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Immigration: Visa Waiver Pilot Program

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Summary

The Visa Waiver Pilot Program (VWPP) allows aliens traveling from certain designated countries to come to the United States as temporary visitors without having the immigration documents normally required to enter the United States. Some maintain it fosters international travel to the United States and eases the workload of the consular offices abroad. Others observe that it by-passes the most important screening step of who is permitted to enter the United States, cautioning that it may inadvertently stimulate immigration violations. The program was scheduled to expire on September 30, 1997, but temporary extensions were included in both Continuing Resolutions passed in the 105th Congress. The Commerce, Justice, State, and Judiciary (CJS) FY1998 appropriations act (P.L. 105-119) also contained an extension through April 30, 1998. When Congress enacted legislation amending the Immigration and Nationality to extend the VWPP through April 30, 2000 (P.L. 105-173), it also modified the qualifications for the pilot program.

Program Features

Nonimmigrants (i.e., aliens legally in the United States for a specific purpose and a temporary period of time) as a general rule must present valid travel documents to enter the United States. Not presenting valid documents or having no documents at all are grounds for inadmissibility, as specified in the Immigration and Nationality Act. Travel documents consist of a passport and either a nonimmigrant visa or — in the case of Canadians or Mexicans — a border crossing card. Aliens seeking to visit the United States obtain their nonimmigrant visa at consular offices abroad.

The VWPP authorizes the Attorney General to waive the visa documentary requirements for aliens traveling from certain countries as temporary visitors for business or temporary visitors for pleasure (tourists), typically referred to as “B visas” because of



the letter denoting the subsection of the law. Nationals from participating countries simply complete an admission form before their arrival and are admitted for up to 90 days.¹

Although the VWPP greatly eases the documentary requirements for nationals from participating countries, it has important restrictions. Normally aliens entering with a B visa may petition to extend their length of stay in the United States or may petition to change to another nonimmigrant or immigrant status. Aliens entering through the VWPP may only be authorized to extend their stay for emergency reasons and are not permitted to change status. An alien entering through the VWPP who violates the terms of admission becomes deportable without any judicial recourse or review (except in asylum cases).

Issues

How VWPP Countries Were Selected. In addition to extending reciprocal privileges to U.S. citizens, countries must have met the following qualifications to participate: have a low nonimmigrant visa refusal rate for 2 years (averaging no more than 2% over both years and not exceeding 2.5% in any one year); have or be developing a machine readable passport program; and, not compromising U.S. law enforcement interests. Countries must maintain a low visa refusal rate to continue in the program.

Some maintain the nonimmigrant visa refusal rate is too arbitrary because it is based on decisions made by consular officers rather than by the actual behavior of the nonimmigrants; instead, some say a country's rate of nonimmigrants who violate the terms of their visas offers a better criteria for participation. Others point out that the latter data are imperfect and currently exist only as *estimates of visa overstays*.²

When the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208) reauthorized the VWPP, it created a new probationary status for VWPP countries that had not maintained a low visa refusal rate. Countries on probation were determined by a formula based on a disqualification rate of 2%-3.5%.³ Probationary countries with a disqualification rate less than 2% over a period not to exceed 3 years may remain VWPP countries. The law also diminished the role of the Department of State in selection of countries, replacing language that said the Attorney General and the Secretary of State make the determination jointly with language stating that the Attorney General makes the decision in consultation with the Secretary of State.

Consideration of Trade and Tourism. Those in the travel and tourism industry state that the VWPP has done a great deal to facilitate tourism to the United States. The

¹ Countries participating in the VWPP at the beginning of 1998 are: Andorra, Argentina, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, San Marino, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

² Problems that INS has in meeting VWPP data requirements are discussed in a recent report. See: U.S. Department of Justice, Office of Inspector General Report No. 1-97-08, *Immigration and Naturalization Service Monitoring of Nonimmigrant Overstays*, September 1997.

³ "Disqualification rate" is defined as the percentage of nationals from a country who applied for admission as a nonimmigrant who either violated the terms of the nonimmigrant visa, who were excluded from admission or who withdrew their application for admission as a nonimmigrant.

example of Argentina is frequently used to illustrate this relationship; during the first year Argentina was in the VWPP, tourism from that country to the United States grew by 11.5%. Some cite Korea as a country that should be participating in VWPP because of the trade and tourism it offers and contend that this factor should be added to the criteria used to select participating countries. Other proponents of the VWPP, however, contend that the criteria should not be broadened to include tourism potential if the thresholds of refusal rates and visa overstay violations are weakened, arguing that these provisions are essential to safeguard and control our borders.

Temporary Status of the VWPP. Since its enactment in 1986, VWPP has been a temporary program. P.L. 104-208 reauthorized it through September 30, 1997. Supporters of the VWPP maintain that it improved relations with the participating countries because it reciprocates what they have long done — permitting U.S. travelers to visit their countries without visas. They also state there are financial benefits because it reduces the work load of the consular offices and because it increases commerce by facilitating international travel to the United States. The Department of State has long supported the extension of the VWPP.

Others are more cautious about the VWPP, fearing that it may foster nonimmigrant visa overstays and other immigration violations such as employment. They want to ensure that the Immigration and Naturalization Service (INS) has sufficient checks in place to deter these immigration violations before making the program permanent. INS acknowledges that it has found fraud in the program but supports its extension.

