

PROJECT
ANAR

AFGHAN NETWORK FOR ADVOCACY & RESOURCES

Immigration Law 101

Project ANAR

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Overview of immigration law



Sources of immigration authority:

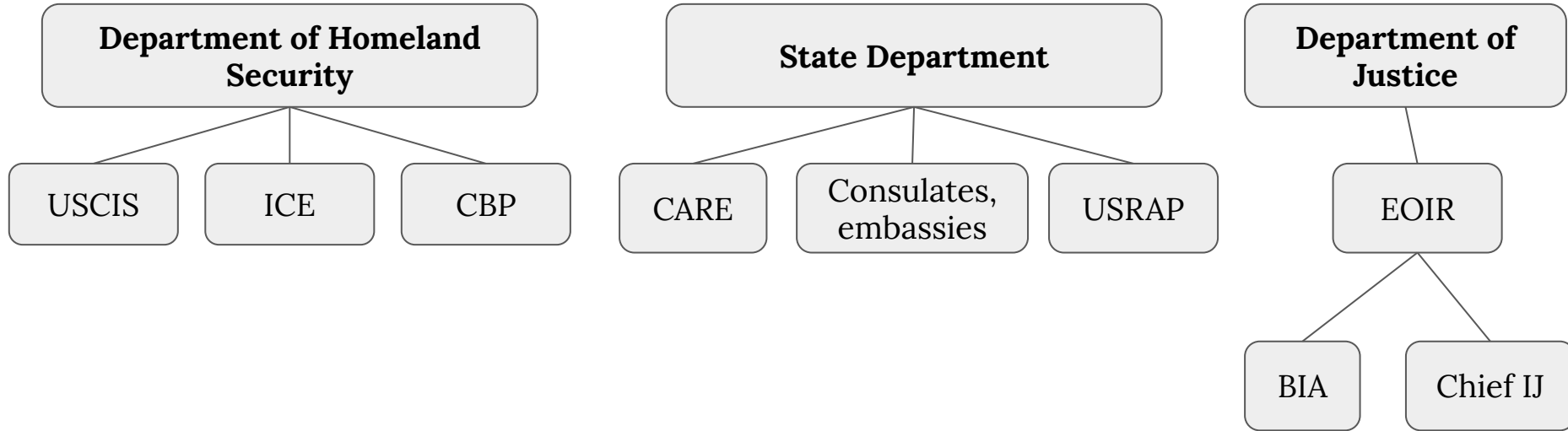
Law

- Immigration and Nationality Act (INA) (same as 8 U.S.C.)
- Constitution
- Caselaw

Regulations and Policy

- Code of Federal Regulations
- USCIS Policy Manual
- Executive orders

Overview of immigration agencies



Common immigration documents



Employment Authorization Card

U.S. Customs and Border Protection
Securing America's Borders

Get I-94 Number **I-94 FAQ**

Admission (I-94) Number Retrieval

Admission (I-94) Record Number: 61234567890 **I-94 Number**

Admit Until Date (MM/DD/YYYY): 10/10/2012 **Expiration Date**

Details provided on Admission(I-94) form:

Family Name: ADAMS **Last Name**

First (Given) Name: JOHN **First Name**

Birth Date (MM/DD/YYYY): 01/01/1990

Passport Number: P123123213

Passport Country of Issuance: Mexico **Issuance Date**

Date of Entry (MM/DD/YYYY): 04/11/2012

Class of Admission: **B1** **Category / Class Admission**

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: F1924 [redacted] DOB: [redacted] [redacted]

In the Matter of: [redacted] currently residing at: [redacted] (Area code and phone number)

Respondent: [redacted]

1. You are an arriving alien.

2. You are an alien present in the United States who has not been admitted or paroled.

3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security has determined that you are removable from the United States pursuant to the following provisions of law:

- You are not a citizen or national of the United States;
- You are a native of HONDURAS and a citizen of HONDURAS;
- You arrived in the United States at or near [redacted] on or about [redacted];
- You were not then admitted or paroled after inspection by an Immigration Officer.

