



United States Department of State

Washington, D.C. 20520

FEB 22 2019

The Honorable
Chris Van Hollen
United States Senate
Washington, DC 20510

Dear Senator Van Hollen:

Thank you for your letter of October 12, 2018 regarding Presidential Proclamation 9645 – Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (the Proclamation or PP 9645). This is a follow up to the Department of State's December 14, 2018 response.

Your letter requested the Department's guidance regarding the processing of waivers to foreign nationals affected by the Proclamation and specific statistical data on such waivers. In addition to the information provided in this letter, the Department also makes a broad range of visa statistics publically available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html>.

The Department works closely with U.S. embassies and consulates to ensure visa applicants who are subject to PP 9645 and otherwise eligible for visas are considered for exceptions and waivers under the Proclamation. An applicant whose situation fits into one of the exceptions set forth in the Proclamation, and who is otherwise eligible for a visa, may be issued a visa without going through the waiver process.

If an applicant does not fall into an exception category, but is otherwise eligible for a visa, a consular officer will *automatically* consider the applicant for a waiver based upon the three-part test set forth in PP 9645. The applicant need not prepare any separate application for a waiver. Consular officers adjudicate waivers as part of the visa application process based on information provided in the standard visa application and an in-person interview of the applicant. Aliens who are subject to the Proclamation's entry restrictions may present evidence regarding their eligibility for a waiver pursuant to the regulations applicable to immigrant and nonimmigrant visa applicants. *See e.g.* 22 C.F.R. §§ 41.105(a), 41.121(b)(1), 42.65, 42.81(b).

The burden of proof is on the alien to establish that they are eligible for a visa and a waiver to the satisfaction of the consular officer. *See e.g.* 8 U.S.C. § 1361; 22 C.F.R. § 40.6. The text of the Proclamation and these regulations and other helpful information, including frequently asked questions regarding the Proclamation and the total number of waivers approved (updated bi-weekly) for applicants subject to PP 9645 travel restrictions, are available on the Department's public website, travel.state.gov. Certain information has also been made publicly available on the Department's Freedom of Information Act website, foia.state.gov, as discussed in the attachment.

The Department noted in its responses to your prior two letters from 2018 that, although two cases had been cleared for waivers as of January 8, 2018 (which was only one month after the Department began processing cases under the Proclamation), that number was expected to grow as time elapsed. The attached data reflects that approximately 5.9 percent of applicants having been found to qualify for waivers as of October 31, 2018. In addition, more than 11,000 applicants have been determined to meet the first two requirements for a waiver and are now under review to determine whether they meet the remaining national security and public safety criterion. Due to the time required to fully evaluate an applicant's eligibility for a waiver, the Department is providing statistics using October 31 as a cut-off date, which is likely to give a more accurate indication of the portion of applicants covered by the Proclamation who qualified for waivers. Many applicants who applied between October 31 and the present are still being considered for a waiver. Furthermore, as discussed in the attachment and in the appendix, once a consular officer determines that an applicant meets all three criteria for a waiver, the timing of visa issuance often depends on how quickly the applicant provides documents required for visa issuance to the consular officer. This includes documents such as medical exam results, police certificates, passports, and other documents required under the Immigration and Nationality Act (INA) or implementing regulations. *See e.g.* 8 U.S.C. §§ 1201(d), 1202(b)-(c).

As requested, please find enclosed answers to the questions enumerated in your letter. The responses include statistics for the period between December 8, 2017 and October 31, 2018. This documentation and information in this letter is being provided for the internal use of you and your staff. The public release of any portion of the enclosed documents is not authorized by this communication and, should you wish to disclose any documents or portions thereof, the Department asks that you provide it with a reasonable opportunity to inform you and your staff of any sensitive information that should be safeguarded.

We hope this information is helpful to you. Please let us know if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Elizabeth Taylor", with a stylized flourish extending from the end.

Mary Elizabeth Taylor
Assistant Secretary
Bureau of Legislative Affairs

Enclosures: As stated.

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Attachment to DOS Official Response to October 12, 2018 Bicameral Letter on PP 9645

All data provided in this attachment is Sensitive but Unclassified and for the time period:

December 8, 2017 to October 31, 2018

1. The number of visa applications received and processed from countries affected by PP 9645 as of October 31, 2018, including:

a. The total number of applications for nonimmigrant and immigrant visas for each of the identified countries

Between December 8, 2017, and October 31, 2018, consular officers adjudicated 149,121 visa applications from nationals of the affected countries. These include 20,469 immigrant visa (IV) applications and 128,652 nonimmigrant visa (NIV) applications.

