

Permanent Immigration Options for Afghans with Immigration Parole

June 21, 2022

Congressional Research Service

<https://crsreports.congress.gov>

R47165



R47165

June 21, 2022

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Permanent Immigration Options for Afghans with Immigration Parole

Since late July 2021, tens of thousands of Afghan nationals whose evacuation from Afghanistan was facilitated by the U.S. government have been relocated to the United States. Some of these Afghan evacuees were U.S. lawful permanent residents (LPRs) and, as such, can reside permanently in the United States. Others had been issued special immigrant visas (SIVs) based on their work for the U.S. government during the war in Afghanistan and became LPRs upon admission to the United States. Still others held valid nonimmigrant (temporary) visas.

The overwhelming majority (numbering more than 70,000), however, did not have a U.S. immigration status or visa and were granted immigration parole at their U.S. port of entry by the Department of Homeland Security's U.S. Customs and Border Protection. These parole grants were generally for two years. A person granted immigration parole (parolee) can remain in the United States for the duration of the parole grant and can apply for work authorization, but does not have a set pathway to LPR status.

The number of Afghan parolees in the United States has raised questions about their ability to remain here. To assist Congress in considering these issues, this report focuses on one key question: What are the options for Afghan parolees in the United States to obtain permanent immigration status?

While Afghan parolees do not have a dedicated pathway to lawful permanent residence, they may be able to adjust their status to LPR status through an existing immigration avenue if they are individually eligible. In the case of Afghan nationals, avenues to LPR status may include the Afghan special immigrant programs, asylum, and family-based immigration. Each of these avenues is subject to a different set of requirements. The number of Afghan parolees in the United States who may be eligible for them is not known.

Regarding the special immigrant programs, the temporary program for Afghans who worked for or on behalf of the United States in Afghanistan is seen as potentially more relevant than the permanent program for translators and interpreters because of its broader definition of eligible employment. In its current form, the temporary program applies to Afghans who provided "faithful and valuable service" for at least one year and have experienced an ongoing serious threat due to their employment. This program is subject to numerical limits.

Asylum is a form of humanitarian immigration relief that can be granted to a foreign national in the United States who is determined to be a *refugee* under U.S. law and satisfies other requirements. Asylum applicants are not required to have any pre-existing relationships with any persons or entities in the United States. There are no numerical limits on asylum.

Under the family-based immigration system, U.S. citizens and LPRs can sponsor certain family members to obtain LPR status. U.S. citizens can sponsor immediate relatives in unlimited numbers. Other relatives of U.S. citizens, and all relatives of LPRs, who are eligible for sponsorship are subject to a numerically limited system of tiered preferences.

Beyond these existing mechanisms, Congress could opt to pass legislation to establish a special pathway to LPR status for Afghan parolees. Over the years, such adjustment of status legislation has been enacted for particular groups of foreign nationals initially allowed to enter the country on immigration parole.

There is no single template for a parolee adjustment of status act. As such, developing an adjustment act for Afghans would involve making a series of choices about the provisions to include. These choices could include how to define the eligible population and what types of security-related provisions to incorporate.

Contents

Introduction	1
Afghan Evacuees in the United States.....	1
Temporary Immigration Relief.....	2
Immigration Parole	2
Temporary Protected Status	3
Permanent Immigration Options	4
Afghan Special Immigrant Programs	4
Asylum	6
Family-Based Immigration	7
Option of New Adjustment of Status Mechanism	8
Historical Parolee Adjustment of Status Acts	9
Afghan Adjustment of Status Legislation	10
Biden Administration Proposals	11
Conclusion.....	12

Contacts

Author Information.....	12
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Introduction

Since late July 2021, tens of thousands of Afghan nationals whose evacuation from Afghanistan was facilitated by the U.S. government have been relocated to the United States.¹ These evacuations were prompted by the U.S. military withdrawal from Afghanistan in the spring and summer of 2021.² Some of the Afghan evacuees who were relocated to the United States were U.S. lawful permanent residents (LPRs) and, as such, can reside permanently in the United States. Others had been issued special immigrant visas (SIVs) based on their work for the U.S. government during the war in Afghanistan and became LPRs upon admission to the United States. Still others held valid nonimmigrant (temporary) visas.

The overwhelming majority (numbering more than 70,000), however, did not have a U.S. immigration status or visa and were granted immigration parole at their U.S. port of entry by the Department of Homeland Security's (DHS's) U.S. Customs and Border Protection (CBP).³ A person granted immigration parole (parolee) can temporarily remain in the United States but does not have a set pathway to LPR status.⁴

The number of Afghan parolees in the United States has raised questions about their ability to remain here. Advocates have expressed concerns that parolees “could potentially be at risk of deportation back to the country they evacuated.”⁵ Reportedly, policymakers are engaged in discussions about the future immigration status of Afghan parolees.⁶ To assist Congress in considering these issues, this report focuses on one key question: What are the options for Afghan parolees to obtain permanent immigration status? The report begins with an overview of the immigration circumstances of Afghan nationals in the United States, focusing in particular on immigration parole. It then turns to available immigration mechanisms for Afghans to potentially obtain LPR status, such as the Afghan SIV programs and asylum. Finally, it considers proposals to establish a new statutory mechanism to enable Afghan nationals in the United States to obtain LPR status.

