

Left Behind: Iraqis and Afghans Caught in a Sea of SIV Red Tape

by Dan Berger, Margaret D. Stock, Mollie McGurk, Rose Olson, and Hannah Oldenburg

As long as U.S. forces have been engaged in operations abroad, local people have been recruited as translators and facilitators. Now, in Iraq and Afghanistan, a new wave of local helpers face uncertain futures as U.S. troops leave. The year 2013 was a key year in this saga from an immigration perspective. This article will review the background, current options, and prospects for these individuals in 2014 and beyond.

To set the stage, consider a situation that is becoming all too common. Service members who have just returned from Afghanistan call an AILA member to describe the frustrations of an Afghan translator, Waheed, who is trying to come to the United States to escape persecution by the Taliban. For the past seven years, Waheed guided their unit on practically every operation and provided critical assistance in navigating the local language and culture. He became a colleague and a friend. Now, on the rare occasions when Waheed can get electricity and signal for the satellite phone on his forward operating base in Afghanistan, he expresses fear of Taliban fighters who associate him with the United States and have targeted him for execution.

Waheed is afraid to leave the base because of threats to his life; he is even afraid to visit his family for fear of endangering their lives. After seven years of working with the U.S. military, his connection to the Americans has become his identity.

The AILA member reads InfoNet regularly, knows of two types of special immigrant visa (SIV) for Iraqis and Afghans, and sets out to help. Unfortunately, she soon learns that Waheed has been pursuing a visa for more than a year and is now stuck in a web of military and immigration bureaucracy. As with many immigration matters, the solution is not as simple as figuring out what visa classification is appropriate, but lies in discovering how that classification works as a practical matter.

The SIV programs for Iraqi and Afghan nationals have been in the news, most notably in a major [Washington Post article](#) published in November 2013. The media spotlight continues, including a [Fox News story](#) in January 2014. Regular coverage of stories such as Waheed's has taught us that these visa programs have not lived up to their promise. A bipartisan effort to reform the program was passed as part of the [National Defense Authorization Act for Fiscal Year 2014](#) (NDAA 2014) in December 2013, but the Afghan Allies Protection Extension Act ([H.R. 4594](#); [S. 2302](#)) was introduced in spring 2014 and is now stuck in Congress.



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Around 22 percent of the 25,000 available visas allocated for Iraqis and only around 12 percent of the 8,750 visas allotted for Afghans have been issued, according to a [letter](#) drafted by 19 members of Congress in March 2013 to the White House and DOS. During the past 12 months [as of December 2013], an [average](#) of only 20 Afghan SIV cases were cleared each month: several of those months saw no cases, or only one case, cleared, according to the List Project.

The SIV Program on Paper: How It Should Work

There are two main types of SIV programs that support Iraqi and Afghan nationals seeking status in the United States. One is for those who served as translators or interpreters and the other is for Iraqis or Afghans who served the United States in other capacities. Applicants can pursue both simultaneously if they meet the eligibility criteria.

The [Special Immigrant Visa Program for Iraqi and Afghan Translators/Interpreters](#) allows the issuance of SIVs to Iraqi and Afghan translators and interpreters (with a low quota of up to 50 visas annually) with at least one year of service. The first step in applying for this visa is to file [Form I-360](#), Petition for Amerasian, Widow(er), or Special Immigrant, with the U.S. Citizenship and Immigration Services (USCIS) Nebraska Service Center, along with proof of nationality, proofs of the applicant's employment for at least 12 months with the U.S. armed forces or the chief of mission (COM), a recommendation letter from a general or flag officer of the unit for which the translator or interpreter worked or from the COM at the U.S. embassy in Baghdad or Kabul, and proof of having passed a background check and screening by the U.S. armed forces or the COM. After the petition has been approved, and assuming the applicant is outside the United States, the applicant must then file for immigrant visa processing through [Form DS-260](#), Immigrant Visa and Alien Registration Application, and send his or her original passport, birth certificate, Resettlement Benefits Election Form, Special Immigrant Visa Biodata Form,¹ and a police certificate (if available) to the National Visa Center (NVC). After NVC reviews the documents, an interview will be scheduled at the U.S. embassy or consulate.

