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Mission impossible: an assessment of the Iraqi Special Immigrant Visa

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Mission Impossible

An Assessment of the Iraqi Special Immigrant Visa

Brendan Rigby Spring 2010

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Note from the Author

I would like to thank everyone who provided me with assistance during this project. Unfortunately, by the time this paper was due I was not able to acquire much of the data that is important to answering the larger questions brought up by my research. As I write this, I am still working to get this information from various government offices.

I had only one semester to write this document, so it did not get the attention it deserved—researching and writing about the massive world of refugee resettlement is no small task. The final result is less comprehensive than I had imagined, and I look forward to continuing to develop this text into a comprehensive survey of the issues that Iraqis face in seeking resettlement.

All errors are my own.

Glossary of Terms

CISOMB	Citizenship and Immigration Services Ombudsman
COM	Chief of Mission
CRSR	Convention Relating to the Status of Refugees
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Person
IOM	International Organization for Migration
NGO	Non-Governmental Organization
NOI	Notice of Ineligibility for Resettlement
NSC	USCIS Nebraska Service Center
NVC	National Visa Center
OIG	Office of the Inspector General
OPE	Overseas Processing Entity
P2	Priority 2 processing designation
PA	Principal Applicant
PRM	United States Department of State Bureau of Population, Refugees and Migration
RCIA	Refugee Crisis in Iraq Act
RFR	Request for Review of a Notice of Ineligibility for Resettlement
RPC	Refugee Processing center
RRF	Resettlement Registration Form
SIV	Special Immigrant Visa
State Department	United States Department of State
UNHCR	United Nations High Commissioner for Refugees
US	United States
USCIS	United States Citizenship and Immigration Services
USG	United States Government
USRAP	United States Refugee Admissions Program
WRAPS	Worldwide Refugee Admissions Processing System

Introduction

The U.S. invasion of Iraq in March of 2003 created the largest humanitarian crisis since 1948.[1] The violence and widespread persecution forced millions of Iraqis to flee their homes or simply leave the country altogether. Their presence in neighboring countries strains the infrastructure of those states which bear the burden of a sudden increase in population from the refugees flooding across the border.

Iraqis did not leave their country in massive numbers until 2006.[2] At that time, one author noted that "the refugee situation in Iraq did not reach crisis proportions…the projected flight of hundreds of thousands from the battle field…did not take place."[3] And until 2006, the United States provided insufficient attention to the humanitarian crisis that was unfolding. The U.S. realized they needed to act, and they created a small number of Special Immigrant Visas for Iraqi translators under section 1059 of the National Defense Authorization Act of 1059.[4] The program created 500 visas per fiscal year for Afghani and Iraqi translators and their families[5]—an incomprehensive effort in light of the fact that thousands of Iraqis worked for the U.S.in capacities other than translator. Recognizing the compelling moral necessity of assisting Iraqis who received threats because of their association with the U.S., Congress passed the Refugee Crisis in Iraq Act (RCIA) in 2007. Congress structured the act to help Iraqis who were in danger because of their work for the U.S. in two ways: it created a new class of Special Immigrant Visa

[1] Barnes, Anne. *Realizing protection space for Iraqi refugees: UNHCR in Syria, Jordan and Lebanon, Anne Evans Barnes*. Policy Development and Evaluation Service: United Nations High Commissioner for Refugees, January 1, 2009. http://www.unhcr.org/4981d3ab2.pdf.
[2] Dawn Chatty, "The Iraqi Refugees: The New Crisis in the Middle East. By Joseph Sassoon.," *Journal of Refugee Studies* 23, no. 1 (March 1, 2010): 102-103.
[3] M. R Alborzi, *Evaluating the Effectiveness of International Refugee Law: The Protection of Iraqi Refugees*, Refugees and human rights v. 11 (Leiden: M. Nijhoff Publishers, 2006). Page 131.
[4] Afghan translators could also apply for this visa.
[5] US Department of State, "Special Immigrant Visas for Iraqi and Afghan Translators/Interpreters," http://travel.state.gov/visa/immigrants/info/info_3738.html.

(SIV) for Iraqis who worked for the U.S., and it included Iraqi refugees who were associated with U.S. organizations in the Priority 2 (P2) access category of the United States Citizenship and Immigration Services (USCIS) humanitarian processing priorities.

The RCIA was a powerful recognition of role of the U.S. in the Iraqi humanitarian crisis, and parts of it have been hugely successful. Record numbers of Iraqi refugees have resettled to the United States since the bill became law; the United States admitted 18,838 Iraqi refugees in FY2009 alone.[6] Unfortunately, few have used the SIV portion of the RCIA. Every year, there are 5,000 SIVs available; but the U.S. has yet to issue more than 1,500 in one year. In post-invasion Iraq, going into the Green Zone was sufficient to convince militias that one was worth kidnapping and torturing. Those Iraqis who were known to work with U.S. forces received the harshest torture or death. Each SIV of the 5,000 available that the U.S. does not issue is an Iraqi family that risked their lives to work for the U.S. cause, and in return has been given little more than cash and a death sentence.[7]

The U.S. invasion of Iraq created a security and governance vacuum, without which the refugee crisis would not have come into existence. Because the U.S. played a profound role in profoundly disrupting millions of lives, it is morally obligated to help these Iraqis reclaim their lives—beyond simply redoubling efforts to rebuild Iraq. Even more pressing than the general obligation to assist Iraqis is the specific need to assist Iraqis whose lives are in danger because they Iraqis chose to work with the U.S. invading forces rather than against them. By choosing to work with the U.S., this subset of Iraqis chose to expose themselves and their families to even greater risks. Militants hunted down Iraqis who collaborated with U.S. forces and companies,

[6] Office of Admissions - Refugee Processing Center. "Admissions and Arrivals Reports." Bureau of Population, Refugees, and Migration. http://wrapsnet.org/Reports/AdmissionsArrivals/tabid/211/language/en-US/Default.aspx.
[7] This was my experience while working at a legal aid clinic that served Iraqi clientele; many clients received threats and had to flee the country because they had worked with Americans; sometimes only in minor roles.

murdered them, raped them, tortured them, and killed their family members. Iraqis who made it out of the country despite these threats deserve all reasonable assistance that the U.S. can offer.

The U.S. also has a political and security interest in ensuring that it can protect its former employees. The political interest arises from the U.S. need for political credibility in Iraq; we need to be trusted. If we are unable properly implement a visa regime that protects Iraqis who work for us by giving them access to life in the U.S., it becomes harder to claim that we are experts at regime change and developing institutions. Iraq's security situation depends heavily on U.S.-Iraqi cooperation; if the U.S. cannot offer protection to Iraqis who it employed, there is very little incentive for Iraqis to cooperate or collaborate with U.S. forces.

The current official U.S. solution to the Iraqi humanitarian crisis—waiting it out, and resettling Iraqis through P2 and refugee programs—does not work as well as it can. The US government (USG) has been less critical of its efforts to resettle Iraqis than it ought to be. The official strategy sounds a bit evasive:

> *The long term U.S. strategy for Iraq's displaced is to help Iraq develop the capacity to reintegrate returning Iraqis into stable neighborhoods, while maintaining resettlement for the most vulnerable. The international community continues to provide protection and assistance to Iraqis living in neighboring countries.*[8]

In short, those responsible for taking charge of the humanitarian crisis officially intend to wait for those are currently taking charge of the security crisis to finish their good work. The thought

[8] U.S. Department of State, U.S. Department of Homeland Security, and U.S. Department of Health and Human Services, "Proposed Refugee Admissions for Fiscal Year 2010," 2009, http://www.state.gov/documents/organization/129393.pdf. PDF pp.54.

is that when Iraq is ready, it's people will come flooding home. But for Iraqis whose lives are in shambles now, this policy is as divorced from the needs of reality as it is cold-shouldered.

But the SIV program has relevance beyond the current crisis in Iraq; history shows that massive influxes of American allies are persecuted for their association. The flight of Vietnamese "boat people" is credited with creating the US Refugee Admissions Program; fixing the SIV now makes sure that next time a humanitarian crisis erupts as a result of our military interventions, we will not leave thousands of our allies with a bull's-eye on their back that reads "Made in America."

Iraqis' Three Options for Resettlement

For Iraqis, there are three options for resettlement to safety in a third country: a United Nations High Commissioner for Refugees (UNHCR) resettlement referral, a P2 Direct Access petition (P2) for resettlement to America through the United States Refugee Admissions Program (USRAP), and a Special Immigrant Visa (SIV) to the United States. The P2 and SIV are only for Iraqis who worked with Americans, while UNHCR referrals are for Iraqis with a specific set of pressing needs.

One of the key distinctions between all of the processes is that both the P2 and UNHCR processes require that the applicant prove that they are a refugee. The SIV does not require the applicant to demonstrate that they are a refugee; it is designed to help Iraqis who worked for Americans resettle to America. To understand the importance of this distinction, one must understand exactly what a refugee is.

Requirement	*Resettlement Procedure*		
	UNHCR	**P2**	**SIV**
Iraqi nationality		**X**	**X**
Refugee status	**X**	**X**	
UNHCR resettlement criteria	**X**		
In Egypt, Jordan, or Iraq		**X**	
Worked for US or US contractor		**X**	**X**

Table 1: Resettlement requirements

International obligations to assist refugees come from three sources: the UNHCR mandate; the 1951 Covenant relating to the Status of Refugees (CRSR) and its 1967 Protocol; and domestic laws. Under international law as, refugees are of two types: convention refugees and mandate refugees. The distinction is not so much substantive as it is procedural; even those countries who are not parties to the CRSR or its 1967 Protocol are obliged to recognize the UNHCR's authority over refugee matters if the state is a member of the UN system.

