

**THE IRANIAN-AMERICAN BAR ASSOCIATION**

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July 31, 2002

Colin L. Powell  
Secretary of State  
Department of State  
2201 C Street, N.W.  
Room 7226  
Washington, D.C. 20520

James W. Ziglar  
Commissioner  
Immigration and Naturalization Service  
Chester A. Arthur Building  
425 I Street, N.W.  
Washington, D.C. 20536

Dear Secretary Powell and Commissioner Ziglar:

On behalf of The Iranian-American Bar Association ("IABA"), an independent, non-profit organization dedicated, *inter alia*, to educating the public on legal issues that affect Americans of Iranian descent, we respectfully submit this letter to express our views regarding the recently enacted Enhanced Border Security and Visa Entry Reform Act (the "Act"). The provision that gives us the most concern is Section 306.

As a general matter, we believe that much of the Act is a necessary and well-crafted response to critical national security issues facing the United States. With large Iranian-American populations, including most of IABA's membership, living in Washington, D.C. and New York City, we have experienced the tragedy of September 11 first-hand. Therefore, we fully endorse the Government's efforts to enhance the protection of our citizenry by, among other measures, improving coordination between agencies and mandating the use of advanced technology.

But while much of the legislation has been generally well received, Section 306 has caused significant consternation among Iranian-Americans<sup>1</sup> and others. Specifically, the legislation has

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<sup>1</sup> It is our understanding that a diverse array of Iranian-Americans, including those with different ethnic and religious backgrounds (Christians, Jews, Zoroastrians, Baha'is, as well as Moslems) and political affiliations (Democrats and Republicans) are concerned that Section 306 could be interpreted in such a way as to effectively constitute a de facto ban on the issuance of nonimmigrant visas to their family and friends.

given rise to concerns that, going forward, matters such as family visitation and emergency medical care may become surpassingly difficult. Further, there is a sense that Section 306 is unfair, or discriminatory, because it is both overinclusive and underinclusive. It is overinclusive because the legislation increases the probability that persons who are totally innocent will merely by virtue of their nationality be subjected to unnecessary screening procedures that will be intrusive and humiliating, and ultimately may improperly bar them from entry into the United States. Consequently, Section 306 could result in disparate and unfair treatment of Americans of Iranian descent and their family and friends without improving national security. Section 306 is also underinclusive because, as you are aware, terrorism has no boundaries and knows no nationality. Recent experiences demonstrate that nationals of states that do not appear on the Department of State's list of sponsors of terror pose a substantial threat to the United States. However, Section 306 fails to account for these present sources of danger.

With these background concerns in mind, we write to urge the Departments of State and the Immigration and Naturalization Service, together with the appropriate implementing agencies, to consider our concerns as they draft regulations and adopt policies to implement Section 306 of the Act. In the spirit of a constructive dialogue, we respectfully propose the following guidelines and practices as means of mitigating potential detrimental effects of this legislation on Iranian-Americans, and others potentially affected by Section 306, without sacrificing legitimate security concerns:

1. Section 306 might be construed in a manner that would justify categorical denials of nonimmigrant visa applications. We do not believe that the statutory language supports such categorical denials. Specifically, by stating that "[no] nonimmigrant visa ... shall issue ... unless" the Secretary of State makes a certain determination, the statute clearly contemplates that each such visa application will be reviewed according to the standards developed by the agencies, and that Congress did not envision categorical denials. We hope that the agencies will expressly note their support for this construction of the statute and will draft the implementing regulations and policies accordingly.

2. To the extent not already in place, we propose implementation of effective background and security check criteria and procedures to safeguard against the issuance of visas to any person (*regardless of nationality or place of birth*) who may pose a threat to the safety and national security of the United States.

3. Further in accord with the express language of Section 306, we urge the agencies not to impose on nonimmigrant visa applicants the burden of proving that they do not pose a security threat. To do so could effectively result in an implicit ban on the issuance of such visas. Instead, the standard should be whether any information provided or discovered in the background check in any way indicates that an applicant may pose a security threat. In this regard, the agencies may wish to implement more stringent practices by requiring visa applicants to submit more detailed information or revising the nature and scope of the questions being

asked on the background check. However, the process should not be so onerous as to constitute an effective ban.

4. We propose that the agencies consider developing certain rebuttable presumptions in connection with evaluating an applicant's eligibility for entry into the United States. Such presumptions would apply to categories of persons that can be viewed as not presenting particular security threats. For your consideration, we propose the following categories:

a. Nonimmigrant visa applicants sponsored by United States citizens or permanent residents should enjoy a presumption favoring expedited and more lenient review. This category would encompass family members and friends, and persons or students accepted or invited by universities and other such institutions as part of continuing efforts to promote higher learning and scholarly and artistic exchanges. Such exchanges will enable artists, scholars and others to continue on-going dialogue and to further mutual respect and understanding among nations.

b. A similar presumption of leniency would also be appropriate in the case of applicants who have a demonstrated need for urgent medical care, or for other emergencies implicating life or death situations.

We hope that you will find our modest suggestions to be helpful. We look forward to the opportunity to work with your agencies in connection with the promulgation of regulations relating to Section 306, and will appreciate and welcome meetings with appropriate persons at your agencies to discuss these and other implementation matters in greater detail.

Respectfully submitted,



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Babak Hoghooghi  
President