



April 12, 2011

PM-602-0035

Policy Memorandum

SUBJECT: Delegation of Appellate Jurisdiction with Respect to Certain Forms I-360 Filed by Afghan or Iraqi Nationals; Revisions to *Adjudicator's Field Manual (AFM)* Chapter 22.3 (*AFM* Update AD 10-40)

Purpose

This Policy Memorandum (PM) describes closing actions to be taken when adjudicating Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*, filed by certain Afghan or Iraqi nationals who worked for or on behalf of the U.S. Government. It also discusses jurisdiction over appeals and certifications relating to decisions on those petitions.

Scope

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

Authority

Title 8 Code of Federal Regulations (8 CFR) section 103.1
8 CFR 2.1
8 CFR 103.1(a)

Background

Section 1244 of the Refugee Crisis in Iraq Act of 2007 (Section 1244 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181), section 602(b) of the Afghan Allies Protection Act (Section 602(b) of Division F, Title IV, of the Omnibus Appropriations Act, 2009, Public Law 111-8), and section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163) allow Afghan and Iraqi translators and employees who worked for or on behalf of the U.S. Government to petition for and be granted immigrant status in the United States. Form I-360 is the immigrant petition filed under these provisions.

Current guidance in the Adjudicator's Field Manual (*AFM*) is unclear about the proper closing actions to be taken by officers adjudicating these Forms I-360, including the authority having jurisdiction over appeals and certifications relating to the petitions. Form I-360 filed by or on behalf of an Afghan or Iraqi translator or employee who worked for or on behalf of the U.S. Government is an employment-based immigrant petition. Pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296, the Secretary of the Department of Homeland Security (DHS) delegated the authority to adjudicate appeals of employment-based immigrant petitions to the USCIS Administrative Appeals Office (AAO). See DHS Delegation

Number 0150.1 (effective March 1, 2003); see also 8 CFR 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 CFR 103.1(f)(3)(iii) (as in effect on February 28, 2003), which provides for appellate jurisdiction over decisions on petitions for employment-based visa classifications or special immigrants or entrepreneurs pursuant to 8 CFR 204.5 and 204.6 except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act.

Policy

(1) The Chief of the AAO has jurisdiction to adjudicate any appeal from the denial of, or certification of, a decision on a Form I-360 filed under:

- Section 1059 of the National Defense Authorization Act, 2006, Pub. L. 109-163, 119 Stat. 3136, as amended by section 699J of Pub. L. 110-161, 121 Stat. 1844 and by Pub. L. 110-36, 121 Stat. 227 (enacted January 6, 2006);
- Section 1244 of the National Defense Authorization Act, 2008, Pub. L. 110-181, 122 Stat. 3, as amended by Pub. L. 110-242, 122 Stat. 1567 (enacted January 28, 2008); or
- The Afghan Allies Protection Act, Title VI of Division F of Pub. L. 111-8, 123 Stat. 524 (enacted March 11, 2009).

A petitioner wishing to appeal the denial of Form I-360 filed under these provisions must submit Form I-290B, *Notice of Appeal to the Administrative Appeals Unit*, to the AAO in accordance with 8 CFR 103.3. A petitioner wishing to provide additional information in connection with a decision that has been certified to the AAO on Form I-290C, Notice of Certification, must submit a brief in accordance with 8 CFR 103.4.

(2) A petitioner who files Form I-360 under section 1244 or under the Afghan Allies Protection Act is exempt from paying the Form I-290B filing fee. A petitioner under section 1059 must pay the Form I-290B filing fee as specified in 8 CFR 103.7(b). There are no filing fees in conjunction with certifications on Form I-290C.

(3) Officers denying or certifying Forms I-360 filed under these provisions must notify the petitioner of the proper procedures and fees for filing an appeal from, or brief on, the decision.

Implementation

Accordingly, the *AFM* is revised as follows:

1. Chapter 22.3(t) of the *AFM* is amended by adding a new section (10):

(10) Closing Action.

(A) Approval. If the alien meets the eligibility requirements set forth above, endorse the petition by placing your approval stamp in the Action Block and

signing your name, annotating the petition (classification **SM1**), and preparing an approval notice to advise the petitioner of the director's decision.

(B) Denial. If the petitioner has failed to establish eligibility for the benefit sought, deny the petition, and prepare a formal decision to inform the petitioner of the reasons for denial and of his or her right to appeal to the Administrative Appeals Office. The petitioner is not required to pay the I-290B filing fee in order to appeal from the denial of a Form I-360 filed under section 1244.

(C) Certification. If a decision on Form I-360 filed under either section 1059 or section 1244 is certified to the Administrative Appeals Office, prepare a formal decision on Form I-290C detailing the reasons for certification and notify the petitioner of his or her right to submit a brief in support of the petition. (See **8 CFR 103.4**).

2. Chapter 22.3(u) of the *AFM* is amended by adding a new section (9):

(9) Closing Action.

(A) Approval. If the alien meets the eligibility requirements set forth above, endorse the petition by placing your approval stamp in the Action Block and signing your name, annotating the petition (classification **SM1**), and preparing an approval notice to advise the petitioner of the director's decision.

(B) Denial. If the petitioner has failed to establish eligibility for the benefit sought, deny the petition, and prepare a formal decision to inform the petitioner of the reasons for denial and of his or her right to appeal to the Administrative Appeals Office. The petitioner is not required to pay the Form I-290B filing fee in order to appeal from the denial of a Form I-360 filed under the Afghan Allies Protection Act.

(C) Certification. If a decision on Form I-360 filed under the Afghan Allies Protection Act is certified to the Administrative Appeals Office, prepare a formal decision on Form I-290C detailing the reasons for certification and notify the petitioner of his or her right to submit a brief in support of the petition. (See **8 CFR 103.4**).

3. The *AFM* **Transmittal Memorandum** button is revised by adding a new entry, in numerical order, to read:

AD 10-40 April 12, 2011	Chapter 22.3(t)(10) and Chapter 22.3(u)(9)	This memorandum adds new paragraphs (t)(10) and (u)(9) to Chapter 22.3 to specify closing actions and administrative appellate jurisdiction for Forms I-360 filed by certain Iraqi and Afghan nationals.
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Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Service Center Operations Directorate.