The [Iraqi SIV program](#) and the [Afghan SIV program](#), implemented in 2008, grant SIVs to Iraqis and Afghans who have worked for or on behalf of the U.S. government, but not necessarily as translators or interpreters. It was not until 2013 that these programs began to operate in a significant way. Up to 2,500 visas for Iraqis² and 3,000 for Afghans³ are allotted in fiscal year (FY) 2014 for employees and contractors who have been employed by or on behalf of the U.S. government for at least one year and have experienced or are experiencing an ongoing serious threat because of that employment. Afghans must have been employed for at least one year after October 7, 2001. Iraqis must have held employment for at least one year after March 20, 2003, and before September 30, 2013.

There are four major steps in the application process for the Iraqi or Afghan SIV:

- The application must be approved by the COM before any filing with USCIS can be made. This requires submission of [Form DS-157](#), Supplemental Nonimmigrant Visa Application; the applicant's passport; verification of one-year employment by or on behalf of the U.S. government; a letter of recommendation from the applicant's direct U.S. supervisor; and a statement of ongoing threats received as a result of employment to the NVC.

1 The Resettlement Benefits Election Form and Special Immigrant Visa Biodata Form are available on the [DOS webpage for the Iraqi SIV program](#) and the [DOS webpage for the Afghan SIV program](#); see "Step 3 – Prepare for Your Visa Application." "There are also [instructions for completing the form for the Iraqi SIV program](#) and [instructions for completing the form for the Afghan SIV program](#) on the DOS webpages.

2 Under the Iraqi SIV program, 2,500 visas may be issued to principal applicants in fiscal year (FY) 2014, and the program will end when all visas have been issued. The deadline for applying for chief of mission (COM) approval has been extended from December 31, 2013, to September 30, 2014.

3 Under the Afghan SIV program, 3,000 visas may be issued to principal applicants in FY 2014, with any unissued visas being allocated to FY 2015. The Afghan SIV program will end when all 3,000 visas have been issued or on September 30, 2015, if all visas are not issued by that date. The deadline for applying for COM approval is September 30, 2014.

- Once NVC considers the application packet complete, it will forward the package to the respective U.S. embassy and COM.
- If the application is approved (notification is by e-mailed letter from the COM), the applicant then must file the Form I-360 petition with the USCIS Nebraska Service Center.
- If the Form I-360 petition is approved, then the NVC and consular processing proceed as for the SIV translator or interpreter cases.

In both the Iraqi and Afghan programs, the principal applicant's spouse, as well as unmarried children younger than age 21, may be granted SIVs, and may travel with or follow to join the principal applicant after he or she has been admitted to the United States.

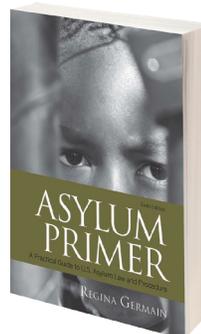
So, Waheed faced two major challenges: he had to navigate both the military and the U.S. Department of State (DOS) hierarchies to get the coveted COM approval, and then get a wary DOS to decide both that he has a well-founded fear of remaining in Afghanistan and that he won't pose a security risk if he comes to the United States.

Current Alternatives to the SIV Program

Beyond the SIV programs, the AILA member would naturally consider other options for Waheed—although, as a practical matter, one or the other SIV is likely the only realistic solution. In any tough situation, immigration lawyers start by thinking as broadly as possible. Some Iraqis and Afghans have convinced the U.S. Department of Defense (DOD) to allow their emergency parole into the United States—but under the Obama administration, such DOD-sponsored paroles have been less common than under the Bush administration.⁴ Others have grown desperate enough to travel to Canada or Mexico and seek asylum at the U.S. border, although the difficulty of travel to the North American continent and the wait for asylum adjudication have been significant deterrents. Other options include trying to bring Waheed to the United States on a temporary visa. Perhaps those at the local airbase can raise money and help him get an F-1 visa to go to school in the United States—although the temporary intent barrier in Immigration and Nationality Act §214(b) may be insurmountable. Or if Waheed has very strong support and a university education, the military members may be able to help him connect with a military contractor in the United States that will sponsor him for an H-1B visa.