Afghan Evacuees in the United States

The FY2022 Afghanistan Supplemental Appropriations Act (P.L. 117-43, Division C) required DHS to provide Congress with an initial report and then quarterly reports containing data on Afghans “whose evacuation from Afghanistan to the United States, or to a location overseas controlled by the United States, was facilitated by the United States.”⁷ The initial December 2021

¹ U.S. Department of Homeland Security (DHS), *Operation Allies Welcome Afghan Evacuee Report*, December 2021, p. 2, <https://www.dhs.gov/sites/default/files/2022-03/DMO-OSEM%20-%20Department%20of%20Homeland%20Security%20Operation%20Allies%20Welcome%20Afghan%20Evacuee%20Report.pdf> (hereinafter cited as “2021 DHS Afghan Evacuee Report”).

² For additional information about these evacuations, see CRS Report R46879, *U.S. Military Withdrawal and Taliban Takeover in Afghanistan: Frequently Asked Questions*, pp. 56-58.

³ 2021 DHS Afghan Evacuee Report, pp. 6-8.

⁴ For additional information about parole status, see CRS Report R46570, *Immigration Parole*.

⁵ Frances Kai-Hwa Wang, Cresencio Rodriguez-Delgado, and Adam Kemp, “Tens of thousands of Afghans have resettled across the U.S. Now, the challenge is making a home,” *PBS NewsHour*, February 3, 2022.

⁶ “For Afghans Resettled in US, An Uncertain Future,” *Voice of America*, March 21, 2022.

⁷ 2021 DHS Afghan Evacuee Report, p. 2. (The reporting requirement appears in P.L. 117-43, Division C, Section 2503.)

report covered individuals who had been evacuated from Afghanistan as part of either Operation Allies Refuge (OAR) in July and August of 2021 or Operation Allies Welcome (OAW), which began on August 29, 2021.⁸ According to the report, there were 82,015 such evacuees. This total included 3,529 LPRs; 3,290 SIV holders; and 21 nonimmigrant (temporary) visa holders.⁹ The report also included data on other overlapping subsets of Afghan evacuees, such as persons who were employees of U.S. government agencies, as specified in the statutory provision.

The report further indicated that “more than 76,000” of the 82,015 evacuees had entered the United States as of November 18, 2021.¹⁰ The report did not specify how many of the evacuated LPRs and SIV holders referenced above had entered the United States (and were thereby part of the “more than 76,000”) and how many were in U.S.-controlled locations abroad.¹¹

Temporary Immigration Relief

According to DHS, the overwhelming majority of the more than 76,000 Afghan evacuees in the United States by mid-November 2021 had been granted immigration parole. In March 2022, another form of temporary immigration relief became available to Afghan nationals in the United States (including parolees) when the DHS Secretary announced the designation of Afghanistan for Temporary Protected Status (TPS).

Immigration Parole

In its initial evacuee report, DHS indicated that 70,192 of the more than 76,000 Afghan evacuees in the United States had been granted immigration parole by CBP at a U.S. port of entry between July 30, 2021, and November 15, 2021. It further stated that “initial parole periods were granted for 2 years.”¹² On March 17, 2022, DHS separately provided CRS with data on Afghan parolees in response to a question about the estimated number of beneficiaries under the designation of Afghanistan for TPS. According to these data, there were approximately 72,500 Afghan evacuees who had been paroled into the United States.¹³

The parole provision in the Immigration and Nationality Act (INA)¹⁴ gives the DHS Secretary discretionary authority to “parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States.”¹⁵ The DHS Secretary’s parole authority has been delegated to three agencies within the department: U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and CBP.

⁸ Ibid., p. 1 (text and footnote 1).

⁹ Ibid., pp. 2-4.

¹⁰ Ibid., pp. 2-3. The data on evacuees located abroad are as of other specified dates in November 2021.

¹¹ The report suggests, but does not directly say, that the 21 nonimmigrant visa holders were in the United States. For information on nonimmigrant visas, see CRS Report R45938, *Nonimmigrant and Immigrant Visa Categories: Data Brief*.

¹² 2021 DHS Afghan Evacuee Report, p. 8. According to at least one source, however, some Afghan evacuees were granted parole for one year. See Rebecca Beitsch, “DHS gives temporary protected status to Afghans in US,” *The Hill*, March 16, 2022.

¹³ Email from DHS to CRS, March 17, 2022.

¹⁴ The INA is Act of June 27, 1952, ch. 477, as amended, codified at 8 U.S.C. §1101 et seq.

¹⁵ INA §212(d)(5), 8 U.S.C. §1182(d)(5).

Parole can be requested by foreign nationals inside or outside the United States in a range of circumstances.

Immigration parole is official permission to enter (if the beneficiary is outside the country) and remain temporarily in the United States. It does not constitute formal admission under the U.S. immigration system. A parolee is permitted to remain in the United States for the duration of the grant of parole. Before the expiration of that grant, a parolee may apply for re-parole.