According to the CRSR, a refugee is someone who:

> *owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*[9]

The CRSR has a large number of signatures, and is widely recognized as customary international law—many states incorporate the CRSR's definition of refugee into their own asylum laws.[10] The instrument has been a major force in ensuring that the basic human rights to life are respected for those who are forced to flee their place of residence.

The five reasons mentioned in the definition are sometimes called the "protected characteristic" because international refuge law ensures that people are protected from persecution that arises from these characteristics. The burden of establishing a protected characteristic is not usually considered to be on the refugee;[11] the UNHCR or other agencies will make a facts-based determination to establish whether or not the petitioner's persecution resulted from one of the protected characteristics.

The most anachronistic provision of the CRSR is that is requires people to cross an international border before they are considered a refugee (the original 1951 Convention also only applied to

[9] United Nations Treaty Series, "Convention relating to the Status of Refugees," July 28, 1951, http://treaties.un.org/doc/Treaties/1954/04/19540422%2000-23%20AM/Ch_V_2p.pdf. Page 14.
[10] "The refugee definition as law: issues of interpretation," in Refugee Rights and Realities: Evolving International Concepts and Regimes (Cambridge [England]: Cambridge University Press, 1999), 13-36: pp. 13.
[11] UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees," January 1, 1992, http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d58e13b4&query=refugee%20status%20handbook. Page 12.

refugees from Europe;[12] the 1967 Protocol expanded this cope). Increasingly, conflicts that produce refugees are not international affairs—one of the largest sources of refugees in recent history has been Somalia. Or those who attempt to cross an international border are prevented from doing: in 1991 Turkey closed its border to Iraqi Kurds.[13] While millions of Iraqis have fled their country, and thus qualify as refugees, officials estimate that violence has forced even more to abandon their homes and become internally displaced persons (IDPs) and seek safety within other parts of Iraq rather than leave the country entirely.[14]

The ideal solution to any refugee population is repatriation; whatever conflict caused the refugee to flee would cease, and the refugee would be able to return home safely. If a refugee is returned to a country in which the situation of persecution has not ceased to exist, it is said that they are suffering *refoulement*, or the forced return of a refugee or asylee in violation of international refugee and human rights law.

Unfortunately, crossing an international border does not always result in protection. Sometimes a refugee's persecutors pursue him or her across international borders, or lack of medical facilities make refuge in a third country untenable. When being in a second country is not a durable solution for a refugee, resettlement is considered as a solution of last resort. Resettlement through the UNHCR is a tool "geared primarily to the special needs of refugees under the office's mandate whose life, liberty, safety, health or fundamental human rights are at

[12] United Nations High Commissioner for Refugees. "Realizing protection space for Iraqi refugees: UNHCR in Syria, Jordan and Lebanon, Anne Evans Barnes," January 1, 2009. http://www.unhcr.org/4981d3ab2.pdf. Page 4.
[13] Alborzi, M. R. *Evaluating the Effectiveness of International Refugee Law: The Protection of Iraqi Refugees*. Refugees and human rights v. 11. Leiden: M. Nijhoff Publishers, 2006. Page 35.
[14] United Nations High Commissioner for Refugees, "2010 UNHCR Country Operations Profile - Iraq," February 21, 2010, http://www.unhcr.org/pages/49e486426.html.

risk in the country where they sought refuge."[15] It is reserved for certain qualified refugees, and "no country is legally obliged to resettle refugees."[16] While not every country has a standing resettlement program, the number of countries offering such programs is growing.[17]

Resettlement Through UNHCR

The United Nations High Commissioner for Refugees (UNHCR) evolved, like the United Nations, from the circumstances before, during, and after World War II. Various regimes and treaties had tried to tackle the problem of refugees. The 1938 Convention concerning the Status of Refugees coming from Germany narrowly defined refugees as hailing from Germany.[18] On 14 December 1950, the United Nations General Assembly (UNGA) passed a resolution calling for the creation of the United Nations High Commissioner for Refugees (UNHCR) with an original mandate for only three years.[19] Unfortunately, refugees continued to present a problem to the international system—a problem that needed to be addressed by a dedicated instrument.[20] The UNGA voted to extend the mandate for UNHCR for another five years.[21]

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[15] United Nations High Commissioner for Refugees, "UNHCR Resettlement Handbook," November 1, 2004, http://www.unhcr.org/46f7c0ee2.pdf. PDF Page 11.
[16] Ibid.
[17] United Nations High Commissioner for Refugees, "Frequently Asked Questions about Resettlement," http://www.unhcr.org/4ac0873d6.pdf. PDF page 2. The list now stands at: Australia, Canada, New Zealand, the Netherlands, Denmark, Finland, Norway, Sweden, the United States of America, Argentina, Brazil, Chile, Iceland, Ireland, the United Kingdom, France, Paraguay, Portugal, Romania, The Czech Republic and Uruguay.
[18] League of Nations, *Convention concerning the Status of Refugees Coming From Germany*, 1938, http://www.unhcr.org/refworld/publisher,LON,,,3dd8d12a4,0.html.
[19] *Statute of the Office of the United nations High Commissioner for Refugees*. UNGA 428(V), http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/060/26/IMG/NR006026.pdf?OpenElement.
[20] *United Nations High Commissioner for Refugees, "History of UNHCR," http://www.unhcr.org/pages/49c3646cbc.html*.
[21] *Prolongation of the Office of the United Nations High Commissioner for Refugees*. UNGA 727(VIII) 1953, http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/085/92/IMG/NR008592.pdf?OpenElement.

UNHCR considers eight grounds that qualify a refugee for resettlement. A refugee is likely to qualify for resettlement if he or she can demonstrate that any of the following are an accurate characterization of his or her status in their current location.[22]

1. Legal and Physical Protection Needs

If the refugee is likely to be: subjected to *refoulement*; threatened by "arbitrary arrest, detention, or imprisonment"; unable to ensure their physical safety or human rights in their country of refuge in a way that renders asylum untenable; then that refugee qualifies for resettlement. An example of this would be a Shi'a Iraqi refugee who is, on a monthly basis, abducted by state security agents in his country of asylum and beaten until he provides information on other Shi'a Muslims in the country.

2. Survivors of Violence and Torture

Survivors of violence and torture require thorough and comprehensive treatment. To demonstrate that torture or violence has caused the refugee to require resettlement, he or she must submit records from a medical or psychological evaluations establishing such a need. An example is an Iraqi man whose violent torture makes him almost completely unable to function or perform basic tasks due the psychological impact of his torture. Resettlement usually involves moving to a country that has better medical and psychological treatment facilities that can provide the specialized comprehensive treatment that survivors of violence and torture require.

3. Medical Needs

UNHCR's definition of medical needs is one of the most firmly articulated of the resettlement criteria. In order to qualify for resettlement based on medical needs, those medical needs must:

[22] United Nations High Commissioner for Refugees, "UNHCR Resettlement Handbook," November 1, 2004, http://www.unhcr.org/46f7c0ee2.pdf. PDF Page 60.

be life threatening without proper treatment or represent an irreversible loss of function or present a significant obstacle to leading a normal, self-sufficient life; adequate treatment for the condition cannot be available in the country of asylum due to lack of facilities and expertise; treatment cannot be ensured through temporary medical evacuation; the situation in the country of asylum must prevent the individual from adjusting and functioning at a satisfactory level; it must be demonstrated that resettlement would likely result in successful treatment and total independence or the situation in the country of asylum is the reason for, or worsens, the medical condition; and the individual must be willing to move to a new community notwithstanding the psychological and social upheaval accompanying such a move.

4. Women-at-Risk

In recognition of the special challenges facing female refugees—sexual exploitation and violence—the UNHCR grants resettlement to those women who face specific protection challenges because of their gender. These problems are especially acute when a female refugee lives alone. An example of women-at-risk is the case of a widowed woman with two daughters; a gang of men broke into her home and raped her two daughters while forcing her to watch.[23] This crime occurred in a society where the male head of family is an especially important element of establishing a family's protection and respect in the community; lacking a man in the house exposed these women to gender-based risks that would not have existed for a similar group of men living together.