The immigration court where your hearing will be scheduled

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provisions of law:

222(a) (1)(A) (i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

Section 219(b)(1) enter was suspended pursuant to: ACFR 208.300(a) ACFR 235.30(5)(i)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: 570 Executive Center Drive Suite 400 Charlotte NC 28211

(Complete Address of Immigration Court, including Room Number, if any)

on _____ date to be seen at _____ time on the _____ day of _____, 2018, to show why you should not be removed from the United States based on the (1)(A) (i) of the Immigration and Nationality Act, as amended.

change(s) on both above: **NICHOLAS E. MOORE** ACTING PATROL AGENT IN CHARGE

Date: April 18, 2018 WASHINGTON, Texas (Signature and Title of Issuing Officer)

See reverse for important information Form I-862 (Rev. 08/01/07) X

Notice to Appear

I-94 Number 000000000 11

Category / Class of Admission B2 (T)

Issuance Date Jun 03 2017

Expiration Date 14 12 76

Department of Homeland Security
CBP I-94A (11/04)
Departure Record

Country of Issuance: MEXICO

20161204 US-VISIT 20161204 MULTIPLE

See Other Side STAPLE HERE

Form I-94 (Arrival Record)
can be online or on paper, typed or written

Paths to immigration



- 1. Employment**
- 2. Family***
- 3. Humanitarian Relief***
- 4. Diversity Lottery**

Family-based pathways



Immediate Relative: spouses of citizens; citizens' unmarried children under 21; parents of citizens over 21.

immediately available

no limit

Family Preferences:

must wait for [priority date](#)

yearly cap

Tier 1: unmarried children of citizens

Tier 2: spouses of LPRs; LPRs' unmarried children under 21 (2A); LPRs' unmarried children over 21 (2B)

Tier 3: married children of citizens

Tier 4: siblings of citizens if they are children of the same parent and the citizen is 21

Derivative: Anyone admitted in through these categories can bring their **spouse or child**

Humanitarian relief



Immigrant:

- Refugee
- Asylee
- Special Immigrant Juvenile Status (SIJS)

Nonimmigrant:

- Humanitarian Parole
- Temporary Protected Status (TPS)
- Convention Against Torture (CAT)
- Withholding of Removal
- T and U Visas*

Humanitarian relief



Status	Requirements	Green Card?	Family?	Work?	Travel?
Asylum	Well-founded fear of persecution	Yes	Yes	Yes	Maybe
Parole	Urgent humanitarian need	No	Maybe	Yes	No
TPS	Afghan, in U.S. after Sept. 20, 2023	No	No	Yes	Maybe
CAT	Torture by government or by government acquiescence	No	No	Yes	No
Withholding	Persecution more likely than not if returned	No	No	Yes	No
T and U Visas	Certain crime victims	Yes	Yes	Yes	Yes

Temporary Protected Status (TPS)



Requirements: Afghanistan was [redesignated](#) September 20, 2023 until May 20, 2025

- Afghan national (or stateless and typically resided in Afghanistan)
- Continuously physically present in the U.S. since Nov. 21, 2023
- Continuously resided in the U.S. since Sept. 20, 2023

Benefits:

- Not removable or detainable on basis of status
- Can get work authorization

Limits: Cannot bring family, no path to greencard, time limited, must apply for travel authorization

Humanitarian/OAW Parole



Form I-131. Includes individuals paroled through Operation Allies Welcome.

Requirements:

- Urgent humanitarian need, significant public benefit, or protection need too urgent for traditional admission process
- Must request while outside the U.S. from an embassy

Benefits:

- Can reunify with family through DS-4317 if OAW parolee
- Can get work authorization

Limits: Temporary, USCIS determines length. Must request travel authorization.