Refugee status, by definition, would be for someone in a third-world country, so Waheed could flee Afghanistan and try to apply for refugee status through the U.N. High Commissioner for Refugees. Many Iraqis who have worked for the United States have taken advantage of this option by fleeing in the past to Egypt or Jordan or other surrounding countries. Very limited options for [applying as a refugee](#)

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4 9 FAM 42.1 N4.4 Parole Authorization for Aliens Outside the United States - Request by U.S. Government Agency/Department (CT:VISA-2043; 10-16-2013)

- a. In certain compelling circumstances, U.S. Government agencies, including the Department, may submit a request to DHS to parole an alien who is outside the U.S. Authority to adjudicate U.S. Government Agency/Department parole requests for aliens outside the U.S. generally rests with both USCIS' International Operations Division (IO) and ICE's Law Enforcement Parole Section (LEPS), depending on the nature of the parole request and the immigration history of the alien for whom parole is requested. An alien outside the United States who is currently in removal proceedings, has been previously removed, or has a final order of removal must request parole from ICE. CBP also has authority to parole aliens who present themselves at a U.S. port-of-entry without filing a formal request for parole, but will also make the final determination on whether any parole is appropriate at the time that the individual presents him or herself for inspection. There may be limited instances where the Department may coordinate directly with CBP on a parole request that is so urgent that it cannot wait for processing by USCIS or ICE.
- b. Parole requested by the Department must be coordinated through CA/VO. The Department may request parole by submitting the appropriate parole request template along with supporting documentation in cases where there is a clear U.S. Government interest and a need to admit an alien to the United States as quickly as possible.

[in Iraq](#) at the U.S. embassy are also available. Elissa Mittman, interim chief operating officer and an attorney at the Hebrew Immigrant Aid Society, a refugee resettlement agency, explained that the SIV program was supposed to supplement the refugee process for those at-risk individuals who had assisted the U.S. government. In her previous position as national immigration director for the International Rescue Committee, Mittman was involved in the original drafting of Senator Ted Kennedy's (D-MA) legislation for the SIV program. "It was supposed to provide a second avenue; it should have been a no-brainer and a quicker process," she said. "It began with great intentions, [the issues] were in the implementation of the law and the program ... It was a mess, it is still a mess, and it didn't have to be that way."

One of the problems at the initial stage, Mittman explained, was that the second bill (the Refugee Crisis in Iraq Act) added requirements that were never in the first bill and were not recommended by the refugee advocacy community. The U.S. government was trying to finish one program while at the same time creating new rules for a larger program. And both Mittman and Katherine Reisner, the national policy director of the Iraqi Refugee Assistance Project (IRAP), agree that the complete absence of any central management or "point person" for the SIV program has been a major cause of its failures. Within every federal agency involved in the SIV process, there is no clear accountability. "There needs to be someone to champion this," Mittman explained. "There are all these policies and procedures, but no clear leadership to implement them."

Challenges to Actually Getting an SIV

With official termination of the U.S. presence in Iraq and the current scaling down of forces in Afghanistan, several cases have brought the dysfunctional SIV programs into the public eye. Major news media reported, for example, on the efforts of military intelligence officer Captain Matt Zeller to help [Janis Shinwari](#), the Afghan translator who had saved his life. Like many veterans in his circumstances, Captain Zeller was initially unaware of the bureaucratic web that threatened to prevent Shinwari from relocating safely to the United States. "If you had asked me about the SIV program months ago, I would have shrugged my shoulders," he said. From the time that Shinwari initially applied in spring 2011 until the time he received his visa in September 2013, he and Zeller experienced the full spectrum of impediments. "The issues that Shinwari faced are common ... his case is actually an example of one that moved quickly and efficiently," said Zeller.

Lawmakers and advocacy groups have noted that a "quick" case can take more than two years; other visas take much less time to issue. "Traditionally, we know from cases [subject to security checks] that the whole process could take a matter of weeks," said Reisner. "It's not clear why there has been no investment into streamlining the SIV program."

In the case of Zeller's translator, Janis Shinwari, the process culminated in "an intense media campaign to publicly embarrass the State Department combined with significant congressional pressure," explained Zeller.

Screening Methods

DOS's outlined criteria are the same for both SIV programs. The initial step is applying for COM approval, which is essentially getting a green light for the application from the U.S. embassy in Baghdad or Kabul. This entails proving at least one year of honorable and faithful service, and an ongoing, credible threat to the applicant's safety as a consequence of employment with the U.S. military.