5. Family Reunification

Family members who are married or over the age of 21 are sometimes required to file separate cases. Sometimes this—or other conditions—results in a separation of family members, which is

[23] This example comes from my own experience working at a refugee legal aid clinic in Cairo, Egypt.

a painful violation of the basic dignity accorded to the family as a unit of society. The International Covenant on Civil and Political Rights recognizes (ICCPR) that "the family is the natural and fundamental group of society and is entitled to protection by society and the State"; violating the sanctity of the family violates many basic human rights.[24] It is important to note that this UNHCR Family Reunification resettlement criteria is separate from other state-sponsored family reunification visas such as the I-130 visa.[25]

6. Children and Adolescents

The UNHCR uses the definition of child found in the Convention on the Rights of the Child (CRC), which states that children are anyone under eighteen years of age[26]—despite that children are typically considered pre-pubescent minors. The UNHCR considers separated, unaccompanied, and orphaned children as special concerns for resettlement.[27] Depending on what it considers to be the best interests of the child, the UNHCR will adopt different outcomes for the child.[28]

7. Older Refugees

Just as woman-at-risk face unique issues due to their gender, older refugees face unique issues because of their advanced age. Although UNHCR does not recognize one particular age as designating the refugee as elderly—especially because different locations have different life

[24] United Nations General Assembly, "International Covenant on Civil and Political Rights," December 16, 1966, http://www2.ohchr.org/english/law/ccpr.htm. Article 23(1).
[25] "Refugee Resettlement Program for Iraqis in Jordan, Egypt and Iraq with U.S. Affiliations," February 3, 2009, http://www.state.gov/g/prm/rls/115888.htm.
[26] "Convention on the Rights of the Child" (United Nations Treaty Collection, November 20, 1989), http://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf. Article 1.
[27] UNHCR Resettlement Handbook, PDF page 98.
[28] Ibid, PDF page 103.

expectancies—elderly refugees are, when living alone, particularly ill-equipped to tackle the challenges of life as a refugee.[29]

8. Refugees without Local Integration Prospects

Lack of local integration prospects is basically a catch-all. It is the least frequently used resettlement criteria because it true for so many refugees. While the UNHCR defines a lack of local integration prospects as not having "an opportunity to establish themselves in their country of refugee in a manner appropriate to their cultural, social, religious or educational backgrounds,"[30] in practice this casts far too wide a net to be used by most refugees. For example, the lack of employment prospects and widespread racism in Egypt means that most Sudanese refugees, even those holding college degrees, cannot seek employment that comports with their educational background. Refugees rarely qualify for resettlement on this ground alone; life as a refugee rarely provides local integration prospects.

The UNHCR is aware of how wide this net is, adding that when submitting a case with lack of local integration prospects as the primary criterion for resettlement, "it is paramount to include adequate justification…a blanked [sic] reference to lack of local integration prospects does not suffice."[31] To demonstrate that there is no possibility of local integration, a refugee must demonstrate that:

- They are at best only tolerated, and possible considered "illegal immigrants";
- The protection regime in place in their host country is discriminatory in nature;

[29] Ibid, PDF page 111.
[30] Ibid, PDF page 112.
[31] Ibid, PDF Page 113.

- Voluntary repatriation is not an option and will not likely be for the foreseeable future.[32]

Unfortunately, the above descriptions apply to nearly every refugee in some countries. For example, Iraqi refugees in Syria and Jordan have no formal protection regime and are at a near-constant risk for *refoulement*;[33] Palestinians in Jordan (although not under the jurisdiction of UNHCR) live under a protection regime that arbitrarily revokes their Jordanian citizenship.[34] Given the reality of many refugee communities, it is not unrealistic to claim that there are over a million Iraqi refugees that qualify for resettlement under the lack of local integration prospects criteria—but clearly UNHCR will not be able to process all of these refugees nor can it realistically be expected that such a large population could be distributed amongst participating resettlement countries.

The New Options: P2 and SIV

Two new paths to resettlement to the U.S. were created by the Refugee Crisis in Iraq Act (RCIA), a law passed in January 2008. Due to their complexity and novelty, these two avenues will be discussed at length in the following section. See Appendix B for a graphic depiction of how an Iraqi can resettle to America.

[32] Ibid, PDF Page 113.
[33] Commission on Iraqi Refugees, *A Tough Road Home: Uprooted Iraqis in Jordan, Syria and Iraq* (International Rescue Committee, February 2010), http://www.theirc.org/sites/default/files/resource-file/IRC_Report_02_18_ToughRoad.pdf. Page 15.
[34] Michael Slackman, "Some Palestinian Jordanians Lose Citizenship," *The New York Times*, March 13, 2010, sec. World / Middle East, http://www.nytimes.com/2010/03/14/world/middleeast/14jordan.html?ref=middleeast. For complicated reasons, Jordan periodically purges Palestinians from its ranks. Some consider it to be a matter of economic necessity, while others argue that giving any Palestinian citizenship ultimately undermines the Palestinian case for statehood by eroding the number of potential citizens for the state that may come into being.

S. 1651: The Refugee Crisis in Iraq Act

The Refugee Crisis in Iraq Act (RCIA), often called the Kennedy Act after its late Democratic sponsor Senator Edward Kennedy (D-MA), was a bipartisan bill with 14 sponsors that originated July 19, 2007. President Bush signed it into law on January 28, 2008 as part of the National Defense Authorization Act for Fiscal Year 2008,[35] a fitting choice for an act that was designed to assist a population endangered by war.

The RCIA makes a convincing case for the need to assist Iraqi refugees, both in moral and security terms. In section two, Congress finds there are at least four million Iraqi refugees within and without the country and that the humanitarian crisis presented by this scenario could, if not adequately resolved, convert this significant population into "a fertile recruiting ground for terrorists."[36] The RCIA positions itself as a solution to the unsettling affect that such a massive population of refugees could have, noting that "if the refugee crisis 'is not addressed, Iraq and the region could be further destabilized'."[37] The recognition that the United States has a "fundamental obligation to help the vast number of Iraqis displaced in Iraq and throughout the region by the war and the associated chaos"[38] comes after the recognition of the potential security threat of a massive refugee population. While the RCIA does acknowledge a "fundamental obligation" to assist Iraqis, this fails to acknowledge just how fundamental that obligation is; it is an obligation that arises from America's nearly-unilateral invasion of Iraq. The millions of Iraqi displaced persons that the RCIA seeks to assist were all created by the American invasion of Iraq. The text of the law gives a nod to this moral obligation; quoting

[35] Public Law 110-181. Section 1241. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ181.pdf
[36] Edward Kennedy, *Refugee Crisis in Iraq Act*, 2007, http://thomas.loc.gov/cgi-bin/query/z?c110:S.1651: Section 2(2).
[37] Ibid., Section 2(3)
[38] Ibid., Section 2(4).

Under Secretary of State Paula Dobriansky: Americans must "honor[] our moral debt to those Iraqis who have provided assistance to the United States military and embassy."[39]

The remarks made by Democratic Senator Kennedy at the introduction of the bill reveal the legislative intent: Senator Kennedy saw a parallel between the contemporary situation in which Iraqis who sided with America were being threatened and killed—but had no way to resettle to America—and the situation that existed in Vietnam in the 1970s.[40] Calls for protecting our Iraqi allies and employees from danger came from Republicans as well, with conservative radio host Michael Medved co-authoring an article with a liberal democrat who served as special counsel to President Bill Clinton entitled "Refugees: One Iraq issue that should unite us all."[41] The common desire was for America to reform its immigration policy to reflect the brutal reality that the US was doing very little to help out the Iraqis who "have a bulls-eye on their back because of their association with our Government."[42] Of the fourteen co-sponsors of the bill, five were Republicans.[43]

Based on this united call for more action and knowing that those Iraqis who were being threatened could likely not wait for lengthy visa procedures, the Kennedy Act made two primary revisions to government immigration policy. First, it created a new class of SIV specifically for Iraqis that worked for the United States Government (USG). Second, it expanded who may apply for admission to the United States as a refugee. The Act did not specify exactly how these programs would be shaped, but said that the Secretary of State and the Secretary of Homeland

[39] Ibid., Section 2(7).
[40] 110 *Congressional Record*, S9768-S9771, July 23, 2007, http://thomas.loc.gov/cgi-bin/query/D?r110:1:./temp/~r1105eyFvP:.
[41] Lanny J. Davis and Michael Medved, "Refugees One Iraq issue that should unite us all," *USA Today*, http://0-search.ebscohost.com.ilsprod.lib.neu.edu/login.aspx?direct=true&db=aph&AN=J0E366501355107&site=ehost-live.
[42] Ibid.
[43] Edward Kennedy. *Refugee Crisis in Iraq Act*, 2007. http://thomas.loc.gov/cgi-bin/query/z?c110:S.1651:. Co-sponsors included Sen. Collins (R-ME), Sen. Hagel (R-NE), Sen. Smith (R-OR), Sen. Snowe (R-ME), Sen. And Voinovich (R-OH).

Security would have 60 days after the enactment of the Act to submit a plan describing how the they would implement the regime. This would include both "plans to establish the processing facilities" and—oddly, because there is no evidence that it was ever formally considered or put to use—the plan would have to "contain an assessment of in-country processing that makes use of videoconferencing."[44] We will now examine the implementation of the two central features of the RCIA: the Priority 2 "Direct Access" Program, and the Special Immigrant Visa.

RCIA Priority 2 "Direct Access" Processing

The U.S. admits refugees through the United States Refugee Admissions Program (USRAP), and it has a domestic law that defines who is a refugee—the Immigration and Nationality Act (INA). The United States Citizenship and Immigration Services (USCIS), the post-9/11 immigration authority that, along with Department of Homeland Security (DHS), took over from the Immigration and Naturalization Services (INS) define three "processing priorities" for referring refugees to the USRAP. Priority 1 is reserved for referrals from UNHCR, U.S. Embassies, or specifically-designated NGOs. Priority 2 is reserved for classes of people who are determined to be of special humanitarian concern as identified by the USRAP. Priority 3 is for cases of family reunification.[45] The Kennedy Act designates additional classes of Iraqis as "refugees of special humanitarian concern under the refugee resettlement priority system," or Priority 2 (P2) processing:[46]

1. Iraqis who worked directly with or for the U.S. Government (USG) or who the USG directly employed;

[44] S. 1651 Sec. 3(b)(2)
[45] U.S. Citizenship and Immigration Services, "The United States Refugee Admissions Program (USRAP) Consultation & Worldwide Processing Priorities," September 4, 2009, http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextchannel=385d3e4d77d73210VgnVCM100000082ca60aRCRD&vgnextoid=796b0eb389683210VgnVCM100000082ca60aRCRD.
[46] S. 1651 Sec. 4(a).

