

# Iranian Terrorism Concerns Surround New Biden Immigration Regulation

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*A new Biden administration immigration regulation, purportedly designed to aid processing of visas for U.S.-friendly Afghan nationals, contains concerning loopholes that could seriously weaken immigration restrictions against members and supporters of terrorist organizations. Simultaneous with the re-opening of negotiations with Iran this week, the regulation also seems to reduce visa restrictions on many conscripts from the Islamic Revolutionary Guard Corps (IRGC), a move that might appear as a partial concession to Iran's demand to lift the IRGC's terrorist designation.*

*If this regulation is truly intended only for the restricted case of Afghanistan, the administration should quickly amend this regulation to remove the troubling loopholes. Congress should press the Executive Branch on this matter, urgently exercise its oversight authority and, if necessary, legislate to maintain or strengthen immigration restrictions against the IRGC and other terror groups.*

## What Happened?

- On June 23, the Department of State and Department of Homeland Security [submitted a notice](#) to the Federal Register releasing details of their June 14 [announcement](#) that immigration restrictions would no longer apply to individuals who had provided “insignificant material support” or certain “limited material support” to designated [Foreign Terrorist Organizations \(FTOs\)](#), their members, or other terrorist organizations.
  - » This carveout was limited to individuals who had undergone and passed other background checks, who U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement, (ICE), or U.S. consular officers determined did not pose a security threat to the United States, and who met other conditions, including not voluntarily or knowingly engaging in terrorist activity.
  - » The text of this regulation fails to specify any individual FTO. As a result, the notice on its face appears to apply to all FTOs and their members, including Hamas, Hezbollah, Al Qaeda, the IRGC, and the Islamic State (ISIS).

## Why Is It Important?

- This new decision could be understood by Iranian negotiators as a concession on the part of the United States to reduce the significance of the FTO designation against the IRGC and its proxies.
  - » This regulation was finalized on June 8, but only announced on June 14, 2022. It is unclear whether the timing is directly related to the latest rounds of negotiations with Iran. However, the issuance of the regulation raises questions about its relation to [Iran's prior demand](#) that the IRGC be removed from the FTO list as a condition for resurrecting the 2015 nuclear deal.
  - » The principal, but not sole, consequence of an FTO designation is the immigration restrictions on its members and supporters. Removing this immigration restriction through regulation could be interpreted as providing Iran the policy concession they were originally seeking, without overtly doing so through negotiations.
    - Senior U.S. officials and military leaders have repeatedly said that the IRGC should remain listed as an FTO in recent months, including CENTCOM Commander Gen. Frank McKenzie [telling](#) Congress in March, “from everything that I can see...the IRGC is a terrorist organization.”
  - » Given the sheer size of the IRGC and the diverse nature of its activities, it is likely that, if the new regulation is applied to the IRGC, a significant number of its members and others associated with the organization could fall within its scope and be eligible for entry into the United States.
  - » While the immigration status of low-level IRGC members may not normally be a priority for the Iranian regime, Iran's leadership could view the change in immigration regulations as a new opportunity to insert intelligence operatives into the United States.
  - » This determination could also lower the stigma of joining or being conscripted into the IRGC, as Iranians often closely consider their immigration opportunities abroad.
- When the policy change was announced, it was messaged as a solution for vulnerable Afghans caught up in the technicalities of U.S. immigration law. After the notice was issued, a spokesperson for the Department of State [told reporters](#) this notice was only intended to address the situation in Afghanistan and that it would not apply to conscripts of the IRGC, as they had received military training.
  - » The U.S. government expressed its concern that some Afghan nationals, or their family members, who helped U.S. and NATO forces, may have had incidental contact with or been forced into providing minimal support to members of the Taliban.
  - » According to State, IRGC conscripts who had received military training from the IRGC, even if they are not considered full members of the FTO, would still normally be restricted from immigrating to the United States by provisions of the Immigration and Nationality Act (INA) that bar anyone who has received military training from an FTO.
- These post-hoc explanations still leave several questions and concerns about this decision unaddressed.

