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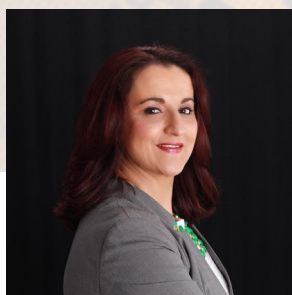
**CREATING
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**THE AFGHAN
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The Harrowing Journey from Kabul to U.S. and the Legal Immigration Pathways for Afghan Parolees

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On August 15, 2021, the world watched in disbelief as Afghanistan's capital city, Kabul, fell to the Taliban's control amid scenes of chaos and panic. In the fifteen days that followed, hundreds of thousands of U.S. Embassy workers, diplomats, aid workers, government contractors, and civilians flooded the streets filled with fear and desperation as they attempted to catch flights out of the Hamid Karzai International Airport. What they encountered was a chaotic and dangerous evacuation effort led by the United States and its allies. American officials have described it as one of the largest, most complex evacuations in history.



During the fifteen days of the chaotic evacuation, my fellow Afghans endured horrendous difficulties in their attempts to get inside the airport. Many waited days amidst the chaos and dangerous conditions in hopes of being evacuated. I stayed awake many of these nights desperately advising and guiding my clients to get access inside the airport. As my clients and others sought their way through the unimaginable and dangerous crowds, they endured beatings by the Taliban with whips and sticks. Many fought their way through tear gas, extortions, and even a suicide bombing. Countless were separated from their loved ones amidst the mayhem. One client, an attorney in Afghanistan, clung desperately to her fourteen-year-old daughter and young son while she endured large crowds, beatings and extortions as she walked from one gate to another desperately seeking a safe passage into the airport. After five harrowing days, she would finally get inside the airport through the sewer canal at the airport's entrance.

The images of death and destruction shared with me via WhatsApp are hard to forget. Another client, a lawful permanent resident with eight children, fought her way through the mayhem after attempting for seven days to gain access inside the airport. She and her children were sprayed with tear gas, and gunshots nearby ruptured one of her young child's ear drum. On her eighth desperate attempt, she and her children were finally able to get inside the airport, but not before suffering extreme trauma that impacts them to this day. It is unfathomable the difficulties Afghans evacuees endured during the unprecedented evacuation. For those lucky enough to have been evacuated from Afghanistan, their life in the U.S. will be safe, but full of challenges and uncertainties.

"Lily Pads"

In the course of the fifteen days of the U.S. lead evacuation, an estimated 120,000 individuals were evacuated from the Hamid Karzai International Airport according to the U.S. government. The evacuees underwent rapid processing at the airport before being taken to U.S. military bases in six countries, including Bahrain, Germany, Kuwait, Italy, Qatar, Spain, United Arab Emirates, referred to as "Lily Pads". On

several bases, and in particular the U.S. base in Qatar, Afghan evacuees endured large crowds, unsanitary conditions, including lack of access to food, water, and bathrooms while sitting in sweltering heat amidst rat infestations. On these "Lily Pads" the evacuees went through extensive security checks and medical examinations before they were flown to one of the eight military bases in the United States referred to as "Safe Havens". A small number of evacuees have been detained and sent to the U.S. base in Kosovo because they were flagged as possibly having ties to terrorist organizations. As of December 17, 2021, approximately 3,000 evacuees remain at the Lily pads overseas.

"Safe Havens"

Currently, an estimated 83,000 Afghans have been paroled into the United States and housed at one of the eight military bases referred to as "Safe Havens". These bases include Fort McCoy in Wisconsin, Joint Base McGuire-Dix-Lakehurst in New Jersey, Fort Bliss in Texas, (parolees are housed at extension site for Fort Bliss in the desert of New Mexico), Fort Holloman in New Mexico, Marine Corps Base Quantico, Fort Lee, Fort Pickett in Virginia, and Camp Atterbury in Indiana. In the last two months, I

have had the opportunity to visit and provide legal services at Fort Lee, Fort Pickett, Quantico, Fort Bliss, and Fort Holloman. As of December 17, 2021, approximately 55,000 individuals have been resettled in the United States and the U.S. government has been resettling approximately 4,000 individuals a week.

