

**Section 811 of the SAFER Act (H.R. 5013),
as Introduced in the House of Representatives,
and Its Potential Implications for Iranian Americans**

In recent weeks, The Iranian-American Bar Association (“IABA”) has received numerous queries concerning the status and implications of H.R. 5013, entitled the “Securing America’s Future through Enforcement Reform Act” (the “SAFER Act”). Specifically, many have expressed concern regarding the potential impact of Section 811 of the SAFER Act on Iranian-Americans. IABA’s analysis of this provision is as follows.

Background. In the aftermath of the events of September 11, 2001, Congress and the Administration have made several efforts to improve the security of the United States. The first major legislation to be enacted in this regard was the Enhanced Border Security and Visa Entry Reform Act of 2002 (the “Enhanced Border Security Act”), which was enacted into law on May 14, 2002. As explained in greater detail in IABA’s analysis of the statute – which is posted on IABA’s website at ([HYPERLINK](#)) – the Enhanced Border Security Act contains a provision, Section 306, that generally prohibits the issuance of non-immigrant visas to aliens from countries that have been designated by the United States Department of State as “state sponsors of terrorism,” unless the State Department, in consultation with other agencies, determines that an applicant for such a visa does not pose a security threat to the United States. This provision has given rise to substantial concern in the Iranian-American community regarding its impact on the issuance of non-immigrant visas to friends and relatives visiting from Iran.

As IABA’s analysis of Section 306 explains, judging by its plain language, the statute does not appear to impose a categorical ban on the issuance of non-immigrant visas to Iranians. According to IABA’s reading of the statute, refusal to issue a non-immigrant visa to a particular applicant may occur only after a determination by the State Department that the particular applicant poses a security threat to the United States. If such a determination is lacking, the statute appears to require issuance of a non-immigrant visa.

This interpretation of the statute, however, may not ultimately be the governing interpretation. As IABA’s analysis notes, the agencies charged with implementing the statute, including the Department of State, are currently reviewing Section 306, and other provisions of the Enhanced Border Security Act, to issue implementing regulations. These agencies have yet to issue a notice of a proposed rule to implement Section 306 and, therefore, at this moment, it is unclear how the Department of State ultimately will interpret Section 306. It is possible that the Department of State and the other relevant agencies will not share in IABA’s understanding of Section 306. Therefore, because the agencies have not offered an interpretation of the statute, it would be premature to speculate upon the precise impact of Section 306 on Iranian-Americans.

The SAFER Act. The SAFER Act, H.R. 5013, was introduced in the House of Representatives on June 25, 2002. It is sponsored by Representative George W. Gekas (R-Pa.) and has thirty-four cosponsors. The SAFER Act is broad-ranging and is intended to amend the Immigration and Nationality Act by, among other things, (i) barring the admission, and facilitating the removal, of alien terrorists and their supporters, (ii) facilitating the removal of illegal aliens, aliens with a criminal history, and aliens who have been "human rights abusers", and (iii) reducing visa, document, employment, and voting fraud. On July 18, 2002, the legislation was referred to the House Subcommittee on Immigration, Border Security, and Claims.

Section 811. The provision of the SAFER Act that has given rise to the greatest number of inquiries and concern among Iranian-Americans is Section 811. As more specifically outlined below, the drafters of Section 811 expressly intend to repeal Section 306 of the Enhanced Border Security Act.

The statute applies both to those who in the future plan to apply for non-immigrant or immigrant visas and to those who already have been lawfully admitted. With respect to the first category, the statute, in Section 811(a), states, in relevant part:

No non-immigrant or immigrant visa may be issued, or non-immigrant or immigrant status otherwise provided, other than a visa or status described in section 101(a)(15)(A), to any alien who is a national of, or residing in, a country that is determined to be a state sponsor of terrorism, or that was subject to such a determination on September 11, 2001.

On its face, the scope of Section 811 appears to be quite broad, constituting an outright ban (with few exceptions concerning diplomats and their attendants) on the issuance of non-immigrant as well as immigrant visas to not only nationals of countries designated as state sponsors of terrorism but also persons residing there. Moreover, as currently drafted, the phrase "or that was subject to such a determination on September 11, 2001" appears to suggest that nationals and residents of states that appeared on the State Department's list of state sponsors of terrorism on September 11, 2001, may never be issued immigrant or non-immigrant visas, regardless of whether the state in question is some day removed from the list of state sponsors of terrorism.

With respect to persons already lawfully admitted to the United States, Section 811(b) applies only to those with non-immigrant visas. Section 811(b) provides that, if on the date a non-immigrant visa holder received its visa it would have been ineligible for visa issuance had Section 811(a) been in effect, then "the period of authorized admission" of such non-immigrant "shall terminate 60 days after the date of the enactment" of Section 811. Thus, if Section 811 is ever enacted into law, holders of non-immigrant visas who are nationals or residents of countries

that are considered state sponsors of terrorism will generally have 60 days before they must leave the United States.

Section 811(b) recognizes two exceptions to the requirement that non-immigrants depart within 60 days after the enactment of the law. First, there is an exception for those who, before enactment of Section 811, are the beneficiary of a petition for immigrant status on the basis of family relationships with U.S. citizens or certain other individuals. The second exception recognized by Section 811(b) concerns cases where the non-immigrant, again before the enactment of the statute, has become the beneficiary of an application for labor certification under 8 U.S.C. § 1182(a)(5)(A). This latter provision of the Immigration and Nationality Act permits certain persons to apply for and receive immigrant status on the basis of their work skills. Visas are issued under this authority, for example, in cases of outstanding and specialized professional or scientific skills, or where, in general, the United States has need for the particular labor or professional skills. If a non-immigrant is the beneficiary of one of the two foregoing applications on the date of enactment of Section 811, then the 60-day period for departure from the United States will be tolled until 60 days after the date on which its application is denied, if it is in fact denied.

The Status of Section 811. Section 811 has not been enacted into law. It currently has been referred to the House Subcommittee on Immigration, Border Security, and Claims. Before Section 811 becomes law, it must be approved by a majority vote in both the House of Representatives and in the Senate, and then it must be signed by the President. In most instances, legislation changes substantially from the time it is first introduced in one of the houses of Congress until the time the President actually signs it. These changes result from ongoing debate between Representatives, Senators, and the Administration concerning what the statutes should specifically say. This debate is invariably informed by persons outside of government who have an interest in the legislation. Therefore, the current draft of Section 811 of the SAFER Act may well change considerably before it is enacted into law, if indeed it is ever enacted.