered by the Joint Adjudication Plan are all people who applied for an Afghan or Iraqi Special Immigrant Visa (“SIV”) pursuant to the Afghan Allies Protection Act of 2009, Pub. L. No. 111-8, 123 Stat. 807 (“AAPA”), and Refugee Crisis in Iraq Act of 2007, Pub. L. No. 110-181, 222 Stat. 395 (“RCIA”), by submitting an application for Chief of Mission (“COM”) approval, and whose applications have been awaiting government action for longer than 9 months, as of May 21, 2020, the date of the submission of this plan. The following parameters will be used to identify class members:<sup>1</sup>

- (1) submitted Chief of Mission (“COM”) applications to the National Visa Center (“NVC”) prior to August 21, 2019 [*i.e.*, (CASE\_RECEIVE\_DTE) is earlier than August 21, 2019], and whose COM applications are pending, either on original review or on appeal, or approved;
- (2) submitted COM applications to the NVC prior to August 21, 2019 and whose COM applications were denied after January 22, 2020 [*i.e.*, (CASE\_RECEIVE\_DTE) is earlier than August 21, 2019 AND (NOT\_APPROVED\_DTE) is later than January 22, 2020], and therefore are still within the statutorily allotted 120-day time period for appealing the denial;
- (3) submitted I-360 petitions that are pending or were issued a notice of approval [*i.e.*, (I-360 Filing Date) is earlier than May 21, 2020]; or

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<sup>1</sup> The parties acknowledge that this methodology will result in over-inclusive class identification, but no class identification methodology will perfectly capture class members given the manner in which Defendants maintain records for SIV applicants and that any methodology will be over-inclusive and/or under-inclusive.

(4) are pre- or post- visa application interview [*i.e.*, whose NVC\_CREATE\_DATE is earlier than May 21, 2020], including those refused under INA section 221(g) for administrative processing.

## II. ADJUDICATION PLAN

Stage		Description	Number of class members <sup>2</sup>	Adjudication Plan Performance Standards
COM application process, including appeals	1	Applicant submits a COM application or appeal package to the NVC.		N/A: Applicant-Controlled
	2	The NVC reviews documents and evaluates whether the applicant submitted all of the required items.	N/A	The NVC will complete review within 15 days of receipt of the applicant's submission (a submission is an application or an appeal, or additional documentation if such documentation was requested by the NVC).
	3	The NVC sends completed application or appeal package to the COM Committee.	N/A	The NVC will send the application or appeal to the COM Committee within 5 days of determining the application or appeal to be documentarily complete.
	4	The COM Committee reviews the application or appeal and makes a decision to approve or deny.	AAPA: 9,210 awaiting government action RCIA: 21 awaiting government action	The COM Committee will adjudicate a completed application or appeal within 120 days of receipt from the NVC.  For class members currently in Step 4, the COM Committee will adjudicate the completed application or appeal within 120 days of the date of the Court's approval of the Plan.

<sup>2</sup> The parties note that these numbers do not reflect the total number of class members per the parties agreed upon class identification method given that some class members are between government-controlled steps and cannot be easily identified unless or until they enter the next step. Because of the nature of Steps 2, 3, 5, and 8, the parties agreed that Defendants will not report the number of class members.