A parolee also may submit an application for employment authorization, which carries a standard filing fee of \$410. In the case of Afghans, DHS announced in November 2021 that initial applications for employment authorization, and certain other applications, filed by persons who were paroled into the United States on or after July 30, 2021, would be exempt from fees and eligible for streamlined processing. DHS indicated it was taking these actions to facilitate Afghan resettlement in the United States.¹⁶

Not all Afghans in the United States with parole are evacuees. While evacuees account for the vast majority of Afghan parolees, some Afghans have been separately granted parole by DHS. These non-evacuees include Afghans who were the subject of parole requests to USCIS from outside the United States.¹⁷ According to USCIS, it adjudicated 2,712 such parole requests from October 1, 2020, to March 4, 2022, and conditionally approved 8% of them.¹⁸

Temporary Protected Status

On March 15, 2022, the DHS Secretary announced the designation of Afghanistan for TPS for a period of 18 months.¹⁹ Established by statute in 1990, TPS is intended to provide safe haven for foreign nationals in the United States as of the designation date—regardless of their immigration status—whose home countries are experiencing armed conflict, natural disaster, or other extraordinary circumstances that prevent their safe return. Individuals granted TPS are eligible for employment authorization and are not subject to removal from the United States. The DHS Secretary can extend a TPS designation in increments of up to 18 months if the country continues to meet the conditions for designation.²⁰ Like parole, TPS does not provide a set pathway to LPR status.

TPS may be held concurrently with another status, such as parole. DHS has estimated that approximately 74,500 Afghan nationals in the United States could be eligible for TPS. This total includes about 72,500 Afghans who were paroled into the United States, as noted above, and

¹⁶ DHS, *DHS Announces Fee Exemptions, Streamlined Processing for Afghan Nationals as They Resettle in the U.S.*, November 8, 2021, <https://www.uscis.gov/newsroom/news-releases/dhs-announces-fee-exemptions-streamlined-processing-for-afghan-nationals-as-they-resettle-in-the-us> (hereinafter cited as “DHS news release, November 8, 2021”).

¹⁷ For information about the parole application process for Afghans, see DHS, USCIS, “Information for Afghan Nationals on Requests to USCIS for Humanitarian Parole,” December 8, 2021. In addition, U.S. executive agencies may request parole “on behalf of individuals who are known by that agency and when visa or refugee processing is not feasible.” Email from USCIS to CRS, April 27, 2022.

¹⁸ USCIS explained “conditional approvals” as follows: “Conditional approvals are issued because the beneficiary must complete additional processing at a U.S. embassy or consulate to verify identity, collect biometrics, complete additional vetting, and, if no derogatory information is found that impacts the parole decision, obtain a travel document.” Email from USCIS to CRS, April 27, 2022. Most of the 2,712 parole requests were denied (83%), and 9% were closed/suspended. Email from USCIS to CRS, March 10, 2022.

¹⁹ For additional information, see CRS Insight IN1903, *Afghanistan Designated for Temporary Protected Status*.

²⁰ For additional information, see CRS Report RS20844, *Temporary Protected Status and Deferred Enforced Departure*.

some 2,000 other Afghan nationals in the United States on the designation date (who are not LPRs).²¹

Permanent Immigration Options

Parolees are allowed to remain temporarily in the United States. Although immigration parole does not provide a dedicated pathway to lawful permanent residence, persons with parole may be able to obtain LPR status through an existing immigration avenue if they are individually eligible. In the case of Afghan nationals, avenues to LPR status may include the Afghan special immigrant programs, asylum, and family-based immigration.²²

Afghan Special Immigrant Programs

There are two special immigrant programs that explicitly cover Afghan nationals.²³ One is a permanent program that was authorized in 2006 for individuals who worked as translators or interpreters directly with U.S. Armed Forces, or under Chief of Mission authority²⁴ (it also applies to Iraqi nationals).²⁵ This program is capped at 50 visas per year for Afghan and Iraqi principal applicants combined; the spouses and unmarried minor children²⁶ of principal applicants are not counted against the cap.

The other program, which is significantly larger, is a temporary program for Afghans who were employed by or on behalf of the U.S. government in Afghanistan or by the International Security Assistance Force (ISAF).²⁷ Authorized in 2009, this program has been amended multiple times, most commonly to increase the number of visas available.²⁸ The latest increase, enacted in July 2021 as part of the FY2021 Emergency Security Supplemental Appropriations Act (P.L. 117-31), provided an additional 8,000 SIVs.²⁹ This addition brought the total allotment of visas available

²¹ Email from DHS to CRS, March 17, 2022.

²² These three mechanisms have been commonly identified as relevant immigration options for Afghans in the United States. For example, the USCIS web page “Information for Afghan Nationals” discusses these three forms of immigration relief. In a report on Afghan evacuees, the Migration Policy Institute (MPI), a nonpartisan organization that undertakes research and analysis on immigration, describes the SIV and asylum processes as “the most straightforward pathways available.” Julia Gelatt and Doris Meissner, *Straight Path to Legal Permanent Residence for Afghan Evacuees Would Build on Strong U.S. Precedent*, MPI, March 2022. This does not mean, however, that these are the only options available to Afghans. Other possible LPR avenues include employment-based immigration (see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*) and the diversity visa program (see CRS Report R45973, *The Diversity Immigrant Visa Program*).

²³ For a more detailed discussion of these programs, see CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

²⁴ The Chief of Mission is the principal officer in charge of a U.S. diplomatic mission abroad. An individual who worked for the U.S. Embassy in Kabul, Afghanistan, directly (not as a contractor) is deemed to have worked under Chief of Mission authority.