Special Immigrant Visa (SIV)



Requirements: worked for or on behalf of the U.S. government (USG) in Afghanistan

- Translators and interpreters for the Armed Forces or Chief of Mission (COM) for 1 year OR
- Worked for the USG, a contractor funded by USG, or ISAF for 1 year AND are experiencing threats because of this work

Steps:

- COM approval (employment verification, supervisor recommendation, proof)
*this step can be done online
- Visa application (must be done at a U.S. embassy or National Visa Center (NVC))
- Interview (must be done at a U.S. embassy or NVC)

Benefits: pathway to green card, can bring family, work authorization, travel

Refugee vs. Asylee



Same status and benefits, distinction is mostly based on where the person applied.

Major protection: nonrefoulement (cannot be returned to country of persecution).

Refugee

- Apply outside the U.S.
- Yearly number determined by President
- Must adjust after 1 yr to LPR (green card)

Asylee

- Apply within the U.S. (“any refugee within the U.S.”)
- Within 1 year of entry (or more if parolee)
- Cannot adjust to LPR before 1 yr, may adjust after 1yr

Asylum: Requirements



1. Persecution: Well-founded fear of persecution or very severe past persecution by the government

- Or government is unwilling and unable to control
- If conditions change or could internally relocate, defeats claim
- Must show subjective and objective fear

2. Protected Grounds: race, nationality, religion, political opinion, particular social group

3. Nexus: Persecution must be on account of one of the protected grounds

- One year deadline to file (unless parolee), may adjust to LPR after one year

Asylum: 5 protected grounds



1. **Race***
2. **Nationality**
3. **Religion***
4. **Political opinion***
5. **Particular social group***
 - Common immutable characteristic
 - Defined with particularity
 - Socially visible

Examples: family membership, women refusing to conform to gendered dress laws, sexual orientation, “married women in Guatemala unable to leave their relationship”

Asylum: Bars to Asylum



- **Persecutor:** Engaged in persecution based on the 5 protected grounds
- **Terrorism-Related Inadmissibility Grounds (TRIG):**
 - Includes engagement or future engagement in terrorist activity, membership in a terrorist organization, received military training, relationship to someone else with TRIG inadmissibility, or materially supported terrorist organizations
 - Exemptions: duress, limited/insignificant support, Afghan allies or civil servants
- **Crime:** convicted of a “particularly serious crime” in the U.S. OR committed a serious nonpolitical crime outside the U.S.
- **Security:** “pose a danger to the security of the U.S.”
- **Resettled:** firmly resettled in another country before coming to the U.S.

Asylum, CAT, Withholding



Can apply for asylum, CAT, and withholding on the I-589

If asylum is denied, will be considered for CAT or withholding

Status	Requirements	Green Card?	Family?	Work?	Travel?
Asylum	Well-founded fear of persecution	Yes	Yes	Yes	Yes
Convention Against Torture (CAT)	Torture by government or by government acquiescence	No	No	Yes	No
Withholding of Removal	Persecution more likely than not if returned	No	No	Yes	No

Affirmative vs. Defensive Asylum



Affirmative asylum: applying while in the U.S., maybe on another status

Defensive asylum: applying during removal proceedings to avoid deportation or in immigration court after affirmative asylum denial

	Affirmative	Defensive
Who reviews the application?	USCIS	Immigration court with immigration judge
When do you apply?	On your own, within 1 year	Removal proceedings, within 1 year
Who is opposing?	No one	ICE attorney
Can you appeal?	No. Can reapply if show changed circumstances	Yes, to the BIA

Removal proceedings



A person is in removal proceedings if they have received a Notice to Appear (NTA) and have a court date with an immigration judge.

Expedited removal: Asylum seekers in expedited removal must receive a credible fear determination. If successful, they go to formal removal proceedings.

Where is my client in the process?

A person receives an NTA which has a date for a Master Calendar Hearing (MCH).

MCHs are preliminary and there might be more than one. A person hears the charges at an MCH and chooses whether to admit or deny them. At an MCH, the court will also set a date for the Individual Hearing or Merits Hearing.