	5	The COM Committee advises the NVC of the determination on the COM application or appeal and NVC notifies the applicant of the decision.	N/A	<p>The COM Committee will advise the NVC within 5 days of the COM Committee making a determination on the COM Application or Appeal.</p> <p>The NVC will send the applicant the COM Application Approval or Denial letter, or COM Appeal determination within 5 days of the NVC receiving notification from the COM Committee.</p>
Form I-360 Petition adjudication process	6	Applicant submits Form I-360 to USCIS		N/A: Applicant-controlled
	7	USCIS adjudicates petition and sends to the NVC if approved.	<p>AAPA: 40 awaiting government action; 15 awaiting applicant action</p> <p>RCIA: 3 awaiting government action; 3 awaiting applicant action</p>	<p>Upon receipt of a petition from the applicant, USCIS will adjudicate the petition and send an approved petition to the NVC within 60 days unless USCIS issues a Request For Evidence (“RFE”) or a Notice of Intent to Deny (“NOID”) to the applicant.</p> <p>Upon receipt of a response to an RFE or a NOID, USCIS will adjudicate the petition and send an approved petition to the NVC within 60 days.</p> <p>Cases that require additional processing time to reconcile any national security concerns, <i>see</i> AAPA § 602(b)(4)(B), RCIA § 1242(c)(2), will be identified on the progress report in the following manner: number of cases pending between 90–180 days; number of cases pending between 181–240 days; and number of cases pending 241 days or more. For the purpose of progress reporting, the</p>

				<p>timeframes will be calculated starting from the date of receipt of the applicant’s petition. USCIS will request that third party agencies prioritize the vetting of these cases. The parties understand that USCIS cannot require a third party agency to complete vetting in any particular timeframe.</p> <p>Based on these target timeframes, the parties expect that all cases awaiting USCIS adjudication as of the date of the beginning of each reporting period will be adjudicated before the end of the same reporting period, unless USCIS issued an RFE or a NOID or the case requires additional processing time to reconcile any national security concerns.</p>
<p>Visa interview process, including pre- and post-interview</p>	8	<p>The NVC sends instruction packet to applicant requesting standard immigrant visa documentation.</p>	N/A	<p>Upon receipt of the petition from USCIS, the NVC will send an instruction packet to the applicant within 5 days.</p>
	9	<p>Applicant submits all required documentation, per the instruction packet, to the NVC.</p>	<p>AAPA: 107 awaiting applicant action</p> <p>RCIA: 8 awaiting applicant action</p>	<p>N/A: Applicant-controlled</p>
	10	<p>The NVC reviews documents and evaluates whether the applicant submitted the required items.</p>	<p>AAPA: 12 awaiting government action</p> <p>RCIA: 1 awaiting government action</p>	<p>Upon receipt of the application or further information requested by the NVC, the NVC will determine whether the application is complete within 5 to 15 days of receipt.</p> <p>If the NVC determines that the application is not complete,</p>

				the NVC will notify the applicant within 5 days of that determination.
	11	The NVC schedules applicant for next available interview at U.S. embassy’s consular section.	<p>AAPA: 120 awaiting interview scheduling; 2 awaiting interview</p> <p>RCIA: 2 awaiting interview scheduling</p>	<p>After the NVC determines the application is complete, the NVC will offer the applicant the next available interview within 10 days of making that determination.</p> <p>The NVC will schedule the interview within 60 days of contacting the applicant unless the applicant requests a different interview location or interview time or unless there are reasonable circumstances for the delay as explained in the Progress Reports.</p> <p>The parties acknowledge that the Department of State suspended all routine visa services worldwide due to COVID-19 worldwide pandemic, and, thus, the NVC is not scheduling interviews as of the date of the submission of this plan, except to the extent that a U.S. Embassy or Consulate's resources allow them to schedule emergency or mission-critical cases. In addition, the parties acknowledge that as of the date of the submission of the plan the Visa Unit at the U.S. Embassy in Afghanistan is closed and consular services in Iraq are severely limited.</p>
	12	Applicant is interviewed by consular officer on the scheduled appointment date. Administrative processing is initiated following the interview.	<p>AAPA: 0</p> <p>RCIA: 0</p>	After completion of the visa application interview, if the consular officer refuses the visa application under section 221(g) for administrative processing, the consular