²⁵ National Defense Authorization Act for FY2006 (P.L. 109-163, §1059). The original version of this program only applied to Iraqi and Afghan nationals who had worked directly with U.S. Armed Forces as translators. It was subsequently amended. For the current statutory language, see 8 U.S.C. §1101 note.

²⁶ *Minor children*, as used in this report, refers to persons under age 21.

²⁷ For information on the ISAF in Afghanistan, see North Atlantic Treaty Organization (NATO), *ISAF’s mission in Afghanistan (2001-2014)*, last updated May 30, 2022, https://www.nato.int/cps/en/natolive/topics_69366.htm.

²⁸ The authorizing statute is the Omnibus Appropriations Act, 2009 (P.L. 111-8, Division F, Title VI). For the current statutory language, see 8 U.S.C. §1101 note. For a discussion of the evolution of this program, see CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

²⁹ P.L. 117-31, Title I, §401(a)(2)(B).

for issuance to principal applicants after December 19, 2014, to 34,500. These visas are not tied to a particular fiscal year and remain available until used. As under the permanent program for Afghan and Iraqi translators and interpreters, spouses and unmarried minor children of principal applicants are not counted against the numerical limits on this program.

Information about visa issuances and application processing under the temporary program is available in congressionally required joint U.S. Department of State (DOS)/DHS quarterly reports. According to the January 2022 report, 16,515 SIVs remained available for issuance to principal applicants as of December 31, 2021.³⁰ The current application deadline for this program is December 31, 2023.

Afghans can apply for special immigrant status under these programs from within the United States or abroad.³¹ The same statutory requirements and most of the same application processing steps apply regardless of the applicant's location. One notable difference is that U.S.-based applicants do not apply to DOS for visas. Instead, they apply to USCIS to change their status to LPR status (this process is known as adjustment of status). For purposes of the numerical limits on the SIV programs, an adjustment of status is treated like a visa issuance.

According to the initial DHS Afghan evacuee report, many Afghans who were granted parole were potentially eligible for special immigrant status. The report characterized 36,821 Afghan evacuees as *SIV applicants*. It defined members of this group as “those who had applied for, but not yet received a Special Immigrant Visa (SIV) at the time of evacuation; and those who were eligible to do so, but had not yet begun the SIV application process.”³² This prospective special immigrant total also included the accompanying spouses and unmarried minor children of the actual and potential principal applicants. The report did not provide separate figures for actual applicants, potential applicants, or family members.³³

The temporary Afghan program is seen as the potentially more relevant one for these prospective special immigrants because of its broader definition of eligible employment. In its current form, it applies to Afghans who were employed in Afghanistan on or after October 7, 2001, for not less than one year; provided “faithful and valuable service” to the employing entity that is “documented in a positive recommendation or evaluation”; have experienced an “ongoing serious threat as a consequence” of their employment; and satisfy other requirements.³⁴

The potential uptick in applications to the temporary Afghan SIV program by evacuees has focused renewed attention on this program's longstanding application processing challenges.³⁵ According to the January 2022 DOS/DHS quarterly report, average U.S. government processing

³⁰ U.S. Department of State (DOS) and DHS, *Report to Congress on Joint Department of State/Department of Homeland Security Report: Status of the Afghan Special Immigrant Visa Program*, January 2022, p. 1, <https://travel.state.gov/content/dam/visas/SIVs/Afghan-Public-Quarterly-Report-Q1-January-2022.pdf> (hereinafter cited as “Quarterly Report on the Afghan SIV Program, January 2022”).

³¹ There has been no immigration processing in Afghanistan since August 2021, when the U.S. Embassy in Kabul suspended operations. DOS, “Update on Visa Processing at U.S. Embassy Kabul,” September 1, 2021. <https://travel.state.gov/content/travel/en/News/visas-news/update-on-visa-processing-at-us-embassy-kabul.html>.

³² 2021 DHS Afghan Evacuee Report, p. 4. These data are as of December 16, 2021.

³³ According to a *Washington Post* article, “more than 30,000 of these people, and their families, are associated with the CIA, according to U.S. government officials who spoke on the condition of anonymity because of the sensitivity of the matter.... Senior administration officials declined to discuss on the record the fact that many evacuees had CIA connections.” Glenn Kessler, “Numbers behind last year's chaotic Afghanistan evacuation come into focus,” *Washington Post*, May 29, 2022, p. A4.

³⁴ P.L. 111-8, Division F, Title VI, §602(b)(2)(A), as amended; 8 U.S.C. §1101 note.

³⁵ For additional discussion, see CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

time during the first quarter of FY2022 totaled 734 calendar days.³⁶ The report also discussed efficiency improvements, including increased staffing levels, technological changes, and policy requirement updates. As part of its November 2021 announcement about actions to facilitate the resettlement of Afghan parolees in the United States, DHS indicated that applications filed by parolees to adjust status as Afghan special immigrants would be exempt from fees and eligible for streamlined processing.³⁷

Asylum

Asylum is a form of humanitarian immigration relief that can be granted to a foreign national in the United States who is determined under U.S. law to be a *refugee*, as this term is defined in the INA, and satisfies other requirements.³⁸ The INA defines a refugee, in general, as a person who is outside his or her country of nationality and is unable or unwilling to return to, or to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution based on one of five protected grounds: race, religion, nationality, membership in a particular social group, or political opinion.³⁹ Asylum applicants are not required to have any pre-existing relationships with any persons or entities in the United States. There are no numerical limits on asylum.