Legislation ⁴

The Senate passed legislation (S. 1178) to extend the program on September 26, 1997. The chair and ranking member of the Senate Committee on the Judiciary Subcommittee on Immigration, Senators Spencer Abraham and Ted Kennedy, introduced S. 1178 which would have extended the program for 5 years, until September 30, 2002. The Senate bill also would have increased the 2-year average visa refusal rate limit from 2% to 3% (and correspondingly the visa refusal rate threshold of 2.5% to 3.5% in any one year) for participation in the program.⁵ S. 1178 furthermore would have required that the Attorney General make *precise numerical estimates* for each participating country's visa overstay rate and disqualification rate. Additionally, S. 1178 would have strengthened the requirements for passport security by requiring that all VWPP countries have machine readable passports (not merely working toward having them) and that they have "highly" fraud-resistance passports. S. 1178, finally, would have re-established the lead role of the Secretary of State in selecting VWPP countries in consultation with the Attorney General.

⁴ Hearings were held on June 17, 1997, by House Committee on the Judiciary Subcommittee on Immigration and Claims and on July 17, 1997 by the Senate Committee on the Judiciary Subcommittee on Immigration. Other bills on the visa waiver program include H.R. 203, S. 974, H.R. 1880, H.R. 627, and S. 290.

⁵ According to the State Department's visa refusal rate statistics for FY1996 and FY1997, countries such as Uruguay, Singapore, South Africa and Taiwan may become eligible for the VWPP under current law. If the threshold is raised to 3.5%, countries such as Chile, Greece, Portugal and Zimbabwe may also be considered.

The House Committee on the Judiciary Subcommittee on Immigration and Claims initially reported legislation (H.R. 2412) that would have extended the VWPP for 2 years, until September 30, 1999. H.R. 2412, however, had other provisions pertaining to the extension of religious worker immigration that proved controversial and did not come to the House floor before the September 30, 1997 sunset.⁶ Meanwhile, Congress included a 23-day extension of the VWPP in the Continuing Resolution (H.J.Res. 94, P.L. 105-46). House Committee on the Judiciary Subcommittee on Immigration and Claims subsequently reported new legislation (H.R. 2578) that would have extended the VWPP for 2 years, until September 30, 1999. It also would have required the Attorney General to implement (no later than 180 days after enactment) a program to collect data on nonimmigrants who overstay the terms of their visas and to provide an annual report to Congress on nonimmigrant overstays. The House Committee on the Judiciary ordered H.R. 2578 reported on October 7, 1997.

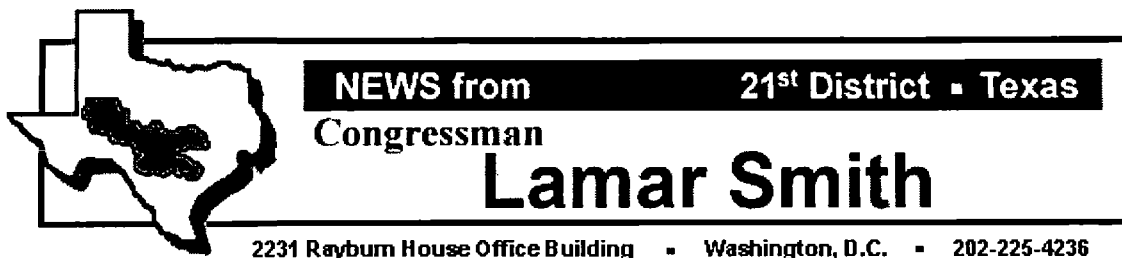
The second Continuing Resolution (H.J.Res. 97, P.L. 105-64) also contained an extension of the VWPP for the duration of the resolution. The conferees for H.R. 2267, the Commerce, Justice, State, and Judiciary (CJS) FY1998 appropriations act (P.L. 105-119), added a provision extending VWPP until April 30, 1998.⁷

On March 25, 1998, the House called up S. 1178 and replaced it with an amended version of text of H.R. 2578. As ultimately agreed to by the House and Senate, S. 1178 (P.L. 105-173) extended the VWPP through April 30, 2000. It also modified the qualifications for the pilot program. The new qualifications are: the average refusal rate was no more than 2.0% over the past 2 fiscal years with neither year going above 2.5% or the refusal rate during the previous fiscal year was less than 3.0%.⁸ It also requires the Attorney General to implement (no later than 180 days after enactment) a program to collect data on nonimmigrants who overstay the terms of their visas and to provide an annual report to Congress on nonimmigrant overstays.

⁶ CRS Report 97-891, *Immigration: Religious Workers*, by Ruth Ellen Wasem.

⁷ §125 of H.R. 2267; H.Rept. 105-405.

⁸ This modification results in Greece and Portugal being added to VWPP.



**Opening Statement of Chairman Lamar Smith
Subcommittee on Immigration and Claims**

**Hearing on Nonimmigrant Visa Fraud in the
Petition-Based and Student Visa Categories**

Wednesday, May 5, 1999

Today's hearing focuses on nonimmigrant visa fraud, specifically fraud with employment-based and student visas.