2. Iraqis who worked for a media organization or NGO based in the U.S.;
3. Iraqis who worked for entities that received a grant from, or entered into a contract or cooperative agreement with, the USG
4. Spouses, children, sons, daughters, siblings, and parents of (1) or of Iraqis who qualify for an SIV
5. Iraqis who are members of a religious or minority community and have close family members in the US
6. Any other groups designated as Other Persecuted Groups in Iraq by the Secretary of State

The above provisions are a numerically massive expansion in the scope of who qualifies for P2 processing, considering that one prominent human rights organization estimates that over 140,000 Iraqis qualify for P2 processing.[47] More people qualify for P2 processing than the other SIV created by the Kennedy Act—the Special Immigrant Visa (SIV). The SIV is much more specific about who qualifies; only an Iraqi who "was employed by, or worked for or directly with the United States Government in Iraq, in or after 2003, for an aggregate period of not less than 1 year; and provided faithful service to the United States Government, which is documented in a positive recommendation or evaluation" or the spouse and children of such an Iraqi qualify for an SIV.[48] While the number of Iraqis that may be admitted to the US through the P2 program is capped by the yearly Presidential Determination[49] of the quantity of refugees that will be admitted in that fiscal year, the SIV has a hard limit of 5,000 principal applicants (meaning that spouses and children are not included in the 5,000 limit) per year. In the event that 5,000 SIVs

[47] *Promises to the Persecuted: The Refugee Crisis in Iraq Act of 2008*. Human Rights First, April 2009. http://www.humanrightsfirst.org/pdf/090428-RP-iraqi-progress.pdf. Page 18.
[48] S. 1651 Sec 5(b).
[49] Public Law 110-181 Sec. 1243(e).

are not granted in one fiscal year, the Act specifies that they ought to carry over to the next year.[50]

Beyond specifying the ways that the P2 process will expand and who qualifies for an SIV, the Act also creates a new position of "Minister Counselor for Iraqi Refugees and Internally Displaced Persons" in many of the countries abutting Iraq that harbor significant populations of Iraqi refugees—Iraq, Jordan, Egypt, Syria, Turkey and Lebanon.[51] The Act also specifies that the President—in practice, this means the executive branch of government, which includes executive agencies such as the State Department—"shall consult" NGOs in determining the number of Iraqis to resettle to the US through P2 visas.[52] Furthermore, the Act makes it clear that those applying under the programs it creates should not be considered ineligible for any other visas—an Iraqi can simultaneously qualify and apply for an SIV, a P2 visa, and resettlement through UNHCR. Most likely, this redundancy was allowed to persist because each process takes an unknown period of time; in order to resettle and Iraqi to safety as quickly as possible, they can apply simultaneously through all processes.

The P2 Application Process

The SIV and P2 programs are more than just visas; each one carries with it specific procedural requirements and provides different benefits. Although the two programs are created by the same act of law, they are implemented in very different ways. The P2 process simply allows an Iraqi to file for resettlement to the US directly with the US—circumventing UNHCR, a US Embassy, or a designated NGO. Normally, a refugee must petition UNHCR for a referral as a refugee in need of resettlement before getting a resettlement referral from UNHCR to a

[50] Ibid., Sec 5(c)(4).
[51] Ibid Sec 7(a).
[52] Not correct citation; Not actually what it says…it says through INA (8 USC 1157 207(a) and (b)

resettlement country. The designation of certain classes of Iraqis as P2 allows them to circumvent this often-lengthy process; the P2 Direct Access Program allows Iraqis to *directly access* the U.S. Refugee Admissions *Program*.

In order to apply for P2 processing, an Iraqi must follow the instructions listed on various State Department and Embassy websites. The process is initiated by e-mailing different regional offices of the International Organization for Migration (IOM), the Overseas Processing Entity (OPE) of the State Department for P2 cases in these countries. The Principal Applicant (PA)—the Iraqi who has employment verification from his employer—emails that verification to the IOM along with a bevy of other information. From there, the IOM will process the application and will conduct a preliminary interview with the PA. If they determine the PA qualifies for the P2 program, they will begin the security clearance process. Then, DHS Refugee Corps officers make "circuit visits" to IOM facilities in Egypt, Jordan, or other countries where they maintain to permanent presence—and conduct final interviews with the PA and the family. If the PA is determined to be ineligible, he (the PA is usually a male because it nearly always an Iraqi male head of family who was employed by the USG) receives a Notice of Ineligibility which describes why he was ineligible.

Because an applicant to the P2 process is applying to the USRAP, they must demonstrate that they are a refugee to the satisfaction of the USCIS officer. As described by 8 USC 1101(42)(a), an alien is considered a refugee only if he or she can demonstrate that he or she "is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race,

religion, nationality, membership in a particular social group, or political opinion."[53] Even if a PA does demonstrate that he or she satisfies that portion of the definition of refugee, he or she can still be rejected for any combination of eight different reasons. The PA receives a Notice of Ineligibility for Resettlement (NOI) which lists nine separate grounds for rejection of a refugee status claim for the purpose of admissions to the USRAP:[54] (1) return to the country of nationality; (2) the refugee did not demonstrate that they have been persecuted or have a well-founded fear of persecution; (3) the refugee did not establish that they were persecuted based on their race, religion, nationality, membership in a particular social group, or political opinion; (4) the refugee's testimony was not credible; (5) the refugee has persecuted others because of their race, religion, nationality, membership in a particular social group, or political opinion; (6) the refugee has been firmly resettled in the country that they are in; (7) inadmissibility due to US immigration law; or (8) other reasons.[55] These eight reasons are not made available to refugees prior to their interviews primarily because if they were, refugees might alter their stories to fit the criteria. But the result is that some refugees do not properly answer the questions of clarify information that they ought to clarify, leading to rejections.

After receiving the above notice of eligibility (each number may be checked off to indicate that that category particularly is the one that disqualifies the PA), the NOI tells the AP that although "[t]here is no appeal for a denial of an application for refugee status", "USCIS may exercise its discretion to review a case" if they receive a Request for Review (RFR) within 90 days. The RFR is restricted to two facets; it must provide either "a detailed account explaining how a

[53] 8 USC 1101(42)(a)
[54] The following reasons are taken from actual P2 process Notice of Ineligibility for Resettlement forms.
[55] *See* Appendix A for a redacted Notice of Ineligibility.

significant error was made by the adjudicating officer" or "new information that would merit a change in the determination."[56]

But if the PA is not rejected, then the DHS checks the PA and family fingerprints,[57] the applicants await security and medical clearance. Once security and medical clearance has been granted, the IOM prepares travel. As part of the USRAP, the refugees all receive travel loans which fund the cost of their tickets to the US. These loans must be repaid within three years of arrival to the US, and it is expected that payment will begin within six months of arriving to the US.[58,59] Once they arrive in the US, refugees are given federal work authorization.[60]

The entire P2 process, from beginning to end, takes about nine months to two years, depending on which country the applicant is in—Egypt, Jordan, or Iraq—with Iraq taking the longest.[61]

The Special Immigrant Visa (SIV)

Whereas P2 applicants must first demonstrate that they are refugees, SIV applicants are only required to prove that they were employed by or on behalf of the US in Iraq. The SIV process is less straightforward and involves more agencies than the P2 process. Furthermore, where P2 applicants submit all of their information up front, SIV applicants submit documentation at four different times throughout the process of their application.[62] The applicant proceeds as follows:

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[56] Ibid.
[57] *Promises to the Persecuted: The Refugee Crisis in Iraq Act of 2008* (Human Rights First, April 2009), http://www.humanrightsfirst.org/pdf/090428-RP-iraqi-progress.pdf. Page 8.
[58] U.S. Department of State, "Refugee Benefits Election Form," http://www.travel.state.gov/pdf/RES-BEN-ELE-0902.pdf.
[59] "Special Immigrant Visas for Iraqis – Who Worked for/on Behalf of the U.S. Government," http://travel.state.gov/visa/immigrants/info/info_4172.html.
[60] U.S. Department of State, U.S. Department of Homeland Security, and U.S. Department of Health and Human Services. "Proposed Refugee Admissions for Fiscal Year 2009," 2008. http://www.state.gov/documents/organization/113507.pdf. Page 18.
[61] *Promises to the Persecuted*, page 8.
[62] Ibid, page 10.

1. The Applicant gets their supervisor to provide a recommendation that certifies they provided "faithful and valuable service" to American forces in Iraq
2. The Applicant submits the above recommendation, along with Form DS-157 "Supplemental Nonimmigrant Visa Application"—a strange name for a form submitted to petition for a Special *Immigrant* Visa—to Chief of Mission (COM), an e-mail address at the State Department
3. If COM approves, the applicant receives official documentation of COM Approval, along with further instructions on how to submit a Form I-360 Petition for Amerasian, Widow(er) or Special Immigrant
4. The Applicant mails a form I-360 to USCIS' Nebraska Service Center (NSC), along with a copy of the passport, birth certificate or national identification card of the applicant. If the document is not in English, a certified English translation must be provided as well. The COM Approval form and supervisor recommendation are also mailed to Nebraska at this point.[63]

After the applicant sends their whole package of documents off to NSC and the various security checks are completed, NSC approves the application and sends it to the National Visa Center (NVC) in Portsmouth, New Hampshire. Once the applicant is made aware that their petition has reached this point, they must again provide additional documents. The applicant must send the following to the NVC:

[63] "Special Immigrant Visas for Iraqis – Who Worked for/on Behalf of the U.S. Government," http://travel.state.gov/visa/immigrants/info/info_4172.html.