The INA places certain restrictions on asylum applications and asylum grants. Among the former, an asylum application must be filed within one year of the individual's arrival in the United States, unless the applicant qualifies for an exception. Statutory prohibitions on granting asylum include bars related to criminal activity and security concerns.

Asylum can be granted by USCIS or the Department of Justice's (DOJ's) Executive Office for Immigration Review (EOIR), depending on the type of application filed. An Afghan parolee in the United States typically would file an affirmative asylum application with USCIS.⁴⁰ The initial DHS evacuee report indicated that 4,050 Afghan evacuees had been referred to the U.S. refugee program.⁴¹ This number included both principal applicants and accompanying spouses and unmarried minor children. Individuals must be outside the United States to apply and be considered for refugee admission to the United States. The Afghans in the United States who previously had been referred to the refugee program could, however, opt to apply for asylum. Persons whose asylum applications are approved are granted *asylee* status, along with their spouses and unmarried minor children. After one year, asylees can apply to adjust to LPR status.

Advocates and other observers have pointed out potential difficulties facing Afghans in the United States who seek asylum. Among them, the affirmative asylum system has a significant application backlog. According to USCIS data, as of December 31, 2021 (the end of the first

³⁶ Quarterly Report on the Afghan SIV Program, January 2022, p. 5. There has been considerable variability in average U.S. government processing time from quarter to quarter. For further discussion of this statistic, see CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

³⁷ DHS news release, November 8, 2021.

³⁸ The main asylum provisions are in INA §208, 8 U.S.C. §1158. For additional discussion of asylum, see CRS Report R45539, *Immigration: U.S. Asylum Policy*. Separate provisions in the INA (in §207, 8 U.S.C. §1157) authorize the granting of refugee status to persons who are outside the United States, and meet the definition of a refugee and other specified requirements.

³⁹ INA §101(a)(42)(A), 8 U.S.C. §1101(a)(42)(A).

⁴⁰ By contrast, persons in the United States who are in removal proceedings would file defensive asylum applications with EOIR.

⁴¹ 2021 DHS Afghan Evacuee Report, pp. 5-6. These data are as of December 13, 2021.

quarter of FY2022), there were 432,341 pending affirmative asylum applications. To place this pending total into context, USCIS adjudicated 9,727 applications during the first quarter (October-December 2021).⁴² Other challenges mentioned by advocates include that Afghans may lack needed documents to make a successful asylum claim because they destroyed them “to elude Taliban detection” or left them behind “in the frenzy of their hurried escapes.”⁴³

Presumably to address these types of challenges, P.L. 117-43 directs DHS to expedite the processing of asylum applications filed by Afghans paroled into the United States between July 31, 2021, and September 30, 2022.⁴⁴ It requires DHS to conduct an initial interview on the application within 45 days of the filing date and “in the absence of exceptional circumstances” to “issue a final administrative adjudication” within 150 days of that date.

As part of the aforementioned reporting requirement in P.L. 117-43, DHS was directed to provide data to Congress on “the number of Afghan evacuees who have been interviewed by U.S. Citizenship and Immigration Services in connection with an application or petition for immigration benefits” as well as “the rate at which individuals were granted or refused the benefits that formed the basis for such interviews.” According to the initial DHS Afghan evacuee report, as of November 15, 2021, no evacuees “had completed processing for an immigration benefit that normally requires an interview” and USCIS had not conducted any such interviews.⁴⁵ In May 2022, USCIS provided CRS with updated data on affirmative asylum applications filed by Afghans who had been paroled into the United States since July 2021. The data indicated that, as of May 20, 2022, 798 such asylum applications had been filed. Of these filed cases, 720 had completed interviews or had interviews scheduled. The remaining 78 applications had received final decisions, 75 of which were approvals.⁴⁶

Family-Based Immigration

The INA authorizes U.S. citizens and LPRs to sponsor certain family members for LPR status. U.S. citizens can sponsor *immediate relatives* in unlimited numbers. This term is defined in the INA to encompass U.S. citizens’ spouses, unmarried minor children, and, if the citizens are adults (age 21 or older), parents. Other relatives of citizens and all relatives of LPRs eligible for sponsorship are subject to a numerically limited system of tiered preferences. In addition to immediate relatives, U.S. citizens may sponsor their unmarried and married adult children and, if the citizens are adults, their siblings. LPRs may sponsor their spouses, unmarried minor children, and unmarried adult children.⁴⁷

⁴² USCIS, “Number of Service-wide Forms, By Quarter, Form Status, and Processing Time, October 1, 2021 - December 31, 2021,” data table (see data for Form I-589, Application for Asylum and for Withholding of Removal), https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2022_Q1.pdf. For additional discussion of the affirmative asylum application backlog and USCIS efforts to address it, see USCIS, *Backlog Reduction of Pending Affirmative Asylum Cases*, October 2021, <https://www.dhs.gov/sites/default/files/2021-12/USCIS%20-%20Backlog%20Reduction%20of%20Pending%20Affirmative%20Asylum%20Cases.pdf>.