With aliens paying tens of thousands of dollars to be smuggled into the United States in derelict vessels and across arid and inhospitable deserts, obtaining a visa fraudulently is a very tempting solution for aliens seeking to enter the U.S. illegally.

Who wouldn't choose a comfortable seat on an airplane over an the unventilated hold of a ship or a long distance trek through the wilderness? Traveling with a visa offers safety and comfort. Some even fly first class.

While our primary concern about visa fraud is over its use as a means to facilitate illegal immigration into the United States, we should not forget that it also can be utilized by terrorists and criminals. Front companies that file fraudulent petitions on behalf of aliens who want to work illegally in the United States can just as easily be used as front companies for organized crime.

The INS and Department of State have identified pervasive fraud with some petition-based visa categories. First, let's look at L visas. Those visas enable personnel of multi-national organizations to transfer to offices in the U.S.

A 1997 report by the INS= California Service Center on L visa fraud by Chinese applicants, entitled the AGreat Wall of Deception,@ described how paper companies play a Ashell game@ with phony sales invoices, business contracts and other documents that give the appearance of legitimate business activities.

Site checks of subsidiaries in the United States (the destination where the L visa holders are supposed to work) turned up a Aflea bag motel, a residential home, an immigration consultant=s office, and a legitimate business that allows subsidiary companies to use their address.@

According to the report, 90 percent of the Chinese L visa petitioners investigated were found to have submitted fraudulent documents to the INS. Department of State reporting from China posts described similar levels of fraud with L visa petitions.

Although many fraudulent L visas are denied, the Department of State still issued 38,000

L-1 visas in fiscal year 1998 and over 150,000 have been issued in the past five years. Thousands more acquired L status by changing their nonimmigrant status with the INS while in the U.S. While many of these visas were issued to the employees of well-known, legitimate companies, the true circumstances of many of the petitioning companies was undetermined.

Next, the H-1B Program is not without fraud. A March 1999 report by the INS= Vermont Service Center on Indian H-1B fraud described companies that established subsidiaries in the U.S. and then solicited job candidates and guaranteed them employment in the U.S. for a fee of \$8,000 to \$10,000.

If the applicant did not have the necessary educational background to qualify for an H-1B visa, the recruiting agency would charge an additional fee and provide the applicant with fraudulent educational certificates or employment experience letters.

One of the questions we need to ask today is whether there are ways to eliminate structural vulnerabilities that exist in these visa categories while maintaining them as vehicles that are responsive to the real needs of legitimate companies.

One option would be for the INS to establish a system to track the immigration status of the holders of petition-based visas after they enter the country. These individuals can remain in the United States legally for as long as seven years -- we need to know where they are and what their status is.

Today, in a related matter, we will hear from the INS about the system it is developing, in collaboration with the schools, to monitor foreign students in the U.S.

Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 mandated that the INS set up a system to track foreign students in the U.S.

Congress= primary concern in setting up this system was with students who legitimately enter the U.S. with a visa, but either do not show up at the school, or drop out after a short time and seek illegal employment. Up until now, the INS and the academic institutions have not had an effective tracking system in place.

The ranking member, Ms. Jackson Lee from Texas, is recognized for an opening statement.

The text of this statement and all written statements from witnesses at this hearing are available today at the following web site: www.house.gov/judiciary/6.htm.

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Committee on the Judiciary, Chairman, Subcommittee on Immigration and Claims * Chairman, Committee on Standards of Official Conduct * Committee on Science

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Statement of

Michael R. Bromwich

Inspector General, U.S. Department of Justice

before the

House Judiciary Committee

Subcommittee on Immigration and Claims

concerning

Nonimmigrant Visa Fraud

May 5, 1999

Mr. Chairman, Congresswoman Jackson Lee, and Members of the Subcommittee on Immigration and Claims:

I. Introduction

I appreciate the opportunity to appear before the Subcommittee to discuss the work of the Office of the Inspector General (OIG) with respect to fraud involving nonimmigrant visas and other immigration documents.

Combating nonimmigrant visa fraud is a responsibility shared primarily by the State Department and the Immigration and Naturalization Service (INS). The State Department has primary responsibility for administering immigration laws outside the United States. Specifically, the State Department's Bureau of Consular Affairs administers visa-processing operations at overseas posts. The primary goal of Consular Offices is to provide expeditious visa processing for qualified applicants while denying entry to individuals who pose a security threat or are likely to remain in the United States illegally. The Inspector General from the State Department can address these issues in greater detail.

Domestically, the primary responsibility for controlling entry of non-citizens into the United States falls to INS. When nonimmigrants arrive at a port of entry and present a

visa and passport, an INS inspector determines whether to grant the nonimmigrant entry to this country. If the visa is machine-readable, the inspector scans it. If it is not, the inspector types the nonimmigrant's name and date of birth into the Interagency Border Inspection System (IBIS) - commonly known as the "Lookout System."

This morning I plan to do four things during my testimony: first, provide an overview of the potential for fraud in the nonimmigrant visa program. Second, describe the OIG's role in investigating visa and other immigration document fraud. Third, update the Subcommittee on testimony I provided two years ago this month on the steps INS has taken to address recommendations in our 1996 inspection of document fraud records corrections. And finally, briefly address the potential for fraud inherent in the Visa Waiver Pilot Program (VWPP), which comes up for reauthorization next year.

