

Public Law 111-8

TITLE VI

AFGHAN ALLIES PROTECTION ACT OF 2009

SEC. 601. SHORT TITLE.

This Act may be cited as the `Afghan Allies Protection Act of 2009'.

SEC. 602. PROTECTION FOR AFGHAN ALLIES.

(a) Appropriate Committees of Congress Defined- In this section, the term `appropriate committees of Congress' means—

- (1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate; and
- (2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on the Judiciary of the House of Representatives.

(b) Special Immigrant Status for Certain Afghans-

(1) IN GENERAL- Subject to paragraph (3), the Secretary of Homeland Security, or, notwithstanding any other provision of law, the Secretary of State in consultation with the Secretary of Homeland Security, may provide an alien described in subparagraph (A), (B), or (C) of paragraph

(2) with the status of a special immigrant under section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)), if the alien—

(A) or an agent acting on behalf of the alien, submits a petition for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4));

(B) is otherwise eligible to receive an immigrant visa;

(C) is otherwise admissible to the United States for permanent residence (excluding the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)); and

(D) clears a background check and appropriate screening, as determined by the Secretary of Homeland Security.

(2) ALIENS DESCRIBED-

(A) PRINCIPAL ALIENS- An alien is described in this subparagraph if the alien--

(i) is a citizen or national of Afghanistan;

(ii) was or is employed by or on behalf of the United States Government in Afghanistan on or after October 7, 2001, for not less than one year;

(iii) provided faithful and valuable service to the United States Government, which is documented in a positive recommendation or evaluation, subject to subparagraph (D), from the employee's senior supervisor or the person currently occupying that position, or a more senior person, if the employee's senior supervisor has left the employer or has left Afghanistan; and

(iv) has experienced or is experiencing an ongoing serious threat as a consequence of the alien's employment by the United States Government.

(B) SPOUSE OR CHILD- An alien is described in this subparagraph if the alien--

(i) is the spouse or child of a principal alien described in subparagraph (A); and

(ii) is accompanying or following to join the principal alien in the United States.

(C) SURVIVING SPOUSE OR CHILD- An alien is described in this subparagraph if the alien--

(i) was the spouse or child of a principal alien described in subparagraph (A) who had a petition for classification approved pursuant to this section or section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 8 U.S.C. 1101 note) which included the alien as an accompanying spouse or child; and

(ii) due to the death of the principal alien--

(I) such petition was revoked or terminated (or otherwise rendered null); and

(II) such petition would have been approved if the principal alien had survived.

(D) APPROVAL BY CHIEF OF MISSION REQUIRED- A recommendation or evaluation required under subparagraph (A)(iii) shall be accompanied by approval from the appropriate Chief of Mission, or the designee of the appropriate Chief of Mission, who shall conduct a risk assessment of the alien and an independent review of records maintained by the United States Government or hiring organization or entity to confirm employment and faithful and valuable service to the United States Government prior to approval of a petition under this section.

(3) NUMERICAL LIMITATIONS-

(A) IN GENERAL- Except as provided in subparagraph (C), the total number of principal aliens who may be provided special immigrant status under this section may not exceed 1,500 per year for each of the fiscal years 2009, 2010, 2011, 2012, and 2013.

(B) EXCLUSION FROM NUMERICAL LIMITATIONS- Aliens provided special immigrant status under this subsection shall not be counted against any numerical limitation under sections 201(d), 202(a), or 203(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1151(d), 1152(a), and 1153(b)(4)).

(C) CARRY FORWARD-

(i) FISCAL YEARS 2009 THROUGH 2013- If the numerical limitation specified in subparagraph (A) is not reached during a given fiscal year, with respect to fiscal year 2009, 2010, 2011, 2012, or 2013, the numerical limitation specified in such subparagraph for the following fiscal year shall be increased by a number equal to the difference between--

(I) the numerical limitation specified in subparagraph (A) for the given fiscal year; and

(II) the number of principal aliens provided special immigrant status under this section during the given fiscal year.

(ii) FISCAL YEAR 2014- If the numerical limitation determined under clause (i) is not reached in fiscal year 2013, the total number of principal aliens who may be provided special immigrant status under this subsection for fiscal year 2014 shall be equal to the difference between--

(I) the numerical limitation determined under clause

(i) for fiscal year 2013; and

(II) the number of principal aliens provided such status under this section during fiscal year 2013.

(4) PROHIBITION ON FEES- The Secretary of Homeland Security or the Secretary of State may not charge an alien described in subparagraph (A), (B), or (C) of paragraph (2) any fee in connection with an application for, or issuance of, a special immigrant visa under this section.

(5) ASSISTANCE WITH PASSPORT ISSUANCE- The Secretary of State shall make a reasonable effort to ensure that an alien described in subparagraph (A), (B), or (C) of paragraph (2) who is issued a special immigrant visa pursuant to this subsection is provided with the appropriate series Afghan passport necessary to enter the United States.

(6) PROTECTION OF ALIENS- The Secretary of State, in consultation with the heads of other appropriate Federal agencies, shall make a reasonable effort to provide an alien described in subparagraph (A), (B), or (C) of paragraph (2) who is seeking special immigrant status under this subsection protection or to immediately remove such alien

from Afghanistan, if possible, if the Secretary determines, after consultation, that such alien is in imminent danger.