The applicant must also not be a risk to the United States; there is always the possibility of a "mole" accidentally being cleared to enter the United States. By definition, all applicants have been working directly with the U.S. military in hostile territory, and they have been screened extremely carefully. Nevertheless, concern about the possibility of a single terrorist entering the United States sharpens the scrutiny.

To show that he or she performed at least one year of honorable and faithful service, an applicant will need letters of recommendation from members of the military and letters from employers verifying the work performed. “Applicants show up at the embassy with binders full of these recommendation letters,” said Zeller. AILA member and retired Army Reserve Lieutenant Colonel Margaret D. Stock confirms that this is typical of most applications she has seen. But even tangible evidence of strong support from military service members does not guarantee that DOS will not deem an applicant to be a threat to the United States. The prevailing mentality is that no matter how many people declare that this is a “good guy,” no one wants to take the risk of being the one who let a “bad guy” into the United States.

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Anecdotally, COM Baghdad and COM Kabul have been increasingly denying cases for failure to demonstrate an ongoing credible threat. “[A]n applicant has to establish that he or she has experienced or is experiencing an ongoing credible threat as a consequence of employment by or on behalf of the U.S. government,” a spokesman for the U.S. embassy in Kabul, Robert Hilton, told the [Washington Post](#). However, he would not elaborate on what is considered a threat or offer case studies. “An asylum applicant can argue past or fear of future persecution within their affidavit,” said Reisner. “[For the SIV], the State Department has set a standard much higher ... Over the last couple of months, we’ve seen a pattern of more denials because applicants ‘don’t face a threat.’”

As with many asylum applicants, the SIV applicant may face serious challenges in documenting the threat—the word of an SIV applicant is rarely sufficient. When Shinwari began receiving threats to his life in 2008, it was Zeller who began keeping a written record of every threatening phone call, note, and text message. Shinwari’s unit maintained this record after Zeller left, which was eventually compiled into a succinct timeline of threats to Shinwari that could be verified by witnesses. Unfortunately, such a detailed timeline is not often a viable option in an environment of constant, perceivable danger, such as that faced by Waheed, where records of individual targeting are not often maintained.

Once the applicant has been granted COM approval, the petition enters an administrative review process that resembles those in other areas of immigration law. The delay in this final stage is caused by complications ranging from inconsistencies in minute details on the application to major failures in communication.

“They should be starting this [phase] when the applicant applies for COM approval,” said Zeller, “but the reality is they don’t even touch these [applications] until they have approval from the embassy.”

As Reisner explained, one of the services offered by IRAP is meticulous proofreading of applications. A common issue involves basic language and cultural differences. In the Iraqi and Afghan languages, Arabic letters are often translated into English in varying ways, so that there are frequently multiple spellings and variations to names that all have to be clarified. A person’s name may be listed as “Waheed” on one document and “Wahid” on another, or he might have used an Americanized nickname that has to be explained. Complicating matters, fraud and identity theft have become more prevalent, according to Stock, making any slight inconsistency subject to close scrutiny. Zeller noted a case in which an applicant indicated that his status was “single,” because he was living alone on base. In fact, he was legally married, but his misinterpretation of the inquiry caused his application to be sent back.

Some cases of mistaken identity are far more serious. Since 9/11, there has been a proliferation of databases created by the U.S. government, which tries to store as much information as possible about persons who pose possible threats and also errs on the side of caution by adding many names that have not been verified. Waheed, for example, had used an alias while working with U.S. troops and this

further complicated the case. Even an applicant's presence at the scene of an attack can sometimes be enough to cause a red flag in the system.

Moreover, there is anecdotal evidence that anti-U.S. groups, such as the Taliban, are making false reports that SIV applicants are working with them, having learned that they can easily derail an applicant's SIV application by doing so. That kind of report can elevate a lengthy security check into a permanent logjam.

"Each security entity conducts its own investigation to individually review and process the application," explained Zeller. "The information is not shared." Once an application is approved by one agency and passed on to the next, the first agency's approval means little or nothing to the next agency in line. The first agency's approval may also expire. This means that if an application sits too long at the second entity, the entire packet may have to go back through another review at the first.

"The applications end up looping through agencies ... [and] the packet gets stuck," Reisner said. Zeller explained that one of the reasons he was able to push Shinwari's case through was because of a trusted contact in the processing center who acted as something of a temporary case manager. "He literally had to walk Janis's application from desk to desk," Zeller said.