				<p>officer will initiate any administrative processing within 5 days.</p> <p>If the applicant is required to provide any additional information or documentation, the consular officer will initiate any administrative processing within 5 days of receipt of all necessary information or documentation.</p>
	13	<p>The applicant's case undergoes administrative processing.</p>	<p>AAPA: 286 awaiting government action</p> <p>RCIA: 47 awaiting government action</p>	<p>All cases refused under INA section 221(g) for administrative processing that is solely within the Department of State's control, including Advisory Opinions, will be completed within 90 days.</p> <p>For class members currently in Step 13 who are in administrative processing that is solely with the Department of State's control, administrative processing will be completed within 90 days of the date of the Court's approval of the Plan.</p> <p>All cases refused under INA section 221(g) for administrative processing that is not solely with the Department of State's control and which require additional processing time to reconcile any national security concerns, <i>see</i> AAPA § 602(b)(4)(B), RCIA § 1242(c)(2), will be identified in the progress report in the following manner: number of cases pending greater than 120 days; number of cases pending</p>



				<p>greater than 180 days; and number of cases pending greater than one year. For the purpose of progress reporting, the beginning date for these cases is the date the consular officer placed the case in administrative processing.</p> <p>The Department of State will request that third party agencies expedite the processing of class members. The parties understand that the Department of State cannot require a third party agency to complete their actions in any particular timeframe.</p>
<p>Visa issuance to eligible applicants</p>	14	<p>Upon completion of administrative processing, applicant is instructed to obtain a medical exam. The visa is issued if applicant is eligible. In some cases, the passport will have expired and requires renewal by the applicant.</p>		<p>N/A: Applicant-controlled</p>

### III. PROGRESS REPORTS

Beginning 90 days after the Court approves the proposed joint adjudication plan and every 90 days thereafter, Defendants shall lodge a progress report with the Court, within 10 days of the 90-day reporting period. The progress report will include Defendants’ performance under the proposed adjudication plan during the prior 90-day period, and, if Defendants’ performance does not meet the target timeframe, will include an explanation regarding why Defendants’ performance did not meet the target timeframe and, if appropriate, also include actions to be

taken to bring performance back in line with the performance standard. The template for the progress report is attached hereto.

If Defendants' performance does not meet the target timeframe, and Plaintiffs on a good faith basis do not believe that Defendants' explanation or revised plan for adjudicating delayed applications is sufficient, the Parties agree to meet and confer to attempt to resolve any differences. Within fourteen (14) days after submission of the progress reports, Plaintiffs must notify Defendants in writing, specifying the basis for Plaintiffs' challenge to Defendants' performance. Within fourteen (14) days of receipt of Plaintiffs' correspondence, the parties will meet and confer.

**PROGRESS REPORT**

Defendants submit this Progress Report as required under the Court's Month DD, 2020 order. The Progress Report is for the period of Month Year to Month Year.

**I. Class Member Breakdown<sup>1</sup>**Refugee Crisis in Iraq Act of 2007

	<b>Number of Class Members at the beginning of reporting period (as of Month DD, Year)</b>	<b>Number of Class Members at the end of reporting period (as of Month DD, Year)</b>	<b>Number of Class Members who entered the step during the reporting period</b>	<b>Number of Class Members who completed the step during the reporting period</b>	<b>Number of Class Members who began and ended the reporting period in the step</b>
<b>Step 4</b>	[x]	[x]	[x]	[x]	[x]
<b>Step 7</b>	[x] (awaiting government action)  [y] (awaiting applicant action)  [a] (national security cases pending between 90 to 180 days)  [b] (national security cases pending between 181 to 240 days)	[x] (awaiting government action)  [y] (awaiting applicant action)  [a] (national security cases pending between 90 to 180 days)  [b] (national security cases pending between 181 to 240 days)	[x]	[x] (approved)  [y] (denied)	[x] (awaiting government action)  [y] (awaiting applicant action)  [a] (national security cases pending between 90 to 180 days)  [b] (national security cases pending between 181 to 240 days)

<sup>1</sup> The parties acknowledge that this report may include SIV applicants outside of the Court's class definition that the parties have nonetheless agreed to treat as class members because no class identification methodology can perfectly capture class members given the manner in which Defendants maintain records for SIV applicants.