⁴³ Krish O'Mara Vignarajah, “Afghan evacuees are stuck in legal limbo. Here’s how to help them,” *Washington Post*, opinion column, March 24, 2022.

⁴⁴ P.L. 117-43, §2502(c). This provision also applies to certain family members of these parolees who are granted parole after September 30, 2022. Also see DHS news release, November 8, 2021.

⁴⁵ 2021 DHS Afghan Evacuee Report, p. 8.

⁴⁶ Emails from DHS to CRS, May 31, 2022.

⁴⁷ For additional information about this system, see CRS Report R43145, *U.S. Family-Based Immigration Policy*.

Because of statutory numerical limitations on family preference visas, a person being sponsored by a relative under the family-based immigration system must wait for a visa number to become available before he or she can take the final steps to become an LPR. Once a visa number becomes available, a prospective immigrant who is abroad can apply to DOS for a visa. A prospective immigrant in the United States can apply to USCIS to adjust to LPR status.⁴⁸

It is not known how many Afghan parolees in the United States may be able to adjust status through the family-based immigration system. The U.S. Census Bureau's 2019 American Community Survey (ACS) includes data on Afghan-born residents in the United States (who, among all U.S.-born or foreign-born groups, may be the most likely to have qualifying family relationships with Afghan parolees). According to the 2019 ACS 1-year estimates, there were approximately 132,000 Afghan-born individuals living in the United States that year. Of these, about 55,000 were naturalized citizens.⁴⁹ The other 77,000 may include LPRs, nonimmigrants, and persons without authorization to be in the United States, among others. To the extent that Afghan-born U.S. citizens or LPRs have the requisite family relationships with Afghan parolees, they could sponsor them for permanent residence.

Option of New Adjustment of Status Mechanism

A number of individuals and organizations, including veterans' groups, refugee resettlement agencies, and faith-based organizations, have called on Congress to create a new statutory process for Afghan parolees to obtain LPR status as an alternative to existing adjustment of status mechanisms.⁵⁰ They have offered various reasons for supporting such legislation, including the U.S. obligation to honor the commitments U.S. troops made to Afghan allies, the benefits to both Afghans and the United States of enabling Afghans to integrate into U.S. society quickly, and the mental stress experienced by evacuees in "legal limbo."⁵¹ They have made other arguments more directly related to the immigration system. For example, they have referenced the "complexity and inefficiency" of the asylum and SIV programs and the latter's "seemingly erroneous denials."⁵² Supporters have also noted that some Afghan parolees may not qualify for LPR status under existing mechanisms.⁵³

The nature and extent of any opposition to creating a new LPR mechanism for Afghans remains unclear. Critics generally have focused on the way in which the Afghan evacuation and relocation were conducted and, for the most part, have not directly addressed the adjustment of status question. For example, many have highlighted the "chaotic" nature of the evacuation and have

⁴⁸ Certain persons in the United States, such as those who entered without inspection, are not eligible to adjust status; they must apply for visas abroad.

⁴⁹ U.S. Census Bureau, ACS, 2019 ACS 1-Year Estimates, Selected Population Profile in the United States (Afghanistan). Data from the 2019 ACS are cited here because of data collection issues with the 2020 ACS (the most recent year for which ACS data have been released).

⁵⁰ See, for example, Austin Landis, "Veterans, advocates ramp up calls to secure permanent status for Afghan evacuees," *Spectrum News NY1*, February 14, 2022; and Jeff Brumley, "Veterans join religious and human rights groups to call for permanent status for Afghan refugees," *Baptist News*, February 28, 2022.

⁵¹ See *ibid.* Also see "Six Months After the Fall of Kabul, Veterans and Allies Call on Congress to Protect Afghan Refugees," *Human Rights First*, February 14, 2022; and Stewart Verdery, "Congress Should Pass an Afghan Adjustment Act," *Roll Call*, opinion column, October 19, 2021.

⁵² Krish O'Mara Vignarajah, "Afghan evacuees are stuck in legal limbo. Here's how to help them," *Washington Post*, opinion column, March 24, 2022.

⁵³ See, for example, "Six Months After the Fall of Kabul, Veterans and Allies Call on Congress to Protect Afghan Refugees," *Human Rights First*, February 14, 2022.

questioned the soundness of the security vetting procedures conducted prior to allowing Afghan evacuees to enter the United States.⁵⁴ Other critics have variously cited security risks associated with large-scale Afghan resettlement in the United States and highlighted “assimilation challenges.”⁵⁵ These criticisms may suggest opposition to creating a new LPR mechanism. A news article made reference to some lawmakers’ “balk[ing] at the idea of fast-tracking permanent residency for the Afghans brought to the United States,” citing their concerns about flawed vetting procedures.⁵⁶

Historical Parolee Adjustment of Status Acts⁵⁷

Over the years, legislation has been enacted that established special pathways to LPR status for particular groups of foreign nationals initially allowed to enter the country on immigration parole. In an early example, P.L. 85-559 provided for the adjustment of status of Hungarian parolees. Enacted in 1958, it described its beneficiaries as persons who had been paroled into the United States as refugees from the Hungarian Revolution after October 23, 1956. About 31,000 Hungarian parolees have adjusted to LPR status under this act.