Looping Through the Institutional Inertia

According to [the List Project](#), an independent entity that aids in resettling Iraqis and Afghans, "[i]f the Iraqi SIV program has been a failure, the Afghan program is even worse." The Iraqi program was initiated in 2008 during the surge of U.S. troops within the country, resulting in more visas being allotted to the program to account for the large number of Iraqis who were employed by the U.S. government. In Afghanistan, the troop surge came one year after the initiation of the program; the number of allotted visas was, therefore, set well below the level of need that arose during the surge. The Iraqi program also received strong support from powerful concerned figures, including Senator Ted Kennedy, who died before the Afghan SIV legislation was passed.

Increased resistance to the Afghan program by U.S. government officials was also more public. "[Then-Afghan Ambassador] Karl Eikenberry has been on the record as being opposed to the program," explained Reisner. In a story that the Washington Post published in 2011, [Eikenberry was quoted](#) as having told then-Secretary of State Hillary Clinton in a February 2010 cable obtained by the Associated Press that "This act could drain this country of our very best civilian and military partners: our Afghan employees ... [The program] could have a significant deleterious impact on staffing and morale, as well as undermining our overall mission in Afghanistan. Local staff is not easily replenished in a society at 28 percent literacy." Eikenberry's view has no doubt resulted in some DOS officials being reluctant to process visa applications quickly.

What We Can Learn from Previous Military Engagements Abroad

When the United States has decisively won a war, as it did in World War II, the issue of leaving local helpers behind has not been a serious concern. In World War II, Germans or Italians who had helped the Allied forces were not in danger after the war. But when the result of a military action has been less clear, the fate of those left "in country" has often been persecution and death. Throughout the 1960s and 1970s, many Laotians, Cambodians, and Vietnamese took the U.S. side in the Vietnam War and faced a terrible fate when U.S. forces left their countries. When the United States withdrew completely from Indochina after the fall of Saigon (April 30, 1975), many locals were left in a precarious situation that mirrors that of Waheed today. Yet as frustrating as the current SIV programs may be, there was no such program at all back in 1975. In fact, it was not until more than two decades after the Vietnam War that President Clinton signed the [Hmong Veterans' Naturalization Act](#), which gave some benefits to a small group of Hmong who had fought with U.S. troops in Indochina. These were mostly people

who had made it into the United States already as refugees or otherwise.⁵

Matter of O- et al., 16 I&N Dec. 344 (BIA 1977), offers a portrait of the challenges of the time. The case involved more than 100 military contractors from all over Asia who were evacuated on U.S. air transports to the American territory of Guam after the Vietnam War. The BIA decision describes in great detail the many different stories that these evacuees told. The common themes running through them include the contractors' strong ties to Vietnam because of family members and the many years of living and working there, as well as their direct links to U.S. forces.

Congressional reports made it clear that these people would be at risk after American troops withdrew. Yet, once these foreign nationals arrived in Guam, having been evacuated from Vietnam by U.S. military forces, legacy Immigration and Naturalization Service began exclusion proceedings against them.

These experiences show that there is a tendency to forget those who helped U.S. forces when the United States disengages from a region—and that those allies may be at significant risk because of their assistance.

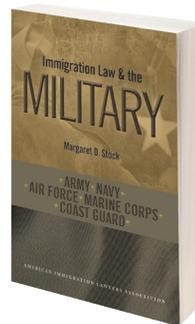
New Deadlines and Potential Reforms: Congress Gets Involved

The NDAA 2014 was signed into law by President Barack Obama in December 2013. Senator Jeanne Shaheen (D-NH) led this bipartisan effort in partnership with Senator John McCain (R-AZ), Senator Patrick Leahy (D-VT), and Senator Lindsay Graham (R-SC). A section of the NDAA 2014 extended the deadline for the Iraqi SIV program and called for some processing reforms for both the Iraqi and Afghan SIV programs. For example, applicants may now bring legal counsel to interviews at the consulate; DOS must explain why an application has been denied and offer the right to appeal; and all SIV cases must be processed within nine months.