At this time, most of the parolees who arrived early on at various U.S. bases have completed their vaccinations and medical examinations. Physicians on site have also completed I-693 forms and parolees will be provided with a copy upon leaving the base for their final destination. In addition, these parolees have completed their security clearance, biometrics, applications for employment authorization (Form I-765) and applications for Social Security card. The employment authorization cards and social security cards have been processed and sent to International Organization for Migration (IOM) in Washington D.C. The documents will be mailed to the parolee's address upon leaving the particular base. Some parolees have received their employment authorization cards on the bases, and the process is constantly being updated. For those who continue to be paroled in, they will go through the same process before leaving a base for their final destination.



In addition, parolees at some of the bases are provided with a copy of the I-94 to use as proof of their status until they receive the employment authorization card. It is important to point out that not all bases have a uniform process of providing the employment authorization card or copy of the I-94 to the parolees. For those individuals who were paroled into the U.S. without an Afghan passport and have not been provided a copy of their I-94 upon leaving a base, it has been challenging to get a copy of the I-94 form. **A copy of the I-94 can also be obtained online by putting the first eight numbers of the Tazkera (Afghan ID) or the nine-digit alien number in place of a passport number. In addition, a copy of the I-94 can be obtained by uploading a photo of the evacuee at the [site](#).**

Parole status for Afghans: Non-SI Parolee Status

Parole is granted either for “urgent humanitarian reasons” or because the entrance of an individual is determined to be a “significant public benefit” to the U.S. In August 2021, the Customs and Border Protection (CBP) allowed certain Afghans to enter the United States under non-SI parole (referred to as Afghan Non-SI Parolees). As with other parolees, these Afghan parolees are paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act. These parolees are eligible to apply for work authorization by submitting Form I-765, Application Employment Authorization Document (EAD), under a C11 category using a CBP “PAROLED” stamp in their passport.



USCIS is issuing an EAD under a C11 category to all Afghan non-SI parolees, regardless of age. In addition, some Afghan non-SI parolees may have a “DT” (parole granted at a port of entry or District Office) or “OAR” (Operation Allies Refuge) notation in the parole stamp in their passport. DHS recently began using this code to help distinguish these Afghans from other parolees. Form I-94 provides proof of the beneficiary’s entry as a parolee and the date by which the beneficiary must depart the United States. Both DT and OAR signifies that the individual has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act.

Conditions of Parole for Afghans

Under humanitarian parole, Afghan nationals can remain in the U.S. temporarily. Parolees are granted protection **from deportation for** only two years, during which they are eligible to apply for temporary work authorization. Parole is not a permanent immigration status and does not provide a path to permanent immigration status without an underlying basis in immigration law. The parolee must take additional steps to ensure they remain legally present in the United

States after their authorized period of parole has ended. Parolees must complete medical screening and vaccinations as a condition of parole and report compliance within seven days of arrival in the United States. Parolees must also complete Form AR-11 and provide every change in address to USCIS as soon as possible and no later than 30 days after each change of address. Furthermore, parolees must comply with all public health directives, comply with requests for additional information from the Department of Homeland Security and federal law enforcement, and comply with local, state and federal laws and ordinances. Failure to comply with these conditions could lead to termination of parole, detention, and removal from the U.S., and could interfere with a parolee’s ability to become lawful permanent resident or obtain another immigration status.



Why thousands of Afghans still remain on the U.S. bases after 4 months of the evacuation

During my visits to the various bases, the number one question all Afghans asked me was why it was taking so long for them to leave the bases and when could they expect to leave military bases. It was always a difficult conversation to have with them. Prior to President Trump reducing the refugee resettlement programs, there were processes in place to support refugees adjust to life in the United States. The services included securing housing, social service related benefits, obtaining work permits, social security cards, job training, and other programs intended for the refugees' adjustment to life in the United States. During Trump's presidency, these programs were altogether halted and tremendously impacted the various resettlement agencies in the United States. In addition, because all Afghans have been paroled into the United States at once rather than arriving as refugees in small numbers, this has put a strain on the resettlement agencies' ability to house Afghans.

