

The Afghan Adjustment Act Would Not Facilitate Safe or Orderly U.S. Entry of Afghan Allies

THE ISSUE

The proposed Afghan Adjustment Act (AAA) seeks to ease adjustment of status for Afghans who are already in the U.S., bring more in from Afghanistan and third countries, and create an additional visa/legalization channel for “at-risk” Afghans. Yet, the AAA would *complicate* the ongoing effort to integrate the more than 80,000 Afghans brought to the U.S. by Operation Allies Welcome and the thousands more who arrived independently.

BACKGROUND

The AAA’s potential pool of applicants is enormous. Vetting of existing Afghan Special Immigrant Visa (SIV) applicants is already inadequate, and Afghans in the U.S. who are legally ineligible to remain are almost impossible to deport. Congress should focus on completing the vetting and adjudication of Afghans already present before adding programs for new arrivals.

SIVs are granted annually to long-serving or meritorious foreign employees of U.S. missions abroad. With increasing U.S. involvement in Afghanistan, legislation lowered qualification requirements and raised numerical limits. After the panicked U.S. withdrawal in August 2021, more than 80,000 evacuated Afghans were brought to the U.S., while thousands of Afghans who remained in Afghanistan were still in, or entirely left out of, the SIV process.

AAA: OVERLY BROAD, UNREALISTICALLY AMBITIOUS

The AAA would expedite adjustment to Legal Permanent Resident for Afghans present in the U.S. who:

- Are anywhere in the SIV process, as long as they have Chief of Mission approval; or
- Were referred (usually by the U.N. refugee agency) to the U.S. Refugee Admissions Program; or
- Had filed an SIV before July 31, 2018; or
- Merely were physically present in the U.S. for the past two years.

The AAA also adds a new category for “at-risk” Afghans with at least one year of service in the Afghan special operations, air force, or female units. The AAA demands that the Secretary of State devise a plan to support “relocations and resettlements” of Afghans overseas, including remote processing, extraction from Afghanistan by land or air, and establishing third-country processing sites. The AAA expects the Department of State to “establish and maintain an office” to review applications and issue visas to Afghans as long as there is no operational U.S. embassy in Afghanistan. The Secretary should even try to obtain Afghan passports for SIV applicants.

VETTING OF AFGHANS IS INADEQUATE—EXPANDING THE POOL EXPANDS RISK

“Vetting” means checking an applicant for past criminal or terrorist activity. Refugee cases are generally processed overseas, as opposed to those of asylum applicants, who

apply at the border or while already in the U.S. legally or illegally; or parolees, who are admitted by Department of Homeland Security (DHS) agents at the border. Potential refugees who fail to qualify are not admitted. However, many of the Afghans who would be entitled to expedited case processing under the AAA are already in the U.S. To vet them, the DHS would have to rely on their biographic information, records known to U.S. entities, biometric information gathered in the U.S. or in Afghanistan, and any criminal conviction after the date on which the applicant entered the U.S.

Unknown would be any convictions, intelligence, or actions in Afghanistan that were unavailable to U.S. agencies. Given the number of Afghans with little or no U.S. connections who were hastily evacuated under U.S. auspices, some surely present security concerns. So far, Afghans in the U.S. have committed several crimes, including four sexual assaults and crimes on or near military bases, which were either not prosecuted or downgraded to misdemeanors. On August 22, Senators Charles Grassley (R-IA), Rob Portman (R-OH), and Jim Inhofe (R-OK) wrote to FBI Director Christopher Wray asking about more than 50 Afghans, paroled into the United States by the DHS, who were flagged by the National Ground Intelligence Center as “potentially significant security concerns.” Wray had testified before the Senate Judiciary Committee on August 2 that the FBI did not know where these Afghans were.

REMOVING UNQUALIFIED OR CRIMINAL AFGHANS IS NEARLY IMPOSSIBLE

The current rate of approvals for Afghan asylum applicants is 99 percent, and the AAA allows not only administrative appellate review of a denial, but judicial review in district court. Under the AAA, the Secretary of Homeland Security can also waive most criminal ineligibilities. While a case is pending, an Afghan is protected from removal unless the DHS Secretary cites “national security

concerns.” Given the massive backlogs in immigration courts, cases could be pending for years. Some would eventually be *ordered* removed due to national security concerns or criminal records. Yet, these failed applicants would be nearly impossible to remove, given both the minimal level of current deportations by Immigrations and Customs Enforcement and the uncooperative state of U.S. relations with the Taliban.

RESETTLEMENT OF AFGHANS IS UNFINISHED, COSTLY BUSINESS

According to the State Department, around 80,000 Afghans have been brought to the U.S. for resettlement in the year since the Kabul pullout. Volunteers, charities, churches, and schools took on some of the social load; the government bore most of the expenses. Applicants under the AAA would be entitled to resettlement assistance, entitlement programs, and other benefits available to approved and resettled refugees who have gone through the U.S. Refugee Admissions Program. Until certain procedural steps are completed, which takes months, they are not authorized to work. Those who do not speak English, lack transferable job skills, or care for dependent spouses and children rely on food stamps, Medicaid, and other federal programs. The AAA also prohibits DHS from charging fees for adjustment applications. All Afghan AAA costs would have to be subsidized by fees paid by applicants for U.S. Citizen and Immigration Services cases in other countries. These fees were calculated based on anticipated cost per service, which did not anticipate nearly 100,000 Afghan, and as many Ukrainian, no-fee cases.

The State Department hired nine non-profits to settle refugees. Still, many refugee resettlement agencies are overwhelmed. Inadequate funding, food, housing, and other services, as well as fraud and mismanagement, have been reported in cities from Houston to Portland, Maine.