- A copy of the biodata page from each applicant's passport (only G-series Iraqi passports are valid, and obtaining a G series passport is sometimes not possible for long periods of time)[64]
- Forms DS-230 Application for Immigrant Visa and Alien Registration and Form DS-157 Supplemental Nonimmigrant Visa Application
- "Family Book"—an Iraqi government document that is typically located in Iraq, meaning that an Iraqi who is outside Iraq probably cannot retrieve the document or risks his refugee status or future resettlement claim to do so
- Any other documentation that demonstrates the Iraqi worked with or for the USG; service dates, type of work, rank, identification badges, etc. Note that these documents are not requested at any earlier point.
- Any applicant who, after turning 16, lived outside of Iraq for more than six months must obtain a police certificate from the police of that locality.
- A Resettlement Benefits Election Form indicating whether or not the applicant would like to receive DOS resettlement benefits such as travel loans and health benefits in the US
- If the applicant opts to receive these benefits, they must also submit a Special Immigrant Visa Biodata Form[65]

The police certificate requirement can be particularly onerous. SIV processing only occurs in Iraq, Jordan and Egypt, but not all of these countries offer police certificates to a person who is outside the country. An Iraqi who lived as a refugee in Jordan for six months before moving to Cairo would be required to get a police certificate from Jordan, but Jordan does not issue these

[64] *Promises to the Persecuted: The Refugee Crisis in Iraq Act of 2008*. Human Rights First, April 2009. http://www.humanrightsfirst.org/pdf/090428-RP-iraqi-progress.pdf. Page 12.
[65] "Special Immigrant Visas for Iraqis – Who Worked for/on Behalf of the U.S. Government," http://travel.state.gov/visa/immigrants/info/info_4172.html.

certificates through its embassies abroad—the Iraqi seeking the report is required to show up in person in Jordan; a tall order if when one has limited funds, protection concerns, questionable residency status, and a family to look after. Furthermore, in the event that an Iraqi did not officially declare his or her residence in Jordan—and many do not—Jordan would be unwilling to issue a certificate, further delaying an SIV application.[66]

Resettlement benefits must be claimed within ten days of the issuance of an SIV. If the applicant does not indicate that they would like to receive resettlement benefits within ten days of their visa's issue, they may not ever claim access to resettlement benefits—though they can still get assistance through other government programs. Requesting resettlement benefits results in a 60 or 90 day wait.[67]

Finally, the applicant is interviewed at a US embassy or consulate where "biodata"—fingerprints and photographs—are taken. After final medical and security clearance are granted, a successful applicant finally arranges travel to the US. All told, the process takes about a year or more according to attorneys. USCIS does not provide an average time period,[68] but many attorneys who work with SIV applicants find that it takes at least a year.[69]

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[66] U.S. Department of State, "Jordan Reciprocity Schedule," http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3593.html.
[67] U.S. Department of State, "Refugee Benefits Election Form," http://www.travel.state.gov/pdf/RES-BEN-ELE-0902.pdf.
[68] Citizenship and Immigration Services Ombudsman, "Annual Report 2009" (Department of Homeland Security, June 30, 2009), http://www.dhs.gov/xlibrary/assets/cisomb_annual_report_2009.pdf. Page 44.
[69] *Promises to the Persecuted: The Refugee Crisis in Iraq Act of 2008* (Human Rights First, April 2009), http://www.humanrightsfirst.org/pdf/090428-RP-iraqi-progress.pdf. Page 12.

Evaluating the RCIA

There are three separate ways to evaluate the RCIA: the P2 Direct Access program, the SIV program, and the Act as a whole. State Department officials are quick to point out that tens of thousands of Iraqis have resettled to America since President Bush signed the RCIA into law—but correlation is not causation; one should not conclude that the increase in Iraqi resettlement is solely because of the RCIA. Quantitatively evaluating the RCIA is difficult because little data is available, and the data that is available is not always compatible—some sources list the number of refugees admitted, while others list the number that have arrived in the country; sometimes only principal applicants are listed, other times each individual is counted. The State Department Refugee Processing Center (RPC) makes a large amount of data on refugee admissions available on its website, and the data is updated automatically every single month, but it is not clear whether that the data is in arrivals or admissions.

Because the objective of the RCIA was to help Iraqis who are no longer safe as a result of their close association with U.S. government agencies or contractors, the important question to ask is: are Iraqis who worked with Americans safer now because of the RCIA? The answer to that question is yes; Iraqis are better off now because they have more avenues to safety in America. But if the question is "Does the RCIA satisfy its own standard of success in helping Iraqis?" the answer is no. The RCIA set a standard of 5,000 SIVs per year, but the number of visas issued in one fiscal year has never been within 3,000 of that number. Because there are thousands of unused SIVs every year—and because not all Iraqi SIV applicants qualify for P2 or refugee resettlement—the RCIA does not succeed in helping as many Iraqis as possible. Now I will turn to an evaluation of the component parts of the RCIA: the P2 program, and the SIV.

The P2 Process: An Illusory Success

The P2 process may not be the resounding success that its numbers seem to indicate. State Department officials will be quick to point to the sheer number of Iraqis resettled to the US as proof that the P2 process works and that America is doing all it can to help Iraqis. But this conclusion ignores the fact that the available data does not separate P2 applicants from UNHCR referrals; many of those resettled to America are referred by UNHCR—a process that existed before the RCIA. If the U.S. approved just 30% of UNHCR referrals for resettlement, then it is possible that not a single refugee came through the P2 program. While the US is a major financial contributor to UNHCR, and thus an increase in UNHCR's ability to refer refugees is largely funded by the US, one cannot discount the fact that a significant number of Iraqi refugees resettle to the US without the P2 program. Data on UNHCR resettlement referrals is hard to locate, but UNHCR claims to have referred around 62,000 Iraqis to the US as of October 2009.[72] From FY2003 to that time, the US only admitted 16,899 refugees.[73] Even if the US admitted every single UNHCR referral in that time period, that means only 27% of applicants were admitted to the US—and that is without any P2 referrals. This means that the only way any meaningful quantity of Iraqi refugees—5,000 is meaningful—could possibly have arrived in the US is if the rate of approval for UNHCR petitions is well below 25%.

	9/2003 – 10/2009
Iraqi refugee arrivals in US	16,899[70]
Cases referred to US by UNHCR	62,000[71]

Table 2: Iraqi refugee admissions and referrals

[70] Office of Admissions - Refugee Processing Center, "Admissions and Arrivals Reports" (Bureau of Population, Refugees, and Migration), http://wrapsnet.org/Reports/AdmissionsArrivals/tabid/211/language/en-US/Default.aspx.
[71] United Nations High Commissioner for Refugees, "Iraqi resettlement update," http://www.unhcr.org/4ad84e7c9.html.
[72] Ibid.
[73] Office of Admissions - Refugee Processing Center.

The RCIA establishes some required reports from the President. He must, according to the law, annually submit the following figures:

- the number and date of P2 applications; and
- the number of P2 applications that have taken more than 6 months and "the reasons that [such] visas have not been expeditiously processed"[74]

While I was unable to locate the particular report, other detailed information on US refugee admissions is located in a yearly report that State Department, DHS and the Department of Health and Human Services (HHS) submits to Congress on behalf of the President.[75] The report's fifty-nine pages say nothing about why P2 visa processing takes longer than six months.

Pitfalls of the P2 Process

The P2 process erroneously rejects many qualified Iraqis. Because the P2 process requires the applicant to demonstrate refugee status, the applicant may also be denied access to the USRAP for any of the criteria discussed earlier. In their haste to process as many cases as possible, DHS circuit officers often make specious assumptions about an applicant and also about Iraqi history. Many times, they do not even bother to fill out the applicant's name on the Notice of Ineligibility for Refugee Status (NOI).

Many variables that State Department could not have anticipated also affect the process. Because most Iraqis are not experienced in immigration law and have no conception of which criteria are being used to assess their eligibility, they sometimes rely on rumor to inform their

[74] Ibid Sec 9(b)
[75] U.S. Department of State, U.S. Department of Homeland Security, and U.S. Department of Health and Human Services. "Proposed Refugee Admissions for Fiscal Year 2009," 2008. http://www.state.gov/documents/organization/113507.pdf.

approach to a P2 or UNHCR interview. Some eminently qualified Iraqis have falsely claimed to be high-ranking army officials—because in Saddam's Iraq, high-ranking officials were granted expedited processing and special attention. Months later, these refugees receive a Notice of Ineligibility based on information they provided based on an assumption about the process.

The volume of interviews each USCIS officer conducts also affects their ability to give each individual claim a full reading. The time pressure combined with the understanding that immigration is a matter of national security produce a climate where DHS Refugee Corps members frequently reject applicants for one of the reasons eight reasons described earlier (see Appendix A). Rejections often come not from a legitimate concern, but from a combination of the language barrier, assumptions by the Adjudicating Officer (AO), abbreviated interviews, and the AO's adversarial approach.

