



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 24934031

Date: FEB. 13, 2023

Appeal of Nebraska Service Center Decision

Form I-360, Petition for Special Immigrant (Afghan National)

The Petitioner, an Afghan national, seeks special immigrant status based on his prior employment in Afghanistan by the U.S. Government. *See* Afghan Allies Protection Act of 2009 (AAPA) § 602, as amended.¹ This special visa classification affords protection to Afghan nationals who have provided faithful and valuable services in Afghanistan while employed by or on behalf of the U.S. Government for more than one year and who, as a result, have experienced or are experiencing an ongoing serious threat.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not submit an approved recommendation from the Chief of Mission (COM), confirming employment and faithful and valuable service to the U.S. Government. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

Section 602(b) of the AAPA authorizes the issuance of special immigrant classification to Afghan nationals who meet certain requirements and who were employed in Afghanistan. Specifically, the law provides:

- (A) **PRINCIPAL ALIENS.**—An alien is described in this subparagraph if the alien—
 - (i) Is a citizen or national of Afghanistan;
 - (ii) Was or is employed by or on behalf of the United States Government in Afghanistan on or after October 7, 2001, for not less than one year;

¹ *See also* Immigration and Nationality Act (the Act) sections 101(a)(27), 203(b)(4) and 204(a)(1)(G)(i), 8 U.S.C. §§ 1101(a)(27), 1153(b)(4) and 1154(a)(1)(G)(i).

- (iii) Provided faithful and valuable service to the United States Government, which is documented in a positive recommendation or evaluation, subject to subparagraph (D), from the employee's senior supervisor or the person currently occupying that position, or a more senior person, if the employee's senior supervisor has left the employer or has left Afghanistan; and
- (iv) Has experienced or is experiencing an ongoing serious threat as a consequence of the alien's employment by the United States Government.

....

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

At initial filing of the petition, the Petitioner indicated that “he has due to no fault of his own been unable to submit approval of his submission of this petition from the appropriate [COM] or the designee of the [COM].” In response to the Director’s request for evidence (RFE), the Petitioner provided a copy of his U.S. Department of State (DS-157), Supplemental SIV Chief of Mission Application, along with supporting documentation, and stated that he “applied to the United States Department of State [DOS] for a [COM] Approval, but despite doing this, he has not received said Approval as the application remains pending.” On appeal, the Petitioner contends:

As USCIS is well aware, [DOS] has been excruciatingly slow in ruling on COM approval applications, such as the one that [the Petitioner] submitted. More than eight months after submitting his response to the RFE and in which [the Petitioner] argued that it would be an injustice if USCIS denied the Form I-360 simply because the Approval was not issued when that is outside the control of [the Petitioner] and is exclusively the province of the United States Government, USCIS whimsically denied the Form I-360. What should have happened is that USCIS should have held the Form I-360 in abeyance while [DOS] considered and hopefully rules favorably on [the Petitioner’s] COM approval.

Section 602(b) of the AAPA, as amended, requires approval from the COM to confirm employment and faithful and valuable services to the U.S. Government.² Here, the record does not contain COM approval, and we have no discretion to approve a petition lacking this mandatory evidence. Furthermore, the Petitioner cites to no law, regulation, or USCIS policy requiring petitions to be held in abeyance until DOS reaches a decision. In fact, the regulation at 8 C.F.R.

² See also 6 USCIS Policy Manual H.9(D), <https://www.uscis.gov/policymanual> (instructing that petitioners must submit COM approval).

§ 103.2(b)(1) requires the petitioner to establish eligibility for the benefit request at the time of filing and continuing through adjudication. Here, the Petitioner did not show that he had obtained COM approval at the time he filed his petition.

For the reasons discussed above, the Petitioner did not demonstrate that he provided the required evidence to establish eligibility for special immigrant status based on his prior employment in Afghanistan by or on behalf of the U.S. Government.

ORDER: The appeal is dismissed.