II. Potential for Nonimmigrant Visa Fraud

In October 1998, the OIG's Inspections Division developed an in-house reference document entitled, "Potential for Fraud in the Visa Program" that focused specifically on nonimmigrants. This document was designed to provide important background information as a prelude to doing further work in this area. To compile the report, OIG Inspectors interviewed staff from INS, the State Department, and the General Accounting Office (GAO). They also reviewed documents from these three agencies as well as relevant legislation. I have copies of this report for members of the Subcommittee and their staff.

Based on our review, we identified four common types of nonimmigrant visa fraud or fraud related to the use of visas:

- A person uses fraudulent documents to obtain a legitimate visa. For example, an individual improperly obtains letterhead from a United States business and creates a letter supporting a false reason for traveling to this country. The State Department generally will issue a B-1 visa (temporary visitor for business). In such cases, the INS inspector has no reason to deny the individual entry into the United States.
- A person obtains a fraudulent visa. An individual can attempt to use the passport and visa of a person who has similar looks and biographical characteristics (e.g., hair and eye color, age) or can purchase an altered document. Accomplished counterfeiters can alter the biographical data and digitized photographs on even the most secure visas in use today.
- An individual may not meet the spirit or intent of the specific visa program. For example, GAO found that 85 percent of individuals requesting religious worker visas are already in the United States and are attempting to adjust status (e.g., from a student visa to a religious worker visa). Many of these individuals are requesting visas through unaffiliated, "storefront churches."
- After arriving legitimately, an individual may overstay his/her visa and plan to reside in the United States "permanently."

We did not find comprehensive data related to nonimmigrant visa fraud. In fact, there is

very little hard data available to gauge the magnitude of visa fraud, a point noted by GAO in its reports on this subject. For example, the State Department does not track visa refusal rates by visa type. Similarly, INS told us that individuals made 42,299 attempts to enter the United States between October 1992 through May 1993 with fraudulent or altered documents. While INS produced these statistics for an audit report, they are unable to update these figures because they do not maintain centralized statistics on fraudulent or altered documents. This lack of comprehensive statistics hinders the ability of the State Department and INS to appropriately respond to visa fraud.

Based on the information we collected, however, potentially the greatest risk to national security and illegal immigration appears to come from nonimmigrants visiting under the VWPP, a subject I will return to later in my remarks. With the extensive use of VWPP and without comprehensive systems to track or without aggressive efforts to identify nonimmigrant visa fraud, it is difficult to provide accurate risk assessments for the various visa classes.

That said, we offer an opinion in our in-house report of the relative risk for each visa type based on the information we reviewed. We also provide for each visa type a description of the visa, the maximum initial period of admission, the number of visas the State Department issued in FY 1996, the number of arrivals INS recorded in FY 1996, and additional information.

III. OIG Role in Investigating Immigration Fraud

The OIG spends almost one-fourth of its Investigations Division resources investigating immigration document-related corruption in INS. During the past five years, 22 percent of all OIG investigations involved document fraud; this percentage is significantly higher for our field offices along the southwest border. A statistical breakdown follows:

	INS Fraud Cases Opened	Total	Employee	Contractor	Civilian
Year		Arrests	Arrests	Arrests	Arrests
1994	105	68	19	0	49
1995	102	63	9	20	34
1996	109	55	7	0	48
1997	193	38	15	1	22
1998	150	26	7	0	19
Total	659	250	57	21	172

To assist the Subcommittee in its examination of this issue, I highlight several examples of investigations of visa fraud or other types of document fraud conducted by the OIG:

- Between 1987 and 1995, four Korean nationals bribed a supervisory Immigration Adjudications Officer in the INS San Jose, CA, office to unlawfully adjust the status of aliens to permanent residence. At least 275 aliens, almost exclusively from Korea, initially entered the United States on nonimmigrant visas. The corrupt INS employee

created false records in INS databases indicating that the aliens changed their status from "nonimmigrant" to "immigrant" (i.e., permanent resident). The INS officer admitted receiving a total of \$450,000 in bribe payments from four Korean nationals who made at least a million dollars from this scheme. The former Immigration officer and the four Korean nationals have been indicted.

- A former INS Officer-in-Charge in Hong Kong was arrested for trafficking in blank Honduran passports (i.e., containing no name, photograph, or biographic data) containing fraudulent U.S. nonimmigrant visas. The passports and nonimmigrant visas were apparently being sold in Hong Kong to Chinese nationals who would use them to enter the United States. The OIG investigated this case jointly with the Hong Kong Independent Commission Against Corruption.

- In the Eastern District of New York, an INS immigration inspector assigned to JFK International Airport was arrested on charges of providing altered U. S. passports and other identity documents to illegal aliens. The inspector was videotaped accepting a total of \$10,000 in bribes in exchange for identity packages that contained U.S. passports, INS Alien Registration Receipt Cards (Green Cards), and drivers' licenses.

These investigations are essential to protect the integrity of the lawful immigration process and to help deter INS employees who might be susceptible to corruption. The experience and expertise of OIG investigators make this office uniquely suited to conduct these complex investigations.