The single most important factor that results in improper finding of ineligibility for Iraqi refugees is the interview. While the State Department and DHS insist that the interview is not adversarial,[76] the interview is adversarial enough to make a victim of torture panic and provide meaningless, evasive, misleading, or false responses. Most Iraqis who apply for resettlement—through the P2 process, UNHCR, or the SIV process—are doing so because they have endured significant trauma.[77] Many suffer from post traumatic stress disorder (PTSD) as result of rape, torture, or death threats. Many Iraqis have tried hard to forget what happened to them in Iraq as a result of their association with Americans or as a result of the civil unrest that the American invasion prompted. For these people, sitting down in a room with an interviewer and being

[76] U.S. Department of State, U.S. Department of Homeland Security, and U.S. Department of Health and Human Services. "Proposed Refugee Admissions for Fiscal Year 2010," 2009. http://www.state.gov/documents/organization/129393.pdf. Page 15.
[77] Barnes, Anne. *Realizing protection space for Iraqi refugees: UNHCR in Syria, Jordan and Lebanon, Anne Evans Barnes*. Policy Development and Evaluation Service: United Nations High Commissioner for Refugees, January 1, 2009. http://www.unhcr.org/4981d3ab2.pdf. Page 22.

asked detailed and accusatory questions about their past recalls horrible memories of being locked in a room with interrogators and torturers. Certainly, an interview is a vital part of determining an Iraqis eligibility for resettlement to the US; but AOs must be careful to ensure that their zealousness does not adversely affect the accuracy of the information they extract from an applicant. Claims that the interview is a vital fraud-prevention step also fall a bit hollow; government documents indicate that early problems of fraud with Iraqi SIVs were largely a result of American officers signing off on inaccurate documents.[78]

After their sub-par performance in this interview, many Iraqis are wrongfully deemed persecutors of others and denied refugee status. The two most common reasons for this rejection are Ba'ath Party membership and service in the Iraqi military. Membership in the Ba'arth Party was a *de facto* requirement for entry into the Iraqi elite; many Iraqis joined not out of any particular allegiance to Saddam or his ideas but simply to ensure non-membership could not be used to persecute them. In Saddam's Iraq, speaking ill of Saddam was enough to get shipped off to a torture facility. Joining the Ba'ath Party was just another, easy way to toe the party line and provide a modicum of self-protection. While it is not often the case that lower-ranking Ba'ath Party members are rejected, some higher-ranking members who have not actually served the party in any meaningful capacity are also rejected. Those Iraqis who are unfortunate enough to have been in the Iraqi military are also viewed unfavorably; the combination of membership in the Ba'ath Party and compulsory service in the Iraqi Army and predetermines the AO to assume that the Iraqi in question can be denied refugee status for being a persecutor of others.

[78] Broadcasting Board of Governors. *Status of Iraqi Special Immigrant Visa Programs*. Office of the Inspector General, July 2008. http://oig.state.gov/documents/organization/109298.pdf. Page 8.

The Iraqi Army and military were so prominently involved in every day affairs—conscription was a feature of Saddam's Iraq—that nearly every Iraqi male was involved in the military in one way or another. Many of these men were called to serve their country in various ways during Saddam's bloody war against Iran or during his oppression of Iraqi Kurds. Simply being in the Iraqi army in 1988—the year Saddam used chemical weapons on the Kurdish town of Halabja—was enough to lead to a rejection for persecution despite the fact that that particular applicant served as a clerk in an isolated military office supply warehouse. In that client's case and probably others, the USCIS officer erred on the side of rejecting the applicant rather than conducting thorough investigation. If it is found that an applicant persecuted others because of their nationality or social group, that person is ineligible. But in the flurry of applications that a USCIS officer must process, it is not always the case that there is adequate time to consider the subtleties of an applicant's history in the military. Refugees who have served in the military are particularly prone to being wrongfully rejected for resettlement.

Refugees may also be rejected for lack of credibility, but such a rejection requires that the Adjudicating Officer (AO) brought the incompatible facts to the attention of the applicant and gave the applicant an opportunity to address them. For many refugees, the interview is too short—sometimes only 20 minutes—and they are never notified of inconsistencies in their testimony nor are they provided the opportunity to address them.

The P2 Process Gone Wrong

Ahmed's Story

The following story illustrates how a life destroyed by collaboration with Americans can be rejected as a result of a poorly-conducted and abbreviated interview. The story is true, with all meaningful details altered to protect the refugee's identity.

Ahmed is an Iraqi who fled Iraq, and currently lives in a nearby country. He graduated high school around the time of the Iran-Iraq war. Iraqi law required Ahmed to enter the army if he was not going to college. Since he was not going to college, he entered the Iraqi military after high school. The army shipped him to a forward base near the border with Iran, but his father used military connections to have Ahmed transferred to a military base hundreds of miles from any active combat. Ahmed stood by a machine gun, but never fired it. Finally, he was transferred to clerical work in a warehouse—he tracked office supplies. He was eventually discharged from the military and became a mechanic.

After the regime fell, Ahmed stopped working. He was at home one day when Americans came to inspect his neighborhood. One American saw that Ahmed was a mechanic and told Ahmed that he was also a mechanic. Ahmed asked the American for help finding work, so the American got him a job working at a local office run by Americans. Ahmed stood outside the gates and checked people for weapons and made sure they were at the right office.

Less than one month after working at that office, a gang of armed men arrived when Ahmed was not home and told his mother that if Ahmed did not stop working for Americans, they would kill Ahmed or his brothers. Ahmed immediately stopped working for the Americans. His parents forced him to move out of the house because they thought his presence endangered the family.

Ahmed spoke to an American in an office located in the Green Zone about employment, and the American promised he would employ Ahmed. He also gave Ahmed promotional materials about the office to distribute at his night school. The materials clearly established that Ahmed had travelled to the Green Zone and met with Americans. Two days later, while he was out in the market purchasing some goods to resell, someone set a bomb off under Ahmed's car. After months of delay, Ahmed was finally offered a job at the American office.

The first day that Ahmed was driving to work, a gang of militants intercepted him. They beat him with their rifles and hands. He recognized that they were probably Sunni, so he gave them a Sunni surname even though he was a Shi'a Muslim, but they were not fooled because they knew who he really was. They accused him of passing information to the Americans to help Shi'as defeat Sunnis. Ahmed swore he had done no such thing, but his captors did not believe him.

"I know how to make you confess!" one of them screamed, and he grabbed Ahmed and kissed him on the lips. Then the kidnappers called him a male prostitute, tied Ahmed to a table, and raped him. Ahmed tried to get them to stop—he screamed "Allahu akbar" and told them that if they were really men they would untie Ahmed and fight him—but they did not release him. They told him that they were going to make him pay for working with the Americans; they were going to destroy his manhood and make him live like that for the rest of his life. When they were done raping him, they took him to another room and hit him on the head until he became unconscious. After that, the kidnappers would return frequently—sometimes after only a couple of hours—to torture Ahmed. They cut him with knives; extinguished cigarettes on him; tied him down and kicked him in the testicles; and raped him repeatedly—sometimes with glass bottles.

Ahmed was finally released on $30,000 ransom, and handed back to his family. During the time he spent being tortured, his mother died. Only days after he got back to his family, his brother Mustafa was kidnapped and endured similar treatment.

Days after Mustafa was released back to the family on ransom, a well-armed Sunni insurgent group came to the house that Ahmed and Mustafa were staying at, and demanded to see them. The two escaped over the rooftops and fled the country—but Mustafa had to wait because he did not have a passport.

Ahmed's Interview & the Results

As a result of the trauma he endured, Ahmed can hardly concentrate for any lengthy period of time. He has medical documents that diagnose him with PTSD, and recommend that he receive comprehensive therapy. He is depressed, and his life feels like a jumble of meaningless events. He has medical issues relating to being repeatedly sodomized, and urinating is very difficult because his torturers kicked him so often in his genitals. He faints frequently, and has severe anxiety issues. He cannot drive because he frequently faints, and suffers memory loss. He cannot manage normal interactions because he gets distracted by thoughts of his lost manhood and extreme torture.

Ahmed's interview lasted less than one hour. The interview focused almost exclusively on his military service. Despite USCIS claims that refugee determination interviews are non-adversarial, Ahmed's AO grew frustrated with his responses and at one point began hitting the table and escalating the ferocity of her challenges to Ahmed's responses. Ahmed said that his AO treated him as though he was personally responsible for Saddam's gassing of the Kurds and bombing of Kirkuk. Ahmed was so disturbed by the interview that he did not even present a

material fact: he never fired a gun at another person, and spent most of his time in the military standing next to an anti-aircraft gun or performing clerical duties.

The AO rejected Ahmed's petition for admission to the USRAP on the basis of *persecution of others* and *credibility*.[79] But the AO failed to account for Ahmed's mental state; he did not consider that his accusatory and adversarial tone would startle Ahmed so severely that he might not be able to organize his thoughts and present a cohesive narrative. Ahmed's case represents the extremely vulnerable subset of refugees which America says it is focusing on resettling, but he was rejected. The interview process took the factor that most qualified him for resettlement—his need for psychiatric counseling as a result of torture—and based a finding of ineligibility on those exact symptoms. Ahmed never persecuted anyone, but he was too busy trying to fend off accusations that he was complicit in the Halabja massacre to mention this material fact to the AO.

Munir's Story

Some Iraqis cannot pursue resettlement through UNHCR because they do not fit UNHCR's nine criteria for resettlement, and cannot resettle through the P2 or Direct Access process because they cannot supply employment verification. This is the story of one of those refugees who falls through the cracks because he could not provide employment verification.

Munir is a photographer. He took pictures for ID cards at a non-American company that was contracted in Iraq. After working at that company for a year, he started receiving death threats; a man called him on the phone and said "You work with the Americans and we are going to kill you. You take pictures for the Americans." Soon after, two men approached Munir's father in the street and told him that "your son is dead"—presumably saying that Munir was a marked

[79] Ahmed has since sought legal aid and successfully appealed his Notice of Ineligibility. He has been offered resettlement to the US.

man, and that they were going to kill him. In the following weeks, the militia that was in control of Munir's district repeatedly drove by his house and shot at it with automatic weapons—the militia did not shoot at any other houses on the street, just Munir's. After the drive-by shootings, Munir got another threat on the phone: "We are going to kill you because you work with Americans and you take pictures for them." Munir fled the country.