In a short time, the resettlement agencies have had to revamp themselves to meet the demands of thousands of Afghans arriving daily at the various bases. These issues have been compounded by the changes the pandemic has brought to the housing market. Securing housing for Afghan parolees throughout the United States and in popular sought-out destinations such as California, Texas, and the Virginia/D.C. area has been cumbersome for the resettlement agencies. It has also becoming more difficult to find affordable housing in areas within close proximity of refugees' family members and existing Afghan diaspora communities throughout the United States. The lack of



housing means Afghans will likely stay on military bases for a longer time before they are relocated to their final destination. No doubt, this will exacerbate the stress, anxiety, and mental well-being of the Afghan parolees who have already endured unimaginable hardships of escaping the wrath of the Taliban.

Legal pathways for Afghan parolees

For those Afghans paroled into the United States, they must find a pathway to gaining permanent resident status in the United States. It is likely that the main avenues for relief pursued by Afghans will be through (1) Special Immigrant Visas (SIV), (2) adjustment through family members and (3) asylum.

Special Immigrant Visa (SIV)

Congress initially established the SIV program with the Afghan Allies Protection Act of 2009. The program is intended to protect Afghans who worked for the U.S. government in Afghanistan and are at risk because of their service. The July 2021 Emergency Security Supplemental Appropriations Act extended the program and reduced the required length of employment from two years to one year. The Act also allowed certain surviving spouses and children of U.S. government employees abroad to obtain special immigrant status. Those parolees

eligible for SIV in the United States who are at different stages of the SIV process, must complete the process in the United States and file Form I-485, Application to Register Permanent Residence or Adjust Status. For those SIV applicants currently residing in Afghanistan or third countries, they must continue with the process from abroad. The difficulties these applicants will encounter include the ability to travel to countries where U.S. Embassies are located to attend the required interviews and complete the required security checks (AILA Doc. No. 21100404. (Posted 10/4/21)).

Family-Based Petitions and Asylum

With over 70,000 Afghans already paroled into the United States and more expected to be paroled in the near future, all will have to adjust their status in some manner. It is estimated that about 40% of those paroled in thus far are eligible for SIV. The rest will have to either obtain permanent legal status through family-based petitions or other immigration process. However, the vast majority of the Afghan parolees will have to apply for asylum. December 2020 U.S. Citizenship and Immigration Services report noted that the backlog in affirmative asylum applications has grown to more than 350,000 cases.

Afghan Adjustment Act (AAA)

The proposed Afghan Adjustment Act would allow Afghans to adjust their status and apply for lawful permanent residency after a certain amount of time in the United States. The Afghan Adjustment Act has historical precedent. It is similar to the 1966 bill Congress passed to allow Cuban parolees who fled the communist regime to apply for legal permanent resident status after one year of residence in the United States. Also, in 1977, Congress allowed more than 150,000 refugees from Southeast Asia to apply for lawful permanent resident status. Similar to these two acts, the Afghan Adjustment Act will allow hundreds of thousands of Afghans the chance to obtain their legal status without waiting for many years living in legal immigration limbo. The current U.S. immigration system is not capable of handling the influx of hundreds of thousands of applications filed by Afghans. Comprehensive immigration reform is needed and until that is done, the Afghan Adjustment Act is necessary to allow Afghans to obtain legal status in a sufficient manner that will avoid hindering their ability to adjust to life in the United States.



Legal avenues for Afghans seeking to enter the United States

Humanitarian Parole

Humanitarian parole authorizes an individual to temporarily enter the United States when there is an urgent humanitarian reason or significant public benefit. See INA section 212(d)(5)). Under the Operation Allies Welcome program, Afghans granted parole will be permitted to stay for two years and may be eligible to apply for immigration status. During the evacuation and in the aftermath, Afghans inside Afghanistan and their families were desperate to get their family members out of Afghanistan. For the last several months, my law office phone has been ringing nonstop for people seeking information on how to evacuate their loved ones out of Afghanistan. All across the United States, lawyers, nonprofits, and ordinary people rushed to file humanitarian parole applications on behalf of Afghans trapped in Afghanistan. As of the December 17, 2021 meeting with the USCIS Director, there are approximately 37,000 pending humanitarian parole requests with less than fifty adjudication officers assigned to review these applications. Thus far, as of July 1, 2021, USCIS has processed 617 humanitarian

parole petitions, 434 petitions were denied, 138 petitions were granted, and 45 petitions closed (processing suspended until the beneficiary reaches a 3rd country). Majority of the humanitarian parole approvals are prior to August 31, 2021 as USCIS was prioritizing applications in the event the approvals would help with evacuation efforts. USCIS typically receives 2,000 applications annually and began receiving approximately 500 to 1000 applications a day. As a result of the high volume of application, USCIS existing intake system could not handle the volume, so USCIS had to create a new system. All cases were expected to be entered in the new system by Tuesday December 21, 2021. USCIS is currently prioritizing applications for individuals in third countries.