See Tables 1.A (i) and (ii) for a disaggregation by country, visa type, and subject status. (Note: To be considered subject to PP 9645, an application must be for a visa class explicitly defined in PP 9645. Affected visa classes vary by country, so the above totals include a significant number of applications that were not subject to the entry and travel restrictions of PP 9645. The total number of applications subject to PP 9645's entry and travel restrictions was 48,656.)

b. The number of applicants refused for reasons unrelated to the proclamation for each of the identified countries, disaggregated by basis for refusal

Between December 8, 2017, and October 31, 2018, for reasons unrelated to the Proclamation, consular officers refused 8,149 visa applicants who would otherwise be subject to the Proclamation. The vast majority of these refusals (over 90 percent) were under sections 214(b) and 221(g) of the INA.

See Table 1.B for a disaggregation by nationality.

(Note: Table 1.B gives statistics on the number of times a refusal ground was applied to a visa application. Because a single application can be refused on multiple grounds, the number of refusals exceeds the number of unique applications that were refused as of October 31, 2018.)

c. The number of applicants qualifying for an exception for each of the identified countries, disaggregated by basis for the exception

Between December 8, 2017, and October 31, 2018, consular officers issued 2,578 visas to applicants based on an exception to the Proclamation.

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See Table 1.C for a disaggregation by nationality for applications resulting in an issuance under an exception to PP 9645. (Note: It is difficult, and often impossible, to determine the specific basis for exceptions, based on the information in our databases, so disaggregation by this parameter is not possible.)

d. The number of applicants who failed to meet the criteria for a waiver for each of the identified countries, disaggregated by basis for denial

Between December 8, 2017, and October 31, 2018, consular officers determined that 24,584 visa applicants considered for waivers under PP 9645 failed to meet either the undue hardship or national interest criteria for a waiver. Of the total number of applications considered for a waiver, approximately 65 percent failed one or more of the criteria required for a waiver, approximately 5.9 percent met all required criteria for a waiver, and approximately 29 percent are currently undergoing administrative processing necessary to make a determination on the national security and public safety criterion. Disaggregation by basis for waiver refusal is not possible without a manual review of all applications.

With regard to how consular officers examine the national security and public safety waiver criterion, we would be happy to offer a briefing at an appropriate level to describe this process in more detail.

See Table 1.D-E and Table 1.F for a disaggregation by nationality.

e. The number of applicants refused under the proclamation with waiver consideration for each of the identified countries, disaggregated by basis for refusal

Between December 8, 2017, and October 31, 2018, consular officers refused 36,309 applications under PP 9645 with waiver consideration. Of these, 24,584 applications were refused for failure to meet the undue hardship or national interest criteria. An additional 11,031 applications have been found to meet the undue hardship and national interest criteria and are currently undergoing administrative processing necessary to make a determination on the national security and public safety criterion. (Until administrative processing is complete, these applications are "refused," because the applicants were found ineligible for visas under PP 9645, and no determination has been made yet on the national security and public safety waiver criterion. Pursuant to Department of State regulations, visa applications must either be issued or refused at the time of the visa application interview, as explained in the supplement to Table 1.D-E. Once administrative processing is complete, these applicants will receive a further adjudication from a consular officer.)

With regard to how consular officers examine the national security and public safety waiver criterion, we would be happy to offer a briefing at an appropriate level to describe this process in more detail.

See Table 1.D-E for a disaggregation by nationality.

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(Note: Each applicant who is subject to the Proclamation, but otherwise eligible for a visa, is considered for a waiver. While our databases reflect whether a consular officer has found an applicant to meet both the undue hardship and national interests criteria, further disaggregation by basis for waiver refusal is not possible without a manual review of all applications.)

f. The number of waivers approved for each of the identified countries, disaggregated by basis for approval

Between December 8, 2017, and October 31, 2018, consular officers determined that 2,216 applicants met all three criteria for a waiver. That figure represents approximately 5.9 percent of all applications considered for a waiver, and approximately 8.3 percent of all applications for which waiver consideration is complete, *i.e.*, cases that are not still undergoing administrative processing.