	[c] (national security cases pending greater than 241 days)	[c] (national security cases pending greater than 241 days)			[c] (national security cases pending greater than 241 days)
<b>Step 11</b>	[x] (awaiting interview scheduling)  [y] (awaiting interview)	[x] (awaiting interview scheduling)  [y] (awaiting interview)	[x]	[x]	[x] (awaiting interview scheduling)  [y] (awaiting interview)
<b>Step 13</b>	[x] (cases in administrative processing)  [a] (national security cases pending greater than 120 days)  [b] (national security cases pending greater than 180 days)  [c] (national security cases pending greater than 1 year)	[x] (cases in administrative processing)  [a] (national security cases pending greater than 120 days)  [b] (national security cases pending greater than 180 days)  [c] (national security cases pending greater than 1 year)	[x]	[x]	[x] (cases in administrative processing)  [a] (national security cases pending greater than 120 days)  [b] (national security cases pending greater than 180 days)  [c] (national security cases pending greater than 1 year)
<b>Step 14</b>				[x] (visas issued)	

Afghan Allies Protection Act of 2009

	<b>Number of Class Members at the beginning of reporting period (as of Month DD, Year)</b>	<b>Number of Class Members at the end of reporting period (as of Month DD, Year)</b>	<b>Number of Class Members who entered the step during the reporting period</b>	<b>Number of Class Members who completed the step during the reporting period</b>	<b>Number of Class Members who began and ended the reporting period in the step</b>
<b>Step 4</b>	[x]	[x]	[x]	[x]	[x]
<b>Step 7</b>	[x] (awaiting government action)  [y] (awaiting applicant action)  [a] (national security cases pending between 90 to 180 days)  [b] (national security cases pending between 181 to 240 days)  [c] (national security cases pending greater than 241 days)	[x] (awaiting government action)  [y] (awaiting applicant action)  [a] (national security cases pending between 90 to 180 days)  [b] (national security cases pending between 181 to 240 days)  [c] (national security cases pending greater than 241 days)	[x]	[x] (approved)  [y] (denied)	[x] (awaiting government action)  [y] (awaiting applicant action)  [a] (national security cases pending between 90 to 180 days)  [b] (national security cases pending between 181 to 240 days)  [c] (national security cases pending greater than 241 days)
<b>Step 11</b>	[x] (awaiting interview scheduling)  [y] (awaiting interview)	[x] (awaiting interview scheduling)  [y] (awaiting interview)	[x]	[x]	[x] (awaiting interview scheduling)  [y] (awaiting interview)

<p><b>Step 13</b></p>	<p>[x] (cases in administrative processing)</p> <p>[a] (national security cases pending greater than 120 days)</p> <p>[b] (national security cases pending greater than 180 days)</p> <p>[c] (national security cases pending greater than 1 year)</p>	<p>[x] (cases in administrative processing)</p> <p>[a] (national security cases pending greater than 120 days)</p> <p>[b] (national security cases pending greater than 180 days)</p> <p>[c] (national security cases pending greater than 1 year)</p>	<p>[x]</p>	<p>[x]</p>	<p>[x] (cases in administrative processing)</p> <p>[a] (national security cases pending greater than 120 days)</p> <p>[b] (national security cases pending greater than 180 days)</p> <p>[c] (national security cases pending greater than 1 year)</p>
<p><b>Step 14</b></p>				<p>[x] (visas issued)</p>	

**II. Performance Standards**

A. Standards Met

For the period of this Progress Report, Defendants met the performance standards in the Joint Adjudication Plan for Steps [list steps].

B. Standards Not Met

For the period of this Progress Report, Defendants did not meet the performance standards in the Joint Adjudication Plan for Steps [list steps].

1. Step [list Step Number]

*a. Performance Standard [list Standard]*

*b. Actual Performance [list Performance]*

*c. Explanation [explain why Defendants did not meet standard and, if appropriate, actions to bring performance back in line with the performance standard]*