

**Visa Issuance to and Admission of Iranian Nationals  
Preliminary Position Paper - Supporting Analysis**

**1. Registration Requirements**

- a. *Consistent with the Department of Justice's recent pronouncements, we support the application of non-nationality-based national security criteria to determine whether, regardless of nationality, a nonimmigrant should be subject to registration requirements.*
- i. *Non-nationality-based selection criteria exist for determining which nonimmigrants should be subject to registration requirements.* On August 12, 2002, the Department of Justice adopted a final rule which provides, *inter alia*, that individual nonimmigrant aliens who are determined to require closer monitoring because of the national security or law enforcement interests of the United States will be subject to special registration procedures. *See* Registration and Monitoring of Certain Nonimmigrants, INS No. 2216-02; AG Order No. 2608-2002, 67 F.R. 52584, 52584 (Aug. 12, 2002) (final rule). In the responses to comments accompanying the announcement of the foregoing final rule, the Department of Justice indicated that, together with other agencies, it has developed, and continues to develop, criteria that assist law enforcement and diplomatic personnel in determining whether particular persons may pose a security threat to the United States. *See id.* at 52588-89 (describing the existence of undisclosed criteria "by which an alien may be required to make a special registration"). Though undisclosed, these criteria appear to be neutral in that they appear to be applicable regardless of a person's nationality.
- ii. *Blanket registration requirements are unnecessary and burdensome.* On November 6, 2002, the Department of Justice issued a notice concerning registration requirements for certain nonimmigrants currently in the United States. *See* Registration of Certain Nonimmigrant Aliens From Designated Countries, AG order No. 2626-2002, 67 F.R. 66765 (Nov. 6, 2002) (notice). Significantly, the Attorney General determined that only males aged 16 years or older from the designated countries need to be registered. *See id.* Equally important, the Attorney General explained:

Based on intelligence information available to the Attorney General, the Attorney General has determined that

registering all nonimmigrant aliens from the covered countries would not enhance national security. Moreover, the Attorney General has determined that it would not be administratively feasible at the present time to register all of the nonimmigrants from the specific countries covered by this Notice, and that the delay occasioned by registering all nonimmigrants from the countries covered by this Notice would jeopardize the national security.

*See id.* Thus, the Attorney General has recognized (i) that blanket registration requirements for the nationalities covered by the notice cannot be justified by national security concerns and (ii) that imposition of blanket registration requirements will prove to be a burden on enforcement resources that may in fact compromise national security.

- b. *The availability of effective non-nationality-based criteria for determining the existence of security risks, together with the recognition that not all nationals of “covered” countries pose such threats, eliminates the necessity for blanket registration requirements for citizens or residents of countries such as Iran.* If the criteria used by diplomatic and law enforcement personnel to determine whether particular entrants into the United States should register are effective, then blanket registration requirements for residents and nationals of particular countries would appear to be unnecessary. Terrorism knows no boundaries. Likewise, there is no suggestion, nor can there be, that all Iranians pose security risks. Therefore, blanket registration requirements for Iranians constitute means not properly tailored to the legitimate security aims they seek to promote. Rather, blanket registration requirements lead to unnecessary expenditure of enforcement resources without a corresponding increase in protection for the United States. Moreover, the imposition of blanket registration requirements have proven to be an unnecessary burden on Americans of Iranian descent, frustrating basic purposes of the Immigration and Nationality Act such as family visitation and legitimate cultural and scholarly exchanges. *Therefore, Iranian nationals and residents should be subject to the same protocols for determining eligibility for special registration as nationals from other countries.*

## 2. Visa Issuance and Security Screening Procedures

- a. *Section 306 does not contemplate categorical bans on the issuance of*

*visas to residents or nationals of countries that the Secretary of State determines are state sponsors of international terrorism.* Section 306 of the Enhanced Border Security and Visa Entry Reform Act of 2002 provides, in pertinent part, that nonimmigrant visas may not issue “unless the Secretary of State determines, in consultation with the Attorney General” and other agencies, “that such alien does not pose a threat to the safety or national security of the United States.” 8 U.S.C. § 1735(a). The clause beginning with the word “unless” plainly indicates that Congress did not intend to foreclose the issuance of visas to residents or nationals of countries appearing on the Department of State's list of state sponsors of terror. Rather, consistent with recent practice, the statute contemplates individualized determinations of admissibility and eligibility for visa issuance.