See Table 1.F for a disaggregation by nationality.

g. The number of visas issued to individuals granted waivers for each of the identified countries, disaggregated by basis for approval

Between December 8, 2017, and October 31, 2018, 1,546 visas were issued to applicants meeting all three criteria for a waiver.

As of October 31, 2018, there were 670 applicants who were determined to meet all three criteria for a waiver, but had not yet been issued a visa. See response to question 1(h) below for additional information on why visa issuance is not always simultaneous with the finding that an applicant meets all three criteria for a waiver.

See Table 1.G for a disaggregation by nationality.

h. The average number of days between waiver approval notice for each of the identified countries, disaggregated by basis for approval, and visa issuance.

As of October 31, 2018, the average number of days between when an applicant is found to meet all three criteria for a waiver, and the visa issuance date is 21 days.

Once a consular officer determines that an applicant meets all three criteria for a waiver, the timing of visa issuance often depends on how quickly the applicant provides documents required for visa issuance to the consular officer. For instance, posts must reach out to the applicant using the contact information provided at the time of application. If the contact information is incorrect or not current, this will cause delays in issuance. Moreover, some immigrant visa applicants are required by the Immigration and Nationality Act or implementing regulations to submit certificates and other documentation that may have expired during the waiver process. For example, IV applicants are required to present valid police and medical certificates. If the information in these certificates has expired, the applicant may need time to renew them. Finally, applicants must present valid passports to the consular officer prior to visa issuance.

See Table 1.H for a disaggregation by nationality.

2. The number of waivers granted to diversity visa winners from each of the identified countries and the number of visas issued to those individuals.

Between December 8, 2017, and October 31, 2018, 92 Diversity Visa (DV) applications from affected nationals met all three criteria for a waiver. Of these, consular officers had issued 72 visas by October 31, 2018.

See Table 2 for a disaggregation by country.

Statistics regarding monthly visa issuance disaggregated by nationality and visa class are also available on our public-facing website, Travel.State.Gov, under <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/immigrant-visa-statistics/monthly-immigrant-visa-issuances.html>.

3. Any guidance or other documents provided to embassies and consulates regarding PP 9645 and the waiver criteria, including 17 STATE 97682 and 17 STATE 56801.

Much of the Department's guidance you have requested is internal and is not available to the public in order to protect the integrity and sensitivity of the waiver adjudication process, which is also why, since long before PP 9645, not all of the Department's guidance to consular officers regarding visa adjudications is made public. Specifically, public disclosure of the guidance you have requested could enable visa applicants who are intent on circumventing the law to conceal or misrepresent information that would trigger additional review and that could uncover potential derogatory information related to their eligibility for a waiver and a visa.

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Although not all of the guidance that the Department has issued regarding waivers can be made public, the Department can assure you that the Bureau of Consular Affairs (CA) has provided extensive guidance to consular officers on how to apply the exception and waiver criteria to applicants affected by PP 9645's travel restrictions. Guidance is incorporated into the Foreign Affairs Manual (9 FAM 302.14-10, unclassified portions of which are publicly available at <https://fam.state.gov/fam/09FAM/09FAM030214.html>). CA regularly conducts worldwide training sessions on PP 9645's application. Most recently, on November 28, CA hosted two webinars focusing on consular officers' most commonly asked questions regarding PP 9645 processing; 88 posts around the world participated. CA also manages an email inbox within the Visa Office where consular officers receive answers to questions about PP 9645-specific guidance and policy on a daily basis. In addition, CA produced a reference guide for officers that answers common questions and details general scenarios where a waiver may be appropriate.

Additionally, in response to requests pursuant to the Freedom of Information Act (FOIA), the Department has made public certain documents and guidance that it has provided to consular officers. These documents are publicly available on the Department's FOIA website at <https://foia.state.gov>, with information that is exempt from disclosure redacted.

- 4. Did the Secretary of Homeland Security perform the required 180-day review of the listed countries in consultation with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies?**
 - a. If so, what findings or conclusions were reported to the President?**
 - b. What was communicated to the governments of the affected countries regarding their information sharing and/or security deficiencies as a result of the review and reporting process?**

We defer to the Department of Homeland Security to address your questions regarding the report that is required to be submitted by the Secretary of Homeland Security to the White House pursuant to section 4(a) of PP 9645.