IV. Update: Inspector General's May 1997 Testimony

I would like to update the Subcommittee on actions taken by INS in response to the recommendation made in our report, Immigration and Naturalization Service Document Fraud Records Corrections, that formed the basis for my testimony before this panel in May 1997.

As you may recall, our inspection found that in successful document fraud investigations the government generally prosecutes the vendors of the documents, the middlemen who paid bribes, and any corrupt INS employees who accepted bribes. If the vendors and middlemen are illegal aliens, INS usually initiates deportation proceedings. What was less clear was what INS did with the aliens who obtained immigration documents by fraudulent means.

Our inspection found that INS took no action against these aliens. Not only did INS fail to prosecute or deport these aliens, it had no method of even flagging the names or alien numbers ("A-numbers") in INS's record systems to alert INS officers who subsequently came into contact with these aliens. Consequently, these aliens were free to continue to reap benefits from an illegal scheme and even use one illegally obtained benefit to obtain additional benefits.

We pointed out the deterrent value of pursuing and deporting aliens identified through document fraud investigations while recognizing constraints on INS's ability to do so. Short of deportation, we recommended that INS correct fraudulent database entries and

develop a flagging system to alert INS personnel to alien participation in fraud schemes.

In its response to our report, INS agreed to develop a "fraud flagging system" and to begin working on the necessary enhancements to its automated systems. INS has since provided us with a copy of its "Flagging of Fraudulent Records in INS Automated Systems Operational Policy and Procedures" document and reported that the automated system has been implemented. Based on this information, we closed the recommendations in our Inspection report. This is the type of issue in which OIG follow-up work would be warranted; however, we have not yet done such work because of resource constraints.

V. Visa Waiver Pilot Program

The OIG issued a report in March 1999 that examined the potential for fraud in the VWPP, a program that waives visa requirements for visitors from 26 countries who travel to the United States for business or pleasure. In FY 1997, 14.5 million visitors entered this country under the VWPP, representing 51 percent of all nonimmigrants admitted.

The VWPP allows aliens who might otherwise be inadmissible or who present law enforcement or security concerns to avoid the pre-screening that consular officers normally perform on visa applicants. All that is required is a passport from one of the 26 participating countries. Our review found that terrorists, criminals, smugglers, and others have attempted to enter the United States using stolen blank passports from a Visa Waiver country or by altering or counterfeiting these passports.

While the recommendations in our report will assist INS in reducing the risks of the VWPP, we recognize that many important issues related to the VWPP are beyond INS's control. These include the State Department's ability to nominate countries for the VWPP that INS considers problematic, when or whether participating countries will be required to implement "machine readable" passports that will facilitate the inspection process and are fraud resistant, and coordinating participating countries' reporting of stolen passports. These are problems that may potentially compromise INS's inspection process.

I understand that the Subcommittee may address this issue in detail next year when the VWPP program comes up for reauthorization. We stand ready to assist the Subcommittee in its deliberations.

VI. Nonimmigrant Visa Overstays

Finally, I wanted to mention a Special Investigation by my office released in March 1998 - "Bombs in Brooklyn: How the Two Illegal Aliens Arrested for Plotting to Bomb the New York Subway Entered and Remained in the United States" - that highlighted the threat that some non-immigrant overstays may be involved in terrorist activities. In this particular investigation, one of the two Palestinians arrested for allegedly planning to bomb the Brooklyn subway illegally remained in the United States after his visitor's visa expired.

We found that because the Palestinian's alleged purpose for traveling to the United States was solely to catch a connecting flight to Ecuador, he should not have received a visa that

permitted him to remain in this country longer than the time needed to board a connecting flight. We recommended that the INS and the State Department more carefully consider when "transit without visa travel" is appropriate; in this particular case, the Consular Office did not even consider this status as an option.

As I testified at the Subcommittee's March hearing on nonimmigrant overstays, our investigation discovered significant differences of understanding between INS and the State Department about various officials' roles in the visa process. Neither the immigration inspector at the port of entry nor the Consular Officer who issued the visa thought it was his or her role to verify that the Palestinian actually had a ticket to Ecuador or adequate funds for the trip. Neither thought that it was his or her responsibility to consider restricting the period of his stay to something less than the 29 days permitted under a "person in transit" or C-1 visa. We believe that this confusion over the appropriate role of INS and State Department officials needs to be addressed and clarified in the interests of controlling illegal immigration.

VII. Conclusion

Nonimmigrant visa fraud poses a threat to the orderly operation of our immigration system and both the State Department and Justice Department have vital roles to play in this process. As resources permit, the OIG will continue to conduct investigations, inspections, and audits that address some of the key vulnerabilities that exist in the system.

I would be pleased to answer any questions.

STATEMENT OF
JACQUELYN L. WILLIAMS-BRIDGERS
INSPECTOR GENERAL OF THE
DEPARTMENT OF STATE, AND THE
UNITED STATES INFORMATION AGENCY, INCLUDING
INTERNATIONAL BROADCASTING

FOR THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
U.S. HOUSE OF REPRESENTATIVES

May 5, 1999

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify before your subcommittee on nonimmigrant visa fraud. I am pleased to provide an overview of our work relating to consular antifraud efforts in the Department of State, as well as some of our activities as they relate to OIG visa fraud investigations.