Much larger numbers of parolees from Indochina (Vietnam, Laos, and Cambodia) have adjusted status under a 1977 act (P.L. 95-145), as amended. Evacuations from Indochina began in April 1975 at the end of the Vietnam War; that spring alone, about 130,000 people were evacuated, most of whom were paroled into the United States. P.L. 95-145 made adjustment of status available to citizens of Vietnam, Laos, or Cambodia who had been paroled into the United States as refugees between April 1, 1975, and December 31, 1978, as well as persons who had been admitted or paroled into the United States by March 31, 1975. About 175,000 persons have obtained LPR status under this act.

P.L. 85-559 and P.L. 95-145 referred to their beneficiaries as refugees, as noted. Both enactments preceded the passage of the Refugee Act of 1980, which added the definition of *refugee* to the INA and established the current U.S. refugee admissions process. In the pre-Refugee Act years, parole was used by U.S. administrations to authorize the entry of persons they considered to be refugees.

Legislation enacted since 1980 to allow parolees to adjust status has not been aimed explicitly at refugees. For example, provisions enacted in 1989 (P.L. 101-167, §599E) and 1996 (P.L. 104-208, Division C, §646) provided for the adjustment of status of persons who had been paroled into the United States after being denied refugee status and were nationals of the former Soviet Union or Vietnam in the former case and were Polish or Hungarian nationals in the latter. Under the P.L.

⁵⁴ See, for example, Jessica Donati and Siobhan Hughes, “Republican Lawmakers Question Vetting Standards for Afghans Brought to U.S.,” *Wall Street Journal*, October 27, 2021. As noted in the article, the Biden Administration has defended its security vetting process. Additional discussion of vetting issues is available in various sources, including James R. Webb, “Afghan evacuees to U.S. weren’t fully vetted and dozens reportedly went missing,” *Military Times*, February 18, 2022; and “Pentagon Reports Security Concerns Over Afghan Refugees,” *National Law Review*, vol. XII, no. 81 (March 22, 2022).

⁵⁵ See Mark Krikorian, “Whom Should We Take from Afghanistan?,” *National Review Online*, August 20, 2021; and Jason Richwine, “Afghans in America: A Potentially Severe Culture Clash,” *Center for Immigration Studies*, August 27, 2021.

⁵⁶ Abigail Hauslohner, “Thousands of Afghans were evacuated to the U.S. Will America let them stay?” *Washington Post*, March 29, 2022.

⁵⁷ All beneficiary estimates in this section of the report are as of September 30, 2020, and are based on data reported in DOJ, Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service* (1991-2001); and DHS, Office of Immigration Statistics, *Yearbook of Immigration Statistics* (2002-2020).

101-167 provision, which has been regularly extended since its initial enactment, about 92,000 persons have obtained LPR status. Under the provision in P.L. 104-208, the figure is less than 200.

Another adjustment of status act—the Haitian Refugee Immigration Fairness Act of 1998 (P.L. 105-277, Division A, §101(h), Title IX)—provided a pathway to LPR status for certain Haitian nationals. Its prospective beneficiaries included persons who had been paroled into the United States following a 1991 coup d’état, as well as asylum applicants who may never have been granted parole. About 31,000 Haitian nationals have adjusted status under this act. In a more recent 2010 enactment involving Haitians, P.L. 111-293 provided for the adjustment of status of certain Haitian orphans paroled into the United States under a 2010 DHS humanitarian parole policy. Under this act, which imposed a cap of 1,400 on the total number of adjustments of status,⁵⁸ about 800 Haitian nationals have obtained LPR status.

While all of the foregoing laws provided for the adjustment of status of parolees, their particular eligibility requirements and other provisions were tailored to their target beneficiary populations as well as to the immigration system in place at the time and other prevailing considerations. As noted, the references to refugees in the pre-1980 laws reflected the absence of explicit INA refugee provisions at the time. P.L. 105-277 contained provisions that reflected concerns about issues such as immigration enforcement and eligibility for public benefits that persist today. For example, it included language that placed restrictions on beneficiary eligibility for certain public benefits.

Afghan Adjustment of Status Legislation

Although there has been discussion about Afghan adjustment of status legislation, no such bills have been introduced in the 117th Congress as of the cover date of this report. The Biden Administration has proposed Afghan adjustment provisions for inclusion in certain appropriations bills (see the “Biden Administration Proposals” section below), but no provisions along these lines have been part of the relevant bills, as considered in the House or the Senate.

As indicated, there is no single template for a parolee adjustment of status bill. Developing an Afghan adjustment act would thus involve making a series of choices about the provisions to include. One basic choice in any adjustment of status bill concerns the definition of the eligible population. In the Afghan case, for example, the eligible population could be limited to parolees whose evacuation and relocation to the United States were facilitated by the U.S. government. Or it could include parolees who were granted parole during a particular period regardless of whether they were evacuees. It could also be broadened further to include Afghans in the United States on a particular date regardless of whether they were ever granted parole.

Another key choice in an Afghan adjustment bill may concern criminal- or security-related requirements. The INA sets forth grounds of inadmissibility upon which foreign nationals can be denied visas or admission to the United States.⁵⁹ The historical adjustment of status acts discussed above reference the INA inadmissibility grounds in effect at the time, making some inapplicable to their applicants. In their current form, the INA grounds of inadmissibility include health grounds, criminal grounds, security grounds (which include terrorism grounds), the likelihood of becoming a public charge, lack of entry documentation, and grounds related to unlawful presence in the United States, among others. Especially since the 9/11 terrorist attacks, issues related to

⁵⁸ None of the other acts described in this section contained numerical limitations.