The Department continues to engage with affected countries, as appropriate, to find ways to improve their information-sharing practices. Section 1 of PP 9645 explains that it is an important foreign policy tool to encourage countries to address the information-sharing deficiencies that may affect the national security of the United States. On April 10, 2018, the President issued a new proclamation that amended PP 9645 to remove the visa restrictions imposed on nationals of Chad.

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- 5. What steps is the administration taking to publicize information regarding the waiver applications process?**
- a. Have embassies and consulates been instructed to post information regarding application and appeal processes for waivers on their public websites?**
 - b. Have embassies and consular staff conducted outreach to visa applicants from countries listed under Section 2 of PP 9645 regarding the application and appeal process for waivers?**

As stated above, there is no separate waiver application process; applicants are automatically considered for a waiver based on their visa application, in-person interview, other information provided by the applicant, and other information that may become available during the vetting process.

The Department of State posted information on waivers on [travel.state.gov](https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/presidential-proclamation-archive/june_26_supreme_court_decision_on_presidential_proclamation9645.html) (https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/presidential-proclamation-archive/june_26_supreme_court_decision_on_presidential_proclamation9645.html). As stated on that website, there is no application for a waiver.

The Department informed consular sections that they may link to this information on their websites. In addition, during public outreach, domestic and overseas consular personnel regularly explain the waiver process and encourage applicants to utilize the visa interview to present any information that might establish their eligibility for an exception or a waiver. Applicants whose visa application has been refused under the Proclamation may seek reconsideration of a refusal in accordance with the existing regulations applicable to visa refusals, 22 C.F.R. § 41.121(c)-(d) or § 42.81(e).

- 6. After a denial, is an applicant's file held at the embassy or consulate or returned to the National Visa Center?**

NIV applicants do not have a physical case file. If an IV or DV applicant is refused, the applicant's IV or DV file will remain at the corresponding embassy or consulate and be retained according to the corresponding records' disposition schedule.

7. How does the Department of State adjudicate the “undue hardship” standard without accepting evidence? What is the basis in law for the “undue hardship” standard?

Consular officers have broad discretion to determine what, if any, information or documents may be necessary to assess applicant eligibility for a visa and a waiver. The visa application, supporting documentation, and required interview provide considerable information to the consular officer, who determines an applicant’s eligibility under the undue hardship standard. The consular officer may also request additional documents or information to establish an applicant’s eligibility under the undue hardship, national interest, and/or national security waiver criteria.

As specified in Section 3, paragraph (c) of the Proclamation, consular officers may “grant waivers on a case-by-case basis” only if the foreign national “demonstrates to the consular officer’s or CBP official’s satisfaction” that: “(A) denying entry would cause the foreign national undue hardship; (B) entry would not pose a threat to the national security or public safety of the United States; and (C) entry would be in the national interest.” Thus, the basis for the “undue hardship” standard is the Proclamation itself.

If the consular officer determines, and a consular manager concurs, that the above three waiver criteria have been met – and provided the applicant is otherwise eligible for the visa – a visa may be issued. When assessing the national security and public safety criterion, consular officers naturally seek input from other vetting partners within the government. The Proclamation includes a list of circumstances in which waivers may be appropriate based on individual circumstances, as determined by the consular officer on a case-by-case basis. There is no separate application for a waiver. An individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she may be eligible for a waiver.

All information provided in this attachment and in the appendix is Sensitive but Unclassified.

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Appendix to DOS Official Response to October 12, 2018 Bicameral Letter on PP 9645

All data provided in this Appendix is Sensitive but Unclassified and for the time period:

December 8, 2017 to October 31, 2018

Table 1.A (i) – Number of Applications for Immigrant Visas (IV) from Nationals of Affected Countries

	IV Application Totals		
Nationality	Not Subject	Subject	Total
Chad	24	9	33
Iran		8,545	8,545
Libya		169	169
Somalia		1,837	1,837
Syria		1,566	1,566
Venezuela	3,093		3,093
Yemen		5,226	5,226
Total	3,117	17,352	20,469

Table 1.A (ii) – Number of Applications for Nonimmigrant Visas (NIV) from Nationals of Affected Countries