Summary

Each year, millions of individuals apply for passports and visas at the more than 230 U.S. embassies and consulates throughout the world. During FY 1998, our overseas missions processed over 311,000 passport applications, 700,000 immigrant visa applications, and over 7 million nonimmigrant visa applications. Antifraud units at overseas posts conducted over 142,000 consular fraud investigations.

Attempts to falsify, alter, or counterfeit U.S. visas or passports, or obtain genuine documents by fraudulent means are a constant problem both within the United States and overseas. Fraud associated with these official documents focuses on either the document itself through counterfeiting or altering it, or on the issuance process through trickery or bribery. Defeating these efforts requires secure documents that are difficult to counterfeit and easy to detect when altered. Additionally, countering fraud requires competent and honest officials who are well trained and informed about common methods of fraud. People are willing to pay a tremendously high cost to obtain entry into the United States. Depending on the locale, quality, and type of a counterfeit visa, the cost can range anywhere from \$1,500 to \$5,000.

The Department has faced significant challenges in its visa processing operations over the years. Since 1987, immigrant and nonimmigrant visa processing has been listed as a material weakness in the Department's annual Federal Manager's Financial Integrity Act report. The Department has cited unfilled computer needs, insufficient consular staffing, and inadequate interagency exchanges of intelligence on inadmissible aliens as problems that create a greater likelihood of fraud by weakening management

controls over consular operations.

Since 1988, my office has also identified a number of weaknesses in the Department's consular operations, particularly in the areas of staffing, training, and program management. Currently, my office is reviewing the Department's consular antifraud programs. While we have not yet issued a final report, my statement includes observations based on our ongoing review.

In recent years, the Department has made significant progress in enhancing visa and passport processing operations. It has introduced a photodigitalized passport, enhanced data sharing via the Interagency Border Inspection System, installed modernized consular systems worldwide, improved effectiveness of the namecheck system, increased efforts to counter document fraud, and is introducing a more secure border crossing card in Mexico. The Department reports that its TIPOFF program, using all-source, U.S. intelligence information, has been used to deny U.S. visas to over 400 terrorists since 1997. In addition, the Office of Consular Fraud Prevention Programs has shifted focus from looking at individual fraud cases to identifying systemic fraud-related issues across a large number of cases. The Department has also developed a model for ranking high-fraud posts and now issues a monthly magazine devoted to global and regional fraud trends.

In my statement today I will discuss ongoing challenges the Department faces in preventing consular fraud. These include staffing shortages in key areas, inexperienced staff, and insufficient training for consular line officers. I will also address problems in the management of antifraud programs including a lack of support for overseas post operations, insufficient analysis of data to provide fraud trends, and inadequate supervision in antifraud units overseas. Finally, I will discuss our investigative work as it pertains to passport and visa fraud cases. My discussion of the Department's antifraud efforts is not limited to nonimmigrant (NIV) fraud, but rather applies more broadly to all types of consular fraud.

Consular Fraud

The Department's antifraud programs are designed to deter applicants, including terrorists, organized criminals, drug traffickers, foreign smuggling rings, and others wanting to illegally immigrate to the United States, from illegally obtaining visas or passports. In the Department, the Office of Consular Fraud Prevention Programs is responsible for developing policies and programs to ensure the integrity of U.S. passports and visas and to prevent consular fraud; coordinating passport, visa, and consular cases involving document fraud; acting as a liaison with other government agencies on fraudulent matters; and providing antifraud training for passport agents and consular officers.

At overseas posts, consular officers are the first line of defense against consular fraud. When consular officers become suspicious of an applicant or the documentation used to support an application, they may refer the case to the antifraud officer for investigation. The antifraud unit will attempt to verify the applicant's identity and the application documents by phone, mail, site visits, or a combination of these techniques.

Consular Staffing

In 1997, the Assistant Secretary of Consular Affairs testified before your subcommittee, and cited the importance of adequate staffing levels to effective fraud prevention. My office's 1995 report on the nonimmigrant visa process, and 1997 report on the machine readable visa program also stressed the importance of staffing and identified problems related to inadequate staffing levels for consular operations.

Overseas consular offices and antifraud units continue to face staffing shortages. High-fraud posts are not able to attract enough experienced consular officers, or enough full-time, experienced antifraud officers because these posts are generally in undesirable locations and have heavy workloads. In addition, no correlation exists between the fraud level of a post and whether that post has a full-time antifraud officer. In the course of our work we have found that many high-fraud posts lack full-time antifraud officers, while many moderate- to low-fraud posts employ such officers on a full-time basis. Of the 12 full-time antifraud officers in the Department, only 4 are assigned to high fraud posts.

Antifraud units also have difficulty retaining Foreign Service national (FSN) investigators because investigator positions are classified at a lower grade than investigator positions for other agencies. High turnover of such staff, who leave for better paying positions, has a negative impact on the effectiveness of antifraud units.

The Department also needs to better match the expertise of its staff with antifraud program priorities and workload. The overwhelming numbers of antifraud investigations relate to visa applications at overseas posts, however the majority of staff has experience working primarily in domestic passport operations. In addition, a 1995 reorganization of the Office of Consular Fraud Prevention Programs changed staff responsibilities from reviewing individual cases to identifying trends and providing operational support. Many employees did not have the skills necessary for the new responsibilities.