After Munir fled, the same militia that shot at his house kidnapped his father. They killed Munir's father, and threw his body into a mass grave. None of the male members of Munir's family went to see the body, because the militia would wait at the mass grave to kill men who visited their loved ones.

Munir's Application

Munir tried to apply to the P2 process, but they were not able to verify his employment. After two months, the IOM told him that they were going to close his file because they could not verify his employment. Munir sought help from a legal clinic, where it took four months to verify his employment. The legal clinic decided to reopen Munir's petition because of the employment verification; the IOM failed to verify employment where the legal clinic succeeded.

Munir still cannot return to Iraq; because he is applying for an SIV and not P2 Direct Access to the USRAP program, he will need to supply a number of documents that are back in Iraq. Hopefully, his family—who he left behind in Iraq—will be able to retrieve them for Munir. But if they cannot, his SIV application will stall indefinitely, as his P2 application did when the IOM failed to verify his employment. At that point, perhaps Munir will be able to pursue a P2 application with his newly-acquired employment verification; but by then he will have been outside Iraqi for five years or more

The SIV: An Abject Failure

The number of SIVs issued each fiscal year is as low as the increase in Iraqi refugees is high. Furthermore, detailed figures on the process are difficult to locate; the number of SIV applications is not publicly available, and inquiries at the PRM and RPC have not yet yielded results. Furthermore, assessing the efficacy of the SIV program based on the number of SIVs issued assumes that everyone who receives a visa then travels with that visa and arrives in the US; it may be the case that a very low percentage of those who possess SIVs actually arrive in the US. The number of SIV applications is not widely publicized—making it hard to understand whether or not the process is experiencing issues—and there is certainly no annual report that addresses how many SIVs have taken more than six months to process.

Fiscal Year	Number Issued[80,81]	Number Available[82]	Percentage Issued
2008[83]	371	5,000	7.4%
2009	1680	9629	17.4%
2010	332	8,320	4.0%

Table 3: SIVs issued of number available

The 2009 USCIS Annual Report states that, as of 30 June 2009, "USCIS does not publish processing times for [Kennedy Act] SIV cases" because so many SIV petitions are "apparently abandoned."[84] These petitions are then denied for lack of evidence, but perhaps only after lengthy periods of time—to report these cases, USCIS argues, would skew the data for processing times into the realm of meaninglessness. Reporting no data at all is a poor substitute for reporting all data, with a significant caveat. While the USCIS Annual Report says that Iraqis

[80] The number issued here refers only to Principal Applicants, as they are the only type of SIV applicant that counts towards the numerical limit of 5,000. *See* Public Law 110-181 § 1244(1)(c).
[81] US Department of State, "SQ Number Use," http://www.travel.state.gov/pdf/SQNumbers1209.pdf.
[82] The number of unused SIVs carries over to the next year for the first four fiscal years of the Act. *See* Public Law 110-181 § 1244(3)(c)(a).
[83] There was initially an error in the law that made it unclear how many visas were available in FY2008. This resulted in SIVs being issued during only four months of the FY2008. *See* Broadcasting Board of Governors. *Status of Iraqi Special Immigrant Visa Programs*. Office of the Inspector General, July 2008. http://oig.state.gov/documents/organization/109298.pdf. Page 4.
[84] Citizenship and Immigration Services Ombudsman, "Annual Report 2009" (Department of Homeland Security, June 30, 2009), http://www.dhs.gov/xlibrary/assets/cisomb_annual_report_2009.pdf. Page 44.

abandon their petitions, at least one State Department Bureau of Population, Refugees, and Migration (PRM) official shifts the blame to Iraqis for the lack of SIV applications—saying that many simply "sit on" their applications after receiving Chief of Mission (COM) approval.[85] This reaction by PRM and USCIS officials is akin to blaming the victim; rather than faulting the process as abstruse, they would rather point the finger at the Iraqi for laziness—"abandon[ing]" or "sitting on" their petitions instead of continuing the application process. While it is certainly true that many Iraqis do not move forward with their applications, it is the SIV application process that is to blame. The application is less a process than a series of procedural impediments that are nearly insuperable without experienced, English-speaking, legal counsel. This high barrier also makes the process a discriminatory one; well-to-do applicants who are able to read and write English or afford to hire an attorney find the process much easier to navigate. But a humanitarian program should be based on need, not means.

The Act also specifies that the USG cannot charge any fees for an SIV application—fees that would normally be around $590 total for a non-Kennedy Act SIV[86]—which has led one State Department Foreign Service Officer to describe the program as "what you might call an unfunded mandate" because the USG must provide a service at its own cost.[87] The Office of the Inspector General (OIG) of the State Department and Broadcasting Board of Governors estimated in July 2008 that processing 5,000 SIVs for free would result in $675,000 in lost revenue for the Bureau of Consular Affairs and $5 million in lost revenue for the US Treasury for every year that those 5,000 visas were issued, assuming that each principal applicant would be accompanied by one spouse and one child. Furthermore, the resettlement benefits that must

[85] Siram, Sumi. 2010. Interview by author over telephone. May 26.
[86] Broadcasting Board of Governors, *Status of Iraqi Special Immigrant Visa Programs* (Office of the Inspector General, July 2008), http://oig.state.gov/documents/organization/109298.pdf. PDF pp. 19.
[87] "Consul-At-Arms: re: "Special Immigrant Visas for Iraqis: Bag with Holes"," September 22, 2008, http://consul-at-arms.blogspot.com/2008/09/re-special-immigrant-visas-for-iraqis.html.

be made available to Kennedy Act SIV holders, have been estimated to cost up to $75 million.[88] In an additional potential cost burden, SIV applicants may not be rejected due to the danger of becoming what is known as a "public charge"—basically, a net cost to the USG.[89] Clearly, the Kennedy Act was written from the perspective that the moral debt to Iraqis far outweighed the material costs of bringing Iraqis here and maintaining their wellbeing once here. The USG cannot abandon that tack.

While it is true that if an Iraqi qualifies for an SIV, then he or she also qualifies for Direct Access, this does not mean that the US should abandon the SIV program and channel Iraqis to the Direct Access program. The US created the SIV for a very clear reason that is well-described in the congressional record surrounding the bill: America has a moral debt to pay. This means that all Iraqis must be given the most favorable options possible; and the SIV—with its automatic green card upon arrival in the US—is a much more favorable option than the Direct Access program. The only set of incentives that would cause an Iraqi to abandon an SIV petition in favor of a P2 petition are procedural: the P2 petition is easier.

More pointedly, there is no data on how many Iraqis qualify for an SIV but have not applied for Direct Access—it may be the case that some Iraqis only pursue the SIV process but do not bother with the P2 because they incorrectly think that they do not qualify for it.

[88] Broadcasting Board of Governors, page 20.
[89] 64 Federal Register 28689: Immigration and Naturalization Service and Department of Justice, *Field Guidance on Deportability and Inadmissibility on Public Charge grounds*, March 26, 1999, http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=72445527075+0+2+0&WAISaction=retrieve.

Conclusion and Recommendations

The same lack of a centralized process that hinders SIV applicants also prevents the government from effectively tracing the faults of the program, and, therefore, from designing a fitting solution. The State Department Bureau of Population, Refugees, and Migration (PRM) does not keep track of the total number of SIV applicants—they only keep track of those successful SIV applicants who apply for resettlement benefits.[90] When asked how many applications for the SIV have been received, the PRM indicated that the USCIS Nebraska Service Center (NSC) may be a better point of contact for ascertaining how many SIV applications exist at each step of the process (COM approved, awaiting security clearance, etc.). Because of the interagency maze, the SIV is escaping critical evaluation; just as when the USCIS bickered with the Ombudsman's accusations that it was approving fraudulent petitions (it argued that it was the responsibility of the Department of Homeland Security to investigate these petitions),[91] the problem cannot be fixed until the source is officially recognized. Ultimately, the SIV program's problems can be solved by changing the process from applicant-initiated to provider-initiated; the applicant cannot be held solely responsible for all aspects of the petition.

There are four ways to improve the utilization of the SIV program and make it a better way to assist Iraqis who worked for U.S. contractors, businesses, and armed forces. First, the process needs to be centralized; just as Iraqis apply to the P2 process through an office of the International Organization for Migration (IOM), the State Department should arrange for the IOM or another Overseas Processing Entity (OPE) to take up the burden of assisting Iraqis with SIV petitions. This would remove many of the intimidating procedural obstacles that have

[90] E-mail correspondence between PRM official and author, April 26, 2010.
[91] "USCIS Response to the Citizenship and Immigration Service Ombudsman's 2009 Annual Report," October 16, 2009. http://www.uscis.gov/USCIS/Resources/Ombudsman%20Liaison/cisomb-2009-response.pdf. Pages 6-8.

discouraged so many from applying for the SIV. The difficulty here would be convincing those who design the budget that such a contracting relationship would ultimately be worth the expense. Because it is unlawful to charge a fee for an SIV application, and because of the current fiscal crisis, there is little incentive to pay an organization to assist Iraqis with SIV petitions—especially when nearly all Iraqis who qualify for SIV also qualify for P2 Direct Access Processing. Furthermore, a proposed bill—the Refugee Protection Act of 2010—would decrease the desirability of the SIV, as it would allow refugees to immediately apply for a green card upon arrival to the U.S.,[92] which is currently one of the most appealing aspects of the SIV.