	NIV Application Totals		
Nationality	Not Subject	Subject	Total
Chad	1,975	204	2,179
Iran	4,663	21,089	25,752
Libya	956	568	1,524
North Korea		62	62
Somalia	912		912
Syria		6,803	6,803
Venezuela	87,573		87,573
Yemen	1,269	2,578	3,847
Total	97,348	31,304	128,652

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Table 1.B – Number of Refusals Unrelated to PP 9645 on Subject Applications

Nationality	Refusals
Chad	124
Iran	3,491
Libya	137
North Korea	9
Somalia	480
Syria	3,054
Yemen	11,994
Total	9,289*

* Because a single application can be refused under multiple grounds, the number of refusals (9,289) exceeds the number of unique applications (8,149) that were refused as of September 30, 2018.

Table 1.C – Issuances under an Exception by Nationality

Nationality	Issuance under an Exception
Chad	11
Iran	982
Libya	37
North Korea	42
Somalia	41
Syria	1,157
Yemen	308
Total	2,578

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Table 1.D-E -- Applications Refused under the Proclamation*

Nationality	1. Failed to meet Undue Hardship and/or National Interest waiver criteria	2. Undergoing Administrative Processing for a Determination on National Security and Public Safety Waiver Criterion	3. Failed to Meet National Security and Public Safety Criterion and Refused under the Proclamation	4. Meets All Waiver Criteria, Visa Not Yet Issued**	5. Total
Chad	48	1	-	4	53
Iran	19,163	5,978	7	144	25,292
Libya	359	146	1	10	516
North Korea	9	1	-	1	11
Somalia	420	869	4	59	1,352
Syria	2,551	1,315	7	85	3,958
Yemen	2,034	2,721	5	367	5,127
Total	24,584	11,031	24	670	36,309***

* Pursuant to the Department's regulations at 22 C.F.R. § 41.121 and 42.81, visa applications must either be issued or refused at the time of the visa application interview. An applicant will be refused pursuant to the Proclamation under section 212(f) of the Immigration and Nationality Act (8 U.S.C. § 1182(f)) while their application undergoes administrative processing for a determination on the national security and public safety waiver criterion. However, applicants whose visa applications have been refused for administrative processing will receive a further adjudication – either an issuance or another refusal – upon completion of administrative processing.

** Once a consular officer determines that an applicant meets all three criteria for a waiver, the timing of visa issuance often depends on how quickly the applicant provides documents required for visa issuance to the consular officer. *See e.g.* 8 U.S.C. §§ 1201(d), 1202(b)-(c). For instance, posts must reach out to the applicant using the contact information provided at the time of application. If the contact information is incorrect or not current, this will cause delays in issuance. Moreover, some immigrant visa applicants are required by the Immigration and Nationality Act or implementing regulations to submit certificates and other documentation that may have expired during the waiver process. For example, IV applicants are required to present valid police and medical certificates. If the information in these certificates has expired, the applicant may need time to renew them. Finally, applicants must present valid passports to the consular officer prior to visa issuance.

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*** 74 additional visa applications were resolved for applicants subject to the Proclamation's travel restrictions on other grounds not covered by the categories of information requested in your letter.

Table 1.F – Number of Applications Meeting all Three Criteria for a Waiver

Nationality	Number of Applications Meeting the Criteria for a Waiver
Chad	31
Iran	413
Libya	50
North Korea	1
Somalia	231
Syria	498
Yemen	992
Total	2,216

Table 1.G – Number of Visas Issued to Applications Meeting all Three Criteria for a Waiver

Nationality	Visas Issued
Chad	27
Iran	269
Libya	40
Somalia	172
Syria	413
Yemen	367
Total	1,546

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Table 1.H – Average Number of Days between when an Application Meets All Criteria for a Waiver and Visa Issuance

Nationality	Average Days* between when an Application Meets All Criteria for a Waiver and Visa Issuance
Chad	28
Iran	14
Libya	17
North Korea	N/A
Somalia	31
Syria	16
Yemen	26
Worldwide average	21

*Numbers rounded to the nearest day

Table 2 – The Number of Waivers Issued to Diversity Visa Lottery Winners

Nationality	Applications meeting criteria for a waiver	Visas Issued
Iran	47	41
Syria	20	15
Yemen	25	16
Total	92	72

All data provided in this appendix is Sensitive but Unclassified.

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