- » The [text](#) of the notice does not include any reference to Afghanistan, any specific FTO or other terrorist group in Afghanistan, or Afghans who have applied for Special Immigrant Visa (SIV) status as a result of having worked for or rendered assistance to the U.S. government or U.S. forces.
- » The Afghan Taliban, which would seem the most likely group for SIV applicants to have had incidental contact with, is not even on the FTO list. It is a Specially Designated Global Terrorist (SDGT), a designation that also incurs immigration restrictions under the INA. Yet, this new regulation also explicitly expands relief to individuals who provide support to FTOs.
- » Al-Qaeda, the Haqqani Network, and ISIS-K are all designated FTOs operating in Afghanistan but were not mentioned in the June 14 press release.
- » Our Afghan partners who supported U.S. military and humanitarian operations there, or worked for the previous Afghan government, and who might be seeking SIVs should not generally have been working or interacting with Afghan groups on the FTO list that were fighting against U.S. security and interests.
- » Background and security checks that showed Afghans joined or provided support to FTOs should generally trigger a red flag that would automatically reject them from entry into the United States.
- Further, the State Department’s claim that IRGC conscripts would not qualify for immigration relief under this regulation is only partially true.
  - » The State Department appears to be making the argument that IRGC conscripts are not normal members of an FTO because of their involuntary service. The State Department then argues that because IRGC conscripts have received military training, they are still inadmissible under the standards of the [INA](#).
  - » However, the INA only limits immigration to individuals who received military training from an FTO if that organization was designated at the time of the training. Since the IRGC was only added to the list of FTOs on April 15, 2019, IRGC conscripts who received training before that date would qualify under this new regulation.
  - » Further, the INA would only restrict IRGC conscripts who received specific military-type training (which is defined in [18 U.S.C. section 2339D\(c\)\(1\)](#)). It would not preclude conscripts who may have proceeded down other training tracks, such as financial or intelligence training.
- This determination waters down the significance and power of the FTO designation as a censure against joining and providing support to FTOs. It also sends the wrong message both to our allies and partners whom the United States is encouraging to strengthen restrictions on terror groups and to members of those terror groups who may be seeking to infiltrate our country to conduct terror attacks.
  - » Over the past four years, sixteen countries have joined the United States in designating the entirety of Hizballah as a terrorist organization: Argentina, Austria, Australia, Colombia, Czech Republic, Estonia, Germany, Guatemala, Honduras, Japan, Latvia, Lithuania, Paraguay, Serbia, Slovenia, and the United Kingdom.
  - » Just because an individual has not committed acts of terrorism or provided material support to an FTO to date does not preclude that individual from doing so in the future. Membership in a terror group is a leading indicator of ideological affiliation with their causes.

## What Should the United States Do Next?

- If the narrow intent of this regulation is to facilitate the entry of legitimate Afghan SIV applicants who had incidental interactions with the Taliban, this notice should be amended to reflect this. As written, this regulation is so broad that it is a green light for individuals who have supported dangerous terrorist groups well beyond just the Taliban in Afghanistan, including the IRGC, to believe they now have a chance at entering and remaining in the United States.
  - » This determination should apply only to Afghan nationals who have assisted U.S. and NATO forces in Afghanistan, as well as their direct family members, from incidental transactions with the Taliban. As written, there is no geographic or nationality limitation, nor limitation on terror groups.
- The carveouts should be further scoped to ensure that incidental contact and support for FTOs was not taken in any manner which could damage the national security interests of the United States and NATO forces or was expressly done at the direction or intended support of the United States and NATO forces. If the actual intent of the regulation is to apply more broadly to all FTOs, including the IRGC, Congress should immediately conduct rigorous oversight of this regulation by demanding answers from the Department of State and Department of Homeland Security to the following questions:
  - » Does this action undermine incentives not to affiliate or provide services to designated FTOs and their members?
  - » Is this action intended as a concession to the Iranian regime during negotiations? How will the Government of Iran view this action?
  - » Does the U.S. Government view IRGC conscripts as *members* of the IRGC?
  - » Does this regulation apply to conscripts of the IRGC who received their military training before the IRGC was listed as an FTO in April 2019?
  - » Does this regulation exclude current IRGC conscripts from immigration relief who did not receive military-type training, as defined in 18 U.S.C. section 2339D(c)(1)? Is it the view of the U.S. Government that all IRGC conscripts receive military-type training?
  - » How many individuals have already qualified for relief under this determination? How many does the U.S. government estimate will qualify each year? How many are from Afghanistan, how many are from Iran, and how many are from other countries?
  - » What precautions is the U.S. government and law enforcement taking to monitor such individuals after they have entered or remain in the United States?
- If the Executive Branch fails to provide answer to these questions that demonstrate a commitment to safeguard U.S. national security interests or fails to amend and narrow the determination to close potential loopholes of abuse, Congress should pass legislation amending the Immigration and Nationality Act to codify the full immigration restrictions against members of FTOs and individuals who provide any level of material support to those FTOs and their members.