An Individual Hearing is a full trial of their case against deportation.

A person can apply for asylum at **any point during the removal proceedings.**

Removal proceedings



What should I do if my client is in removal proceedings?

Refer them to an attorney. Encourage your client to keep checking for their court date, as they may change, and it is very important not to miss a court date. **If someone misses their court date, they could be ordered deported immediately.**

Your client will have a few options:

Applying for asylum defensively (and withholding, CAT) or adjusting status to another immigrant status

Applying for a nonimmigrant status (like TPS) and trying to pause or end the removal proceedings while on that status

Voluntary departure (to avoid a removal order and time bars to reentry). Client leaves on their own cost, but it is still hard to get.

Where to access case information



- **Automated Case Information**

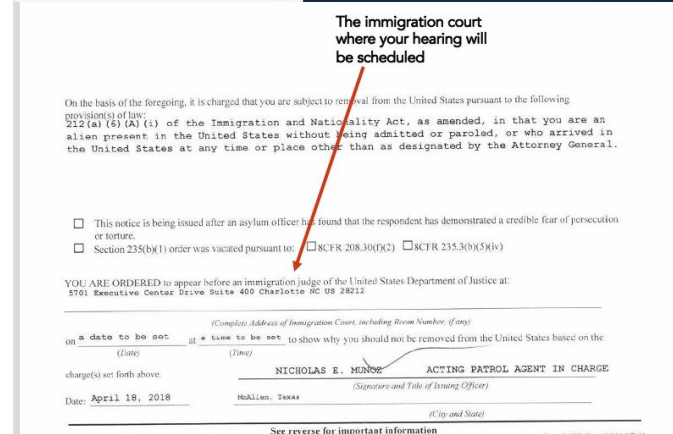
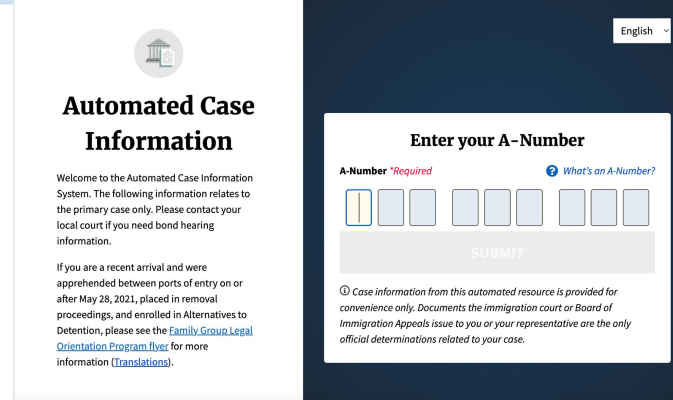
<https://acis.eoir.justice.gov/en/> OR

1-800-898-7180

(needs A number)

- **Client's Notice to Appear (NTA)**

(will have A number, might have court information)



If someone is in detention



- **ICE Detainee Locator**

<https://locator.ice.gov/odls/#/results>

(needs A number)

ORR Hotline (for minors) call
800-203-7001 9am-9pm ET, 7 days a week

- You can also reach out to **Project ANAR** via email or leave us a message, with the person's name, DOB, A# (or as much information as available).

Search by A-Number

If you know the detainee's A-Number, ICE recommends you use the A-Number search. The A-Number must be exactly nine digits long. If the A-Number has fewer than nine digits, please add zeros at the beginning. You are also required to select the detainee's correct Country of Birth. (* Required Field)

A-Number: *

Country of Birth: *

Search by A-Number

Search by Biographical Information

When searching by name, a detainee's first and last names are required and must be an exact match (e.g., John Doe will not find Jon Doe or John Doe-Smith). When inputting a hyphenated last name into the Online Detainee Locator System, please include hyphen in order for the locator to find the individual (e.g., Doe-Smith). You are also required to select the detainee's Country of Birth. (* Required Field)

First Name: *

Last Name: *

Country of Birth: *

Month: Day: Year:

Search by Biographical Information

Family reunification



People with permanent statuses can bring derivatives. Generally, people with temporary statuses cannot.