(7) OTHER ELIGIBILITY FOR IMMIGRANT STATUS- No alien shall be denied the opportunity to apply for admission under this subsection solely because such alien qualifies as an immediate relative or is eligible for any other immigrant classification.

(8) RESETTLEMENT SUPPORT- A citizen or national of Afghanistan who is granted special immigrant status described in section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) shall be eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of such Act (8 U.S.C. 1157) for a period not to exceed 8 months.

(9) ADJUSTMENT OF STATUS- Notwithstanding paragraph (2), (7), or (8) of subsection (c) of section 245 of the Immigration and Nationality Act (8 U.S.C. 1255), the Secretary of Homeland Security may adjust the status of an alien described in subparagraph (A), (B), or (C) of paragraph (2) of this subsection or in section 1244(b) of the Refugee Crisis in Iraq Act of 2007 (Public Law 110-181; 122 Stat. 397) to that of an alien lawfully admitted for permanent residence under subsection (a) of such section 245 if the alien--

(A) was paroled or admitted as a nonimmigrant into the United States; and

(B) is otherwise eligible for special immigrant status under--

(i)(I) this subsection; or

(II) such section 1244(b); and

(ii) the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(10) REPORT ON IMPLEMENTATION AND AUTHORITY TO CARRY OUT ADMINISTRATIVE MEASURES-

(A) REQUIREMENT FOR REPORT- Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of State, in consultation with the Secretary of Defense, shall submit to the appropriate committees of Congress a report on the implementation of this subsection.

(B) CONTENT OF REPORT- The report required by subparagraph (A) shall describe actions taken, and additional administrative measures that may be needed, to ensure the integrity of the program established under this subsection and the national security interests of the United States related to such program.

(C) AUTHORITY TO CARRY OUT ADMINISTRATIVE MEASURES- The Secretary of Homeland Security and the Secretary of State shall implement any additional

administrative measures described in subparagraph (B) as they may deem necessary and appropriate to ensure the integrity of the program established under this subsection and the national security interests of the United States related to such program.

(11) ANNUAL REPORT ON USE OF SPECIAL IMMIGRANT STATUS-

(A) REQUIREMENT- Not later than 120 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Homeland Security shall submit to the appropriate committees of Congress a report on the number of citizens or nationals of Afghanistan or Iraq who have applied for status as special immigrants under this subsection or section 1244 of the Refugee Crisis in Iraq Act of 2007 (Public Law 110-181; 122 Stat. 396).

(B) CONTENT- Each report required by subparagraph (A) submitted in a fiscal year shall include the following information for the previous fiscal year:

(i) The number of citizens or nationals of Afghanistan or Iraq who submitted an application for status as a special immigrant pursuant to this section or section 1244 of the Refugee Crisis in Iraq Act of 2007 (Public Law 110-181; 122 Stat. 396), disaggregated--

(I) by the number of principal aliens applying for such status; and

(II) by the number of spouses and children of principal aliens applying for such status.

(ii) The number of applications referred to in clause (i) that--

(I) were approved; or

(II) were denied, including a description of the basis for each denial.

(c) Information Regarding Citizens or Nationals of Afghanistan Employed by the United States or Federal Contractors in Afghanistan-

(1) REQUIREMENT TO COMPILE INFORMATION-

(A) IN GENERAL- Not later than 120 days after the date of the enactment of this Act, the Administrator of the United States Agency for International Development, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of State, and the Secretary of the Treasury shall--

(i) review internal records and databases of their respective agencies for information that can be used to verify employment of citizens or nationals of Afghanistan by the United States Government; and

(ii) request from each prime contractor or grantee that has performed work in Afghanistan since October 7, 2001, under a contract, grant, or cooperative agreement with their respective agencies that is valued in excess of \$25,000, information that may

be used to verify the employment of such citizens or nationals by such contractor or grantee.

(B) INFORMATION REQUIRED- To the extent data is available, the information referred to in subparagraph (A) shall include the name and dates of employment of, biometric data for, and other data that can be used to verify the employment of each citizen or national of Afghanistan who has performed work in Afghanistan since October 7, 2001, under a contract, grant, or cooperative agreement with an executive agency.

(2) REPORT ON ESTABLISHMENT OF DATABASE- Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Administrator of the United States Agency for International Development, the Secretary of Homeland Security, the Secretary of State, and the Secretary of the Treasury, shall submit to the appropriate committees of Congress a report examining the options for establishing a unified and classified database of information related to contracts, grants, or cooperative agreements entered into by executive agencies for the performance of work in Afghanistan since October 7, 2001, including the information described and collected under paragraph (1), to be used by relevant Federal departments and agencies to adjudicate refugee, asylum, special immigrant visa, and other immigration claims and applications.

(3) REPORT ON NONCOMPLIANCE- Not later than 180 days after the date of the enactment of this Act, the President shall submit to the appropriate committees of Congress a report that describes--

(A) the inability or unwillingness of any contractor or grantee to provide the information requested under paragraph (1)(A)(ii); and

(B) the reasons that such contractor or grantee provided for failing to provide such information.

(4) EXECUTIVE AGENCY DEFINED- In this subsection, the term 'executive agency' has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(d) Rule of Construction- Nothing in this section may be construed to affect the authority of the Secretary of Homeland Security under section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 8 U.S.C. 1101 note).

This division may be cited as the 'Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2009'.