



Practice Pointer

Practice Pointer: Heightened Scrutiny of Individuals of Iranian Descent¹

Background:

AILA's CBP Liaison Committee has continued to receive reports of individuals of Iranian descent facing increased scrutiny and denials/revocations from the Department of State (DOS) and the Department of Homeland Security (DHS) when attempting to enter or reenter the United States. This includes individuals in nonimmigrant status, Lawful Permanent Residents (LPRs), and U.S. Citizens (USCs). The CBP Liaison Committee provides this summary of reports we have received on individuals of Iranian descent who have been stopped, including the categories of individuals and the reasoning for which they might have been stopped.

Increasingly, one potential reason for denials of a visa or refused admission is prior military service. Iranian males are required to complete military service and are randomly assigned to one of the branches of the military. In 2019, the U.S. designated one branch of the Iranian government's military, the Islamic Revolutionary Guard Corp (IRGC) as a terrorist organization.² As a result, military service can result in inadmissibility under INA 212(a)(3)(B) for having been involved in terrorist activities. While there are exceptions to, and waivers for this ground of inadmissibility,³ these are increasingly not being considered. Also, there have been reports of an inadmissibility finding being extended to those who served in one of the other (non-designated) branches of the Iranian military, or to family members (e.g., a spouse).

Nonimmigrant or Immigrant Visa Applicant

In addition, as outlined in a previous practice pointer by the DOS Liaison Committee,⁴ Iranian nationals applying for a visa or admission in nonimmigrant visa categories or for immigrant visas have experienced one or more of the following:

- Visa is denied;

¹ Special thanks to CBP Committee member, Atessa Chehrazi, and Elected Director, Mahsa Khanbabai, for their contributions to this practice pointer.

² <https://www.state.gov/foreign-terrorist-organizations/>; (84 FR 15278, 4/15/19) AILA Doc. No. 19041571

³ For example, per INA 212(a)(3)(B)(i)(VII) if "the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;"

⁴ See DOS Practice Pointer: Administrative Processing, AILA Doc. 12091850, available here: www.aila.org/infonet/dos-practice-pointer-administrative-processing

- Advised that a visa is approved after completion of administrative processing,⁵ but the visa is not issued and the application is instead again placed into administrative processing;
- Visa is approved, but revoked by the Department of State prior to travel or admission under 9 FAM 403.11;
- Visa is approved, but revoked by the Department of Homeland Security (Customs & Border Protection) during travel, after which CBP denies admission at the US port of entry or preflight inspection, at which point the applicant may be given the option of withdrawing his/her application for admission as an alternative to administrative removal;
- If a typically visa exempt dual Canadian/Iranian citizen, CBP refuses entry and advises a visa application at a U.S. consulate is required, with the visa application then being placed into administrative processing.

Other potential reasons for visa or admission denials or issued visa revocations for impacted Iranian nonimmigrants can be one or more of the following:

- Section 501 of the Iran Threat Reduction and Syria Human Rights Act of 2012,⁶ which includes the below:
 - “The Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien who is a citizen of Iran that the Secretary of State determines seeks to enter the United States to participate in coursework at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) to prepare the alien for a career in the energy sector of Iran or in nuclear science or nuclear engineering or a related field in Iran”.⁷
- Prior schooling, training, or employment or other connections with another entity designated as or associated with a “foreign terrorist organization”⁸ or sanctioned “specially designated national”;⁹
- A determination that an export license should be issued for access to controlled technology;¹⁰

⁵ <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/administrative-processing-information.html>

⁶ See Practice Pointer: Iranians and U.S. Visas, AILA Doc. 12110161, available here: <https://www.aila.org/infonet/dos-practice-pointer-iranians-and-us-visas>

⁷ If this section is being applied to students/scholars specializing in electrical engineering, computer science, and environmental science, it may be an indication that these have application in the energy sector or are considered sufficiently related fields.

⁸ See DOS Provides FAQs on Terrorism Designations, AILA Doc. 18022731, available here: <https://www.aila.org/infonet/dos-provides-faqs-on-terrorism-designations>

⁹ See U.S. Department of Treasury, Resource Center, available here: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx/>

¹⁰ See Deemed Exports, available at <https://www.bis.doc.gov/index.php/policy-guidance/deemed-exports> and Understand the ITAR and Export Controls, available at https://www.pmdtc.state.gov/ddtc_public?id=ddtc_public_portal_itar_landing

- Heightened screening and vetting;¹¹ and/or
- Social media history, whether obtained from the Form DS-5535, DS-160, or an electronic device search, that could be used as a basis to find that the foreign national is inadmissible (i.e., on national security grounds).

Since the death of Iran’s General Qassem Soleimani on January 3, 2020, denials of applications for admission have increased, and CBP issued a statement that it has enhanced its “security posture.”¹² It is unclear if this statement is indicative of a national directive or policy concerning individuals of Iranian descent.

In the current environment, practitioners may want to advise Iranian foreign national clients already in the U.S. against traveling internationally, even with a facially valid visa in hand. If travel is required (i.e., initial admission or client already departed), travelers should check their visa case status in Consular Electronic Application Center (CEAC) to ensure that they are aware of any changes.¹³

The Department of State Foreign Affairs Manual (FAM) calls for notifying “the alien of the intent to revoke a visa, *if such notification is practicable.*” Visa revocation may be indicated by an updated message to contact the consulate. Typically, if the consulate confirms revocation of the issued visa, a new visa application (likely involving additional administrative processing) will be required.

Practitioners counseling Iranian nationals seeking admission to the U.S. should advise individuals to expect the possibility of lengthy questioning regarding social media profiles, military service history of the applicant and family members, political opinion, academic and employment history, and professional area of specialization. Applicants should also expect a search or temporary seizure of their electronic devices. Finally, nonimmigrant applicants with IRGC military service should be advised of the high likelihood of denied admission by CBP and return to their port of origin.

Lawful Permanent Residents and U.S. Citizens

There have been continued reports of U.S. permanent residents and citizens of Iranian descent being routed to secondary inspection for questioning. In addition, AILA has received reports of individuals having their Global Entry revoked, as well as their electronic devices searched and confiscated.

¹¹ See DOS Cable Superseding Previously Issued Cable on Implementing Heightened Screening and Vetting of Visa Applications, AILA Doc. 17032337, available here: <https://www.aila.org/infonet/dos-cable-superseding-previously-issued-cable>

¹² See CBP Statement on Enhanced Security Posture, available here: <https://www.cbp.gov/newsroom/speeches-and-statements/cbp-statement-enhanced-security-posture>

¹³ See U.S. Department of State, Consular Electronic Application Center, available here: <https://ceac.state.gov/ceac/>

Conclusion

Members are advised to discuss potential issues with clients of Iranian nationality in order to ensure they are prepared for heightened scrutiny or adverse action from the DOS and DHS. As continued reports show, individuals with a facially valid visa in hand, U.S. citizenship, or lawful permanent resident status are facing increased scrutiny by both the Department of State and the Department of Homeland Security. Members can also advise their clients to file a redress inquiry through the DHS Trip program,¹⁴ and possibly also submit a report to the DHS Office of Civil Rights and Civil Liberties (CRCL).¹⁵

AILA's CBP Liaison Committee continues to monitor the issues included above and will keep members alerted to any updates received.

¹⁴ <https://www.dhs.gov/dhs-trip>

¹⁵ <https://www.dhs.gov/file-civil-rights-complaint>