Section 1218 extended the deadline for applications for the Iraq program to September 30, 2014, but the deadline for the Afghan program remained unchanged. It was not until May 2014 that the Afghan Allies Protection Extension Act was introduced to extend the Afghan SIV program beyond the end of the year.⁶ Sponsors included Senator John McCain, Senator Jeanne Shaheen, Representative Earl Blumenauer (D-OR), and Representative Adam Kinzinger (R-IL). Michael Breen, executive director of the Truman National Security Project and cofounder of IRAP, said of this development: "I applaud Congress for championing this program and keeping the promise that this country made to those who served with us. As we drawdown in Afghanistan, continuation of the SIV program will provide safe passage to security and the beginning these men and women rightfully earned in America."

However, as of the publication of this article in early summer 2014, debate on the House bill is blocked. Captain Zeller commented in a press release that he is deeply disappointed that the House leadership has refused to allow a debate on this critical amendment, which would save the lives of thousands of Afghan men and women who risked everything for the security of U.S. troops. If Congress fails to act, this program will end in September and as a result, many will die.

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⁵ See M. Ehling, "Veterans of 'Secret War' in Laos Seek U.S. Military Burial Rights," *MinnPost*, May 2, 2010. Some who helped U.S. forces are still at some risk even now. T. Fuller, "Old U.S. Allies, Still Hiding in Laos," *New York Times*, Dec. 17, 2007.

⁶ As introduced, the Afghan Allies Protection Extension Act of 2014 amended the Afghan Allies Protection Act of 2009 to extend the Afghan SIV program through FY2015 and set the unused visa carryover authority to run through December 31, 2016. It also expanded the scope of a principal applicant's qualifying employment to include employment by or on behalf of an organization associated with the U.S. mission in Afghanistan that has received U.S. funding through an official and documented contract, grant, or cooperative agreement; or employment by a media or nongovernmental organization headquartered in the United States. And it revised some family-member requirements. To track the Afghan Allies Protection Extension Act of 2014, see [H.R. 4594](#) and [S.2302](#).

The issue of accountability is also addressed. Section 1219 orders the secretary of state, secretary of homeland security, and secretary of defense to submit a report on processing applications and explain the reasons for delays. This report must also lay out the numbers of applications at each stage of processing and provide a breakdown of the reasons for denials at each embassy. “Success will depend on how much Congress holds people accountable,” said Reisner. “Requirements for reporting are frequently overlooked.”

In addition to an extended deadline and a call for reports on delays and denials, the NDAA 2014 takes steps to create central management for SIV programs—something that has been missing until now. DOS, the Department of Homeland Security, and the U.S. embassies in Kabul and Baghdad are now required to appoint an internal administrator for the programs. Who will be appointed and the person’s official role remain to be determined. “There needs to be someone with the patience, time, and dedication to really work on these cases,” Mittman said. These reforms are important steps, and by mid-to late 2014, we will know whether they are working. Mittman is hopeful because there is still a lot of bipartisan advocacy and support for the programs. “I think there will be an appetite to get more legislation to pass,” she said. Mittman is a little more concerned about the prospect of sustained pressure. “People are weary of hearing about Iraq and Afghanistan,” she said, explaining that as new crises arise globally, they constantly redirect both media and government attention. Despite her optimism about steady support, Reisner also acknowledged this prevailing concern. “We’re just hoping there won’t be exhaustion,” she said.

For both Iraqis and Afghans still trying to navigate the broken SIV system, there is undoubtedly no shortage of fatigue. For them, however, the constant danger they face makes it impossible to simply ignore these issues. The severe shortage of alternative options for most applicants underscores the need for the U.S. government to follow through on genuine improvements to SIV processing.

Ways to Follow the SIV Programs Through 2014

With the United States continuing to decrease its military presence in Afghanistan in 2014, it is likely there will be many more like Waheed, and they will face the same challenges. Sadly, at least one Afghan interpreter has been [killed](#) while waiting for an SIV.

We will closely monitor the results of congressional action in 2014. If you are interested, you can visit the websites of [IRAP](#) and the [List Project](#) to track legislation and offer support for those who helped U.S. forces and now need help from the United States; you can also sign up for updates from one of the key sponsors of the legislation through their websites, such as [Senator Shaheen’s website](#). And, of course, keep watching AILA InfoNet for updates. We are cautiously optimistic that we will be able to write a follow-up piece in late 2014 that describes a more robust and effective SIV program for those who took such serious risks to help U.S. forces in Iraq and Afghanistan. 

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