For individuals currently residing inside Afghanistan, the individual or someone on their behalf can request parole for a temporary period based on urgent humanitarian or significant public benefit reasons. USCIS authorizes parole on a case-by-case basis and specifies the duration of the parole. While parole allows for temporary lawful presence in the United States, it does not confer immigration status and does not provide a path to lawful permanent residence or another lawful immigration status.

At this time, the State Department is unable to complete the processing of a parole request while the individual is residing inside Afghanistan because the U.S. Embassy in Kabul is closed and all regular consular services in Afghanistan have been suspended. If determined that an individual may be eligible for parole, a notice will be issued informing the individual that they must arrange their own travel outside of Afghanistan to a country where there is a U.S. embassy or consulate. Individuals may experience long wait periods while waiting in a third country. The challenge will be obtaining permission to remain in a third country until there is a final decision on the humanitarian parole request.

During the Humanitarian and Significant Public Benefit Parole USCIS Engagement Call on November 5, 2021, USCIS officials stated that humanitarian processing may take several months and USCIS is prioritizing the parole applications for Afghan nationals outside of Afghanistan given the availability of completing the processing for those individuals at a U.S. embassy or consulate, as well as those who have family ties in the United States. The USCIS officials also stated the responsibility of the financial sponsorship of the parolee would be limited to several weeks while the parole is eligible to seek resettlement assistance pursuant to the Afghan Supplemental Appropriations Act.

P-1, P-2, and P-3 Refugee Status

On August 2, 2021, The Department of State announced a Priority 2 designation (P-2) for some Afghan refugees and their families, allowing them access to P-2 resettlement options. The priorities currently in use are:

- **Priority 1:** Cases that are identified and referred to the program by the United Nations High Commissioner for Refugees (UNHCR), a United States Embassy, or a designated non-governmental organization (NGO).
- **Priority 2:** Groups of special humanitarian concern identified by the U.S. refugee program.
- **Priority 3:** Family reunification cases (spouses, unmarried children under 21, and parents of persons lawfully admitted to the United States as refugees or asylees or permanent residents (green card holders) or U.S. citizens who previously had refugee or asylum status).

More than 4 months after the fall of Kabul to the Taliban, Americans and their allies are all gone and the eyes of the world are off of Afghanistan. Millions of Afghans, including tens of thousands who served alongside the United States and their allies for years are left behind, living in fear and desperation, uncertain of what future lies ahead for them and their families. For those fortunate to have survived the long and difficult journey to the United States, the

eyes of the world will be on them to see how they are welcomed in the United States. In the coming months and years, the majority of Afghans will need legal representation and it will be incumbent on us in the legal profession to provide legal immigration services. No doubt, like any refugees before them, the road to adjusting to life in America will have its challenges and opportunities.

About the Author

Spojmie Ahmady Nasiri is a first-generation immigrant and the founder and principal attorney at the Law Office of Spojmie Nasiri, P.C. in Pleasanton, CA. Spojmie is a member of the California Bar and is admitted to the Northern District of California. She has been practicing immigration law for more than 15 years and focuses on family-based immigration, including U visas, T visas, VAWA, I-601A waivers, as well as consular processing and removal defense. She has been recognized for her dedication and commitment to the immigrant community by her peers and community leaders. In 2019, Spojmie was selected to the Alameda County Women's Hall of Fame for the Justice Award. Spojmie currently serves on the board of Afghan American Community Organization dedicated to serving the Afghan community and board member of International Orphan Care (IOC) dedicated to helping orphans in Afghanistan. She has served as board President of the Council on American Relations (CAIR) for the San Francisco Bay Area Chapter protecting the civil rights of Muslim Americans. She is currently part of AILA's Afghan Taskforce addressing the legal needs of Afghan evacuees. Spojmie is fluent in Pashto and Dari. She has spoken at numerous AILA conferences and other conferences locally and nationally on immigration law.