At overseas posts, inexperienced consular officers often rely too heavily on antifraud unit staff for routine cases, limiting the time antifraud staff can devote to more serious antifraud efforts. At posts we visited, we found a number of routine visa fraud cases referred to the antifraud units that line officers should have been able to recognize and handle themselves. These types of fraud cases were forwarded to the antifraud unit partly because posts lacked clear guidelines for case referrals. Also, insufficient training and experience caused consular officers to question their own judgement.

Training

Inadequate training for consular officers has been a problem identified in several past OIG reports. Our ongoing review of the Department's consular fraud prevention programs has focused on the antifraud training provided to junior officers and passport specialists, antifraud officers and passport fraud managers, and antifraud unit FSN investigators. While the Department has made improvements in its antifraud training efforts, deficiencies still exist.

Antifraud training for the junior officers is inadequate. The Department's basic consular course, which all consular officers are required to attend prior to departing for post, contains a 4-hour antifraud training segment. Because fraud varies from country to country, this training segment is general in nature. The Department relies on posts to provide country-specific antifraud training. We found that officers were receiving limited, or in some cases, no country-specific antifraud training prior to serving on the visa lines. Instead, officers were expected to learn on the job. As a result, we found that officers did not have confidence in their ability to decide whether to approve visas and were routinely sending applications to the antifraud unit, overwhelming the antifraud officers with routine cases that should have been dealt with on the line.

In response to OIG's ongoing review, the Department has already made some improvements to its antifraud officer training. The Department has initiated a 1-week course for antifraud officers, which it plans to offer annually. Prior to this there was no specific training related to this function. While this training is a good initiative, the Department needs to ensure that those antifraud officers assigned to high fraud posts attend this training. The Department has also initiated a series of regional training conferences for FSN antifraud unit investigators. This is the first formal training for many of the investigators.

The Department needs to expand the concept of regional training to the antifraud officers. Although the Department frequently offers regional training conferences to deliver and reinforce training for many jobs overseas, with the exception of one post-initiated effort, no regional training has been devoted specifically for consular antifraud officers. Regional training would help improve and coordinate posts' antifraud efforts by disseminating regional fraud trends and patterns that may otherwise go unnoticed, allowing officers to share best practices and unique antifraud tools or techniques, and improving communication among the officers.

Fraud Program Management

Support to Overseas Posts

The Bureau for Consular Affairs is responsible for providing antifraud guidance and support to passport agencies and overseas posts. Site visits by Washington staff to posts and passport agencies are one method of support by identifying and correcting antifraud operational deficiencies, providing training, obtaining hands-on knowledge of fraud trends, and establishing working relationships between the Department and the post or passport agency visited. However, site visits are infrequent and rarely include visits to those posts with the highest fraud.

Instead of prioritizing site visits based on the fraud level, posts were being selected based on requests from a post and on invitations to consular or other conferences. For example, of the 37 overseas site visits made by Washington staff during FY 1997, only 2 were to posts ranked in the top 10 high-fraud category, and only 4 were ranked from 11 to 20 for high fraud. When site visits have been conducted, the quality of the visits has been inconsistent, since there are no standardized written procedures for reviewing the operations or reporting the results of the visits. As a result of the lack of visits to these locations, deficiencies in antifraud operations continue, unnoticed by the Department. By neglecting to make site visits, the Department missed opportunities to improve its understanding of field operations and to train entire consular sections and passport agencies. More recently, the Department has conducted site visits to more high fraud posts such as Manila, Kingston, and Santa Domingo.

Antifraud officers at posts are also not provided with the basic guidance needed to run an antifraud operation. Officers assigned as antifraud officers are often inexperienced and untrained for the position and do not have the knowledge or background to do an adequate job. Few posts overseas maintain fully-staffed antifraud units, therefore officers must generally start from scratch in developing procedures. For example, at the sixth highest ranked fraud post, the antifraud unit consisted of a part-time junior officer in a rotational position and a newly hired, inexperienced FSN investigator. Antifraud officers at posts we have visited want to perform their jobs effectively but were frustrated by the lack of guidance. Lack of guidance resulted in serious management deficiencies, such as inadequate supervision of FSN investigators, insufficient or nonexistent case management tracking systems, poorly documented investigative files, and failure to set workload priorities and control workflow.

Data Analysis and Verification

We also found that posts were not adequately monitoring their nonimmigrant visa operations for fraud. There are several methods by which this can be done such as: analyzing Immigration and Naturalization Service data on applicants turned away at the border; sampling prior issuances to determine whether the applicants returned to the host country as required; or routinely verifying the return of applicants who obtained visas under the posts' referral programs.

When applicants are turned away from U.S. borders, documentation detailing the actions is routinely sent to the applicable post. While posts generally review this documentation on an individual case basis, few posts we visited ever performed an overall analysis of this information. One post began doing this at our suggestion and subsequently reported back that its analysis had helped develop information on a smuggler who was able to enter the United States five times on a photosubstituted Machine Readable Visa. The analysis also led to the arrest of two visa vendors, provided leads for future investigations of certain travel agencies, and resulted in post's restricting the use of the drop box for certain other suspect travel agencies. The review also identified operational weaknesses on the visa line and helped the antifraud officer to focus the training of the line officers. In fact, this particular post ended up recommending such analysis to the Department as a best practice.