- b. *To the extent not already in place, effective non-nationality-based criteria should be developed that will subject all applicants for nonimmigrant visas to the United States to scrutiny for whether they pose a threat to the safety and national security of the United States.* Because terrorism is a worldwide problem that knows no boundaries, effective screening procedures should exist for all persons, regardless of nationality. The Secretary of State and the Attorney General are empowered under 8 U.S.C. §§ 1103, 1104, 1182, and 1184, to develop and implement such criteria.
- c. *Consistent with the approach to special registration, outlined above, the criteria developed by the Secretary of State, the Attorney General, and other agencies for determining eligibility for the issuance of nonimmigrant visas pursuant to Section 306 should not be nationality based, should not indiscriminately require that all applicants from any country obtain security clearances and should not subject all such applicants to the same level of security screening.*
  - i. *The practices codified in the Foreign Affairs Manual (the “FAM”) provide instructive precedent for the adoption and application of non-nationality-based criteria to determine visa eligibility.* The version of the FAM currently available on the State Department’s website provides an example of the manner in which rational and effective criteria may be used to identify nonimmigrant visa applicants who may pose a danger to national security. See Foreign Affairs Manual, <http://foia.state.gov/famdir/FAM/fam.asp> (visited Nov. 7, 2002). For example, with respect to Iran, Appendix C of the FAM sets forth such criteria, and they include (i) whether the applicant intends to engage in study or commerce involving fields related to the Technology Alert List (“TAL”) and (ii) whether the applicant has any connection with the Government of Iran. These and similar criteria of general applicability may properly be relied upon to indicate circumstances under which consular officials should seek Security Advisory Opinions

(“SAOs”) from the Department of State for any non-immigrant visa applicant.

- ii. The criteria reflected in the FAM confirm that blanket requirements for SAOs are not necessary. As the classifications in the currently available version of the FAM demonstrate, not all Iranian nationals would require security clearance, as there is no blanket requirement in the FAM for obtaining SAOs for nonimmigrant visa applicants. This approach properly reflects the undisputable fact that not all Iranians pose security risks.
  - iii. The criteria reflected in the FAM indicate further that not all non-immigrant visa applicants need be screened similarly. As indicated by the various classifications of Iranian nonimmigrant visa applicants under the FAM, not all such applicants require the same level of security screening. Certain attributes legitimately will justify stricter screening. But, the absence of such attributes should indicate that more lenient and expedited screening, if any at all, is in order. For instance, in the version of the FAM cited above, more stringent clearance requirements are imposed upon Iranian nationals who seek student visas in TAL fields (requiring VISAS DONKEY clearance), but male applicants between the ages of 18 and 60 who seek a visa under Section 101(a)(15)(B) (family or pleasure visits) receive a lesser degree of scrutiny (requiring VISAS EAGLE clearance). We believe that such distinctions generally have a rational basis and therefore are supportable.
  - iv. A particularized and targeted approach to security screening, along the lines indicated by the FAM, both relieves the burden on legitimate visa applicants and preserves enforcement resources. The application of effective criteria, which law enforcement authorities have developed through experience, to assist in determining which nonimmigrant visa applicants may pose security risks to the United States, makes blanket requirements for security clearance unnecessary. As with the special registration process, dispensing with blanket security screening relieves burdens on both law enforcement and Americans of Iranian descent whose family members wish to visit the United States for legitimate purposes. Relieving law enforcement of the burden of handling excess SAOs, moreover, permits more effective screening of persons who pose a security risk and greater expedition in issuance of SAOs in cases where they are necessary.
- d. *Recommendations.*
- i. Maintain the basic security clearance framework reflected in the FAM. To the extent there are legitimate, specific criteria that indicate the need for heightened awareness and scrutiny – such as

the instances enumerated in the FAM – SAOs should be requested and visas should not be issued before clearance is obtained. However, if heightened awareness is not indicated – such as with instances of legitimate family visitation – then, even where a request for an SAO is required (e.g., males between ages 18 and 60), the waiting period before the issuance of a visa should be definite, and in all events not longer than 30 days.

- ii. Based on the developing criteria for identifying persons who may pose security risks to the United States, eliminate overinclusive security clearance categories. As noted in the preceding discussion on special registration, law enforcement agencies are developing specific criteria by which they determine whether particular persons, regardless of nationality, may pose security threats to the United States. As information and experience increases, application of these criteria by consular officials, in light of the consular officials' experience, should eventually enable dispensing with obviously overinclusive categories for requesting security clearances, such as the current FAM classification that requires a VISA EAGLE clearance for all Iranian male nonimmigrant visa applicants between the ages of 18 and 60.
- iii. Preserve the possibility for expediting security clearances. The State Department recognizes that consular posts may request expedited processing of a name check or SAO. Urgent cases frequently involve medical emergencies or humanitarian concerns. Such expediting of security clearances with respect to nonimmigrant visa applicants from Iran should be preserved. In addition, as databases and technology improve, we encourage the State Department and the law enforcement agencies to shorten the response time for all SAOs.