Second, security checks must be made faster. While Iraqis wait for their security clearance, they may continue to suffer persecution, abuse, or poor living conditions—the exact vein of inconveniences that the SIV was designed to prevent. Furthermore, SIV applicants, having worked for U.S. forces or U.S. organizations, may have already submitted to background and security checks—making additional security checks slightly redundant.

Third, the staff who process SIV refugee and SIV claims must be expanded. Currently, interviews can only be conducted when DHS Refugee Corps are performing "circuit rides" to the area. In practice, this happens about every two months.[93] Waiting two months for an interview, simply because there are no staff in the area, is not an efficient use of refugees' or DHS officers' time. It may be the case that having a dedicated corps of refugee officers at U.S. embassies provides more expeditious access to the USRAP and quicker processing times.

Fourth and finally, better records should be kept in order to expedite employment verification. Currently, it is the sole responsibility of the applicant to provide the U.S. Government with the

[92] Leahy, Patrick J. *Refugee Protection Act of 2010*, 2010. http://thomas.loc.gov/cgi-bin/query/z?c111:S.3113:
[93] This was the frequency of visits during my time at a refugee legal aid clinic in Cairo, Egypt.

names of supervisors and colleagues who can verify employment. Employers are not required to respond; but State Department officials say that they "do not have a the [sic] power to compel a response, but [employers] are informed that their response is necessary for an applicant to enter their respective programs."[94] While this is sometimes sufficient to garner a response, the response is often slow to arrive. USG contractors in Iraq ought to be required to respond to immigration petitions relating to their former employees. The USG also ought to require contractors in Iraq to provide monthly employment data on the names of local Iraqi employees; maintaining a database of Iraqis who work for American companies would have the triple benefit of expediting security checks, verifying employment for P2 and SIV petitions, as well as assisting U.S. and Iraqi investigations into criminal wrongdoing by Iraqis or their U.S. employers.

The U.S. commitment to ensuring the safety of Iraqis who are in danger because they worked closely with U.S. forces and interests in Iraq as manifested in the Refugee Crisis in Iraq Act (RCIA) is admirable. But without more data, it is impossible to make a meaningful assessment of how much of the increase in Iraqi refugee admissions is a result of the processes created by the RCIA, and how much is an ancillary result of the renewed commitment to providing aid to Iraqis by admitting more refugees from Iraq and less refugees from other countries. If there is one lesson that the U.S. can learn from the RCIA, it is that poor implementation can stymie good intentions. The U.S. must correct this error in the future, and design refugee and special immigrant admissions processes that are coherent, transparent, accessible, and effective.

[94] E-mail correspondence with PRM official, April 26, 2010.

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Appendix A: Notice of Ineligibility

U.S. Department of Homeland Security
AMERICAN EMBASSY
ATHENS, GREECE

U.S. Citizenship and Immigration Services

[redacted]

NOTICE OF INELIGIBILITY FOR RESETTLEMENT

Dear M[redacted]

This letter refers to your Registration for Classification as a Refugee (Form I-590) and your recent interview with an officer of the U.S. Citizenship and Immigration Service (USCIS). Pursuant to § 207 of the Immigration and Nationality Act ("INA") (8 U.S.C. § 1157) and § 101(a)(42) of the INA (8 U.S.C. § 1101(a)(42)), applicants for classification as refugees must establish that they are unable or unwilling to return to their country because they have suffered past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Applicants for refugee classification must also establish that they are otherwise admissible to the United States, are of special humanitarian concern to the United States, and are not firmly resettled in a third country.

For the reason or reasons indicated below, we have determined that you are not eligible for resettlement in the United States.

1. ☐ **RETURN.** You did not establish that you are unable or unwilling to return to a country of your nationality or last habitual residence.

2. ☐ **PERSECUTION.** You did not establish that you have suffered past persecution or that you have a well-founded fear of future persecution.

3. ☐ **PROTECTED CHARACTERISTIC.** You did not establish that the persecution or fear of future persecution was on account of race, religion, nationality, membership in a particular social group, or political opinion.

4. ☒ **CREDIBILITY.** The USCIS officer informed you of discrepancies concerning material facts within your testimony during your interview and you were provided with an opportunity to reconcile those discrepancies. Because you were unable to reconcile the discrepancies to the officer's satisfaction, it has been determined that your testimony lacked credibility on those material facts. As a result, you are not eligible for refugee status.

www.uscis.gov

[File Number]
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5. ☒ **PERSECUTOR.** You are ineligible for refugee status because it has been determined that you ordered, incited, assisted, or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion.

6. ☐ **FIRM RESETTLEMENT.** You are ineligible for refugee status because you have been firmly resettled in a third country.

7. ☒ **INADMISSIBILITY.** You were found to be inadmissible to the United States pursuant to INA § 212(a) (8 USC § 1182(a)) pertaining to:

_____

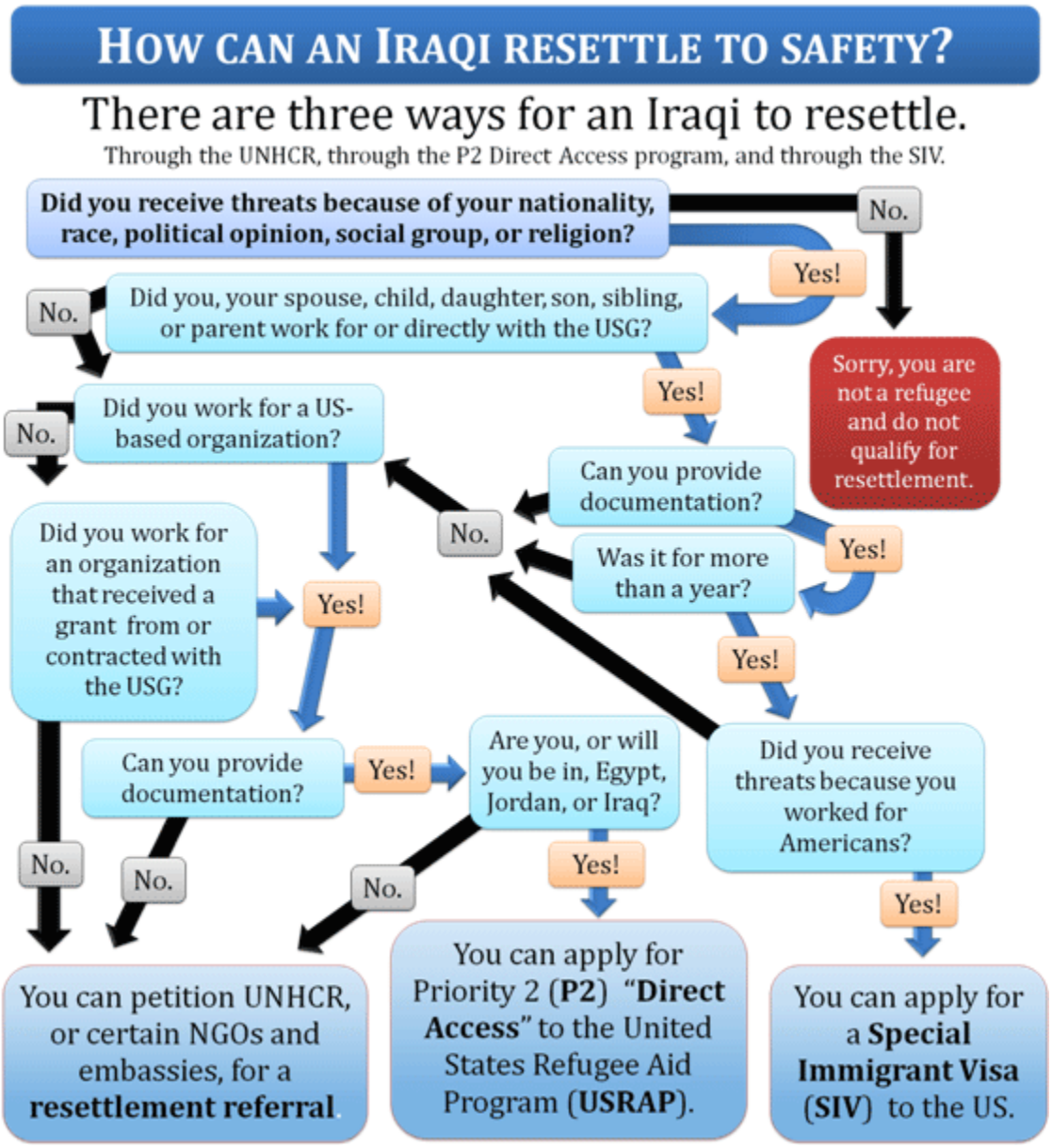
_____

☐ A waiver of the inadmissibility cited above may be requested.
☒ A waiver is not available for the inadmissibility cited above.

8. ☐ **OTHER REASON(S):** _____

_____

Based on the reason or reasons indicated above, your request for resettlement to the United States is hereby denied.

There is no appeal for a denial of an application for refugee status. USCIS may exercise its discretion to review a case upon timely receipt of a request for review from the principal applicant. The request must include one or both of the following: (1) a detailed account explaining how a significant error was made by the adjudicating officer, or (2) new information that would merit a change in the determination. USCIS will only accept one request that is postmarked or received by USCIS within 90 days from the date of this notice.

Appendix B: Resettlement Diagram