Derivatives:

Spouse or unmarried child under 21. Relationship must exist at the time of application.

	Citizen/LPR	Asylum	TPS	OAW Parole
Family?	Immediate relatives or family member preference visas	Spouses and children	No	If adult applicant: spouses and children. If child, primary caregiver*
Family status?	LPR or immigrant visa	Asylees	N/A	Refugees
Form?	I-130	I-730	N/A	DS4317*
Agency?	USCIS	USCIS	N/A	CARE

DS-4317 Reunification



* What is this family member's relationship to you? * Required

In cases of polygamy, only the first spouse may qualify as a spouse for family reunification.

* What is their Surname? (Last name) * Required

Spelling should match the spelling on traveler's passport

* What is their Given Name? (First name) * Required

Spelling should match the spelling on traveler's passport

* What is their Date of Birth? * Required

* What is their sex? * Required

Please enter date in mm-dd-yyyy format.
Ex: August 31st 1998 should read 08-31-1998

Preferred Spoken Language ✓

* Which language * Required

Passport #

A current passport is required for travel. If your family member does not have a passport, you may want to apply for one to prepare for potential travel.

Passport Expiration Date

Passports must be valid for at least six months from the date of travel. Potential travelers are encouraged to seek an extension or renewal if needed.

* Tazkera * Required

* What is their nationality? * Required

* What country are they currently in? * Required

* What city are they currently in? * Required

For parolees separated from spouses, children, and caregivers

children can bring primary caregiver, not just their parents

Follows case throughout other statuses and adjustments - no need to refile

One form per family, not per person

Parolees who get TPS are still eligible

Need EAD or A Number to apply

CARE Team Relocations

Eligibility for USG Relocation Flights from Afghanistan

All Travelers Must Have Valid Passport from Country of Nationality
 This requirement cannot be waived. Traveler's passport cannot be expired; if flying to Doha, passport must have 6 months validity *from date of travel*. Traveler must have physical possession of passport; a photocopy is not acceptable. Extension stamps from the MoFA are acceptable.

Definition of 'Eligible Family'
 Except where indicated, 'eligible family' means one spouse and unmarried children under age 21. If a child was added to an SIV case, or an I-130 petition was filed for a child prior to that child turning 21, the unmarried child over age 21 may be eligible; this will be determined by the US Department of State on a case-by-case basis.

Principal Traveler Type	Eligible?	Manifesting?	Notes
US Citizen (AMCIT)	Yes	Yes	Eligible for relocation if they were not previously relocated by the US Department of State and if they arrived in Afghanistan prior to August 2021. LPRs who have been outside the US for more than 12 months may need authorization from USCIS for reentry.
Lawful Permanent Resident (LPR)	Yes	Yes	CEAC Visa status should read ISSUED. Possession of printed visa foil in Passport and "foil-less" (no physical visa in Passport) are both acceptable. Principal applicant must travel ahead of or with derivatives. All derivatives should be included on petition.
SIV Issued	Yes	Yes	Applicant will have received email from NVC stating all documentation has been received and case is awaiting interview scheduling. All derivatives should be included on case.
SIV Interview Ready	Yes	Yes	Encourage applicant to continue required paperwork to move to interview-ready status.
SIV COM-Approved	Yes	No	CEAC Visa status will read REFUSED.
SIV Refused	Maybe *	Maybe *	* Eligibility for travel and manifesting depends on reason case is in refused status. Travel decisions will be made by the US Department of State on a case-by-case basis.
Eligible Family of US Citizen, LPR	Yes	Yes **	US Citizen eligible family includes parents. LPR eligible family <i>does not</i> include parents. ** Interview-ready IV case, with submitted/accepted Affidavit of Support (DS-864) required.
Non-Eligible Family of US Citizen, LPR	No	No	
Eligible Family of OAW Parolee	Yes	Yes	Eligible family members of Afghan nationals in the US who were granted Parole status. Complete form DS-4317 required. See www.state.gov/afghanistan-family-reunification for details.
Eligible Family of Asylee	Yes	Not Yet	Eligible family members of Afghan nationals in the US who were granted Asylee status. Complete I-730 follow-to-join petition required. See www.state.gov/afghanistan-family-reunification for details.
P1 / P2 / P3 Referral	Maybe ***	Maybe ***	*** For the vast majority, processing must be completed in a third country (outside both Afghanistan and the US). Enduring Welcome authorizes relocation for the "most at-risk" USRAP referrals; more detail on "most at-risk" forthcoming.
Humanitarian Parolee	No	No	Processing must be completed in a third country (outside both Afghanistan and the US).
Diversity Visa Selectee	No	No	Processing must be completed at an Embassy; visa <i>must be issued by September 30</i> .