⁵⁹ INA §212(a), 8 U.S.C. §1182(a).

national security and criminality have become a more prominent part of immigration policy discussions. Immigration bills enacted since the attacks that provide immigration relief commonly include criminal- or security-related restrictions in addition to requiring clearance of the corresponding inadmissibility grounds.⁶⁰

In the case of an Afghan adjustment of status bill, there may be an even greater focus on security issues in light of concerns that have been expressed about vetting procedures. These concerns are reflected in at least one bill that has been introduced in the 117th Congress. The Afghanistan Vetting and Accountability Act of 2022 (S. 3759) would require DHS to “verify the personal and biometric information” and “conduct in-person vetting” of each individual evacuated from Afghanistan and relocated to the United States between January 2021 and January 2022. This bill, which would not establish an adjustment of status mechanism, would make Afghans who did not comply with its verification and vetting processes ineligible to receive federal public benefits. Supporters of Afghan adjustment of status legislation likewise have cited national security-related concerns as reasons for establishing an LPR pathway. They have argued, for example, that if Afghans who worked with the United States are not granted permanent status, local populations in future conflicts will not be willing to lend assistance.⁶¹

Biden Administration Proposals

As noted, the Biden Administration has sought inclusion of Afghan adjustment of status language in appropriations measures, but this language has not been part of the relevant bills, as considered in the House or the Senate. In September 2021, the White House recommended that Congress include in the first FY2022 continuing resolution, provisions granting DHS discretionary authority to adjust the status of an Afghan national who (1) was paroled into the United States between July 31, 2021, and September 30, 2022, and whose parole had not been terminated, and (2) “successfully completed background checks and screening in accordance with ... Operation Allies Welcome (or any predecessor or successor operation) or equivalent background checks and screening.” To be eligible for adjustment of status under this proposal, an applicant would have had to be present in the United States for at least one year and “[clear] any additional background checks and screening, as specified by [DHS].” In addition, the individual would have had to clear the INA grounds of inadmissibility, except for those related to the likelihood of becoming a public charge, lack of entry documentation, and lack of labor certification (for intending workers). DHS also could have waived any other inadmissibility ground for humanitarian or public interest reasons. These grants of LPR status would not have been subject to numerical limits.⁶²

In April 2022, the White House proposed Afghan adjustment of status provisions as part of its request for FY2022 emergency supplemental funding for Ukraine. This proposal was generally similar to the one described above. One notable difference, however, was that it did not contain language authorizing DHS to waive any inadmissibility ground.⁶³

⁶⁰ For example, the 2019 Liberian Refugee Immigrant Fairness (P.L. 116-92, §7611), which provided for the adjustment of status of certain Liberian nationals, required that prospective beneficiaries had not been “convicted of an aggravated felony or two or more crimes of moral turpitude.”

⁶¹ See Ellen M. Gilmer, Jack Fitzpatrick, Zach C. Cohen, and Emily Wilkins, “Ukraine Aid Bugged Down by Afghan Immigration Skirmish,” *Bloomberg Government*, May 11, 2022.

⁶² This proposal is available at https://www.whitehouse.gov/wp-content/uploads/2021/09/CR_Package_9-7-21.pdf; see pp. 25-26.

⁶³ This proposal is available at https://www.whitehouse.gov/wp-content/uploads/2022/04/FY_2022_Emergency_Supplemental_Assistance-to-Ukraine_4.28.2022.pdf; see pp. 34-35.

Conclusion

August 2022 will mark one year since most Afghan parolees in the United States entered the country. For those granted parole for two years who have not obtained another status, it will also mean that one year remains in their U.S. authorized period of stay.

As discussed, P.L. 117-43 required DHS to report to Congress on Afghan evacuees who fell into specified immigration categories. The department was also directed to provide data related to Afghan applications for other immigration statuses. In response to this latter directive, DHS indicated in its initial Afghan evacuee report that no evacuees had completed processing for an immigration benefit requiring an interview and no interviews in connection with any such applications had been conducted as of November 15, 2021. USCIS data that were subsequently shared with CRS indicate that asylum applications filed by Afghan parolees have started to receive decisions (see the “Asylum” section). As additional data on applications for asylum and other forms of relief are reported in DHS quarterly evacuee reports, which P.L. 117-43 requires through September 30, 2023, it may be possible to assess the ability of Afghan parolees to obtain LPR status through existing mechanisms. These data may also have relevance for efforts to enact an Afghan adjustment act.

Finally, while this report is focused on Afghans, the ability of Afghan parolees to obtain LPR status (or not) may have implications for immigration policy toward other groups. For example, the Afghan experience has been raised in connection with Ukrainians who have fled their country in response to the Russian invasion. Concerns that many Afghan parolees may not be able to obtain LPR status have been cited by some advocates in arguing for offering more durable U.S. immigration options to Ukrainians.⁶⁴

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⁶⁴ See, for example, Mark Hetfield, “The right way to bring Ukrainian refugees to the U.S.,” *Washington Post*, opinion letter, March 20, 2022.