Based on #AfghanEvac understanding of US Government policy as of January 2023

Although the process is not very public due to its sensitive nature, **the State Department Coordinator for Afghan Relocation ("CARE") continues to facilitate relocations for those who qualify through the DS-4317 and various other limited pathways.**

- Approved HP is NOT one of the qualifying pathways, people in that position have to coordinate their own travel to the U.S.

Visit [AfghanEvac](#) for current information.

Public benefits



Public charge rule: Most noncitizens are not eligible to receive public benefits.

Exceptions:

The public charge rule does not apply to asylees or Afghans eligible for resettlement assistance (including SIVs, TPS, parolees).

Humanitarian immigrants can also get SSI for up to the first 7 years

CAT and withholding of removal are eligible for SSI, TANF, some Medicaid, CHIP.

Some states have chosen to expand certain services (like WIC) to noncitizens.

Immigrants who have been in the U.S. for more than five years may become eligible for federal means-tested benefits (SNAP, TANF, Medicaid, CHIP, SSI).

Note: ORR benefits expired September 30 and have not yet been renewed.

Public benefits



Southern Border arrival flag:

Some people who came through the southern border and are in removal proceedings might also have parole status, either through CBP or ICE's discretion, or because they entered the U.S. via the CBP One App and were given an I-94.

Please have an attorney review your client's documents to assess whether they have parole, as this could allow them to qualify for OAW parolee benefits even if they are not an OAW parolee.

They can also generally apply for an EAD/work authorization based on parole.

Work authorization



Form I-765 for an Employment Authorization Document (EAD).

can also apply for an SSN on this form

Form I-765 is very expensive (\$410). Afghan parolees are exempt from this fee, and others can request a fee waiver.

Available with every immigrant status, including asylum. Asylum seekers can apply for EAD 150 days after submitting their application.

Certain other statuses are also eligible, including:

- TPS
- Withholding
- CAT
- Parole (must request an SSN)

Work authorization must be attached to a status. If a person's status changes, they must apply for a new work authorization.



Reminders for clients



- Give any changes to address to [EOIR](#) within 10 days.
- ICE can and will look at all social media. Be careful on social media.
- Some fee waivers and exemptions are available for Afghans.
- If they received an NTA but do not have a court date, continue to check with the EOIR website or phone number for a court date.
- Check the [asylum clock](#) for application progress and time to file for EAD

Organizations and resources



Legal Information:

- [ILRC](#)
- [IRAP](#)
- [ABA](#)
- [Vecina](#)
- [NIP-NLG](#)

Legal Services:

Parolee

- [ILSAA](#)

Not parolee

- Clinics (including Project ANAR's)
 - Email hello@projectanar.org or call (510) 954-3219 and leave a message
- [PARS](#)
- [Jewish Family Services of Silicon Valley](#)
- [JFCS in Oakland](#)
- [East Bay Sanctuary Covenant](#)
- [CAIR](#)

Wrapping up



Q&A



Thank you!

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