Conducting samples of prior issuances to identify which applicants remained illegally in the United States is also a method to monitor fraud. These reviews, called validation studies, are recommended by Washington as a best practice, but in actuality are rarely conducted by posts. Those posts that have conducted studies have been able to use the information to identify which categories of applicants that are higher risk and therefore require interviews, and which categories of applicants can have interviews waived. In many cases, this not only helps to identify fraud patterns and trends, but also helps to streamline nonimmigrant visa operations by reducing the number of applicants who are required to appear in person. The Department has reported that it has completed a statistical sampling model for

validation studies, and has piloted it successfully at six posts. However, unless the Department has an enforcement plan, effective implementation of this practice by posts is doubtful.

Consular sections often use referrals from travel agencies, businesses, universities, and U.S. personnel at post to facilitate visa processing. This allows low-risk applicants to bypass the interview process, thereby relieving consular officers of heavy workloads, facilitating the visa process for host country officials, and allowing officers to help important contacts. These programs, however useful, are extremely vulnerable to fraud and need to be closely monitored for noncompliance and abuse. We have found that posts rarely conduct spot-check verifications to determine whether the applicants remained in the U.S. illegally.

Antifraud Unit Supervision

Supervision over FSN investigators is lax at many posts, often resulting in internal malfeasance. Investigators are especially vulnerable because of the independent nature of their day-to-day work and their frequent direct contact with those people who are committing fraud. American officers rarely, if ever, accompany the investigators on their field investigations. Other supervisory controls are often lacking. Officers often do not control the investigative process by establishing priorities, assigning cases, and reviewing investigative reports, but instead delegate this function to the supervisory investigator.

These weaknesses can often be attributed to the overall lack of full-time antifraud officers at posts. Antifraud responsibilities are often ancillary and therefore officers have little time to focus on antifraud work. As a result, there have been several instances of malfeasance, which have been identified through outside sources, not through management controls. At one such post where my office identified serious supervisory deficiencies, two of the investigators were subsequently fired due to evidence of visa fixing.

OIG Investigations of Passport and Visa Fraud

OIG is mandated to prevent and detect waste, fraud, and mismanagement. Specific allegations or other information indicating possible violations of law or regulation are investigated by OIG special agents supported by experts from other OIG offices as appropriate. For the most part, OIG's investigative caseload is reactive.

The Office of Investigations, for its part, historically has conducted passport and visa fraud investigations, primarily targeted against employees of the Department who are part of these schemes. Often the investigations involve cooperative efforts with the Department's Bureau of Diplomatic Security and with other law enforcement agencies.

Visa and passport fraud currently comprises over 25 percent of the cases being investigated by OIG. Our cases include a broad range of malfeasance related to consular fraud. For example, in 1998, OIG investigated a case involving "marriages of convenience" for illegal aliens currently in the United States. OIG, working with INS and the Federal Bureau of Investigation, identified the marriage broker who had arranged at least 30 sham marriages between aliens and U.S. citizens over a 5-year period.

In 1996, a joint investigation conducted by OIG and INS uncovered an operation run by an individual who was illegally obtaining nonimmigrant tourist visas, selling fraudulent documents and U.S. passports, and smuggling aliens into the United States. Also in 1996, OIG conducted a joint operation with INS, on a case involving visa swindling, forgery, and passing fraudulent identity documents to defraud the INS. Using an undercover operative, INS and OIG purchased numerous documents and a fraudulent political asylum package. It is believed that the subjects filed over 1,200 false political asylum applications, with unreported income from the scheme in excess of \$1 million. In a passport fraud case, OIG conducted an undercover operation in which an individual sold a fraudulent passport to a confidential informant. The individual had sold at least 20 such passports for \$3,000 each.

Some of OIG's investigations also include fraud allegations in the H-1 nonimmigrant visa program. These investigations are typically brought to our attention by informants and through contacts with other Federal, State and local law enforcement agencies. The H-1B program permits eligible foreigners to

enter the U.S. temporarily to perform services in a specialty occupation that requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation. It may require a baccalaureate degree or equivalent experience in a specific occupational specialty.

Fraud involving the H-1 visa program often involves large scale and complex operations. Joint investigations and the creation of task forces are particularly useful and often necessary when dealing with H-1 visa fraud. Moreover, the magnitude of the smuggling operations usually associated with these fraud cases requires significant investigative resources.

In our latest semiannual report, I reported on a case involving selling fraudulent H-1B nonimmigrant visas to illegal aliens. A joint investigation was initiated with the U.S. Customs Service, INS, the U.S. Social Security Administration's Office of Inspector General and my office. The investigation developed evidence that an individual, posing as a financial and legal consultant in a storefront office, was manufacturing fraudulent H-1B visas, as well as INS entry stamps and INS employment authorization stamps, and was inserting them into passports supplied by the subject's customers. The passports containing the fraudulent documents would then be used as documentation in support of applications for social security cards and driver licenses. Judicial proceedings are pending in U.S. District Court on this matter.

* * *

This concludes my statement Mr. Chairman. Thank you for the opportunity to testify before the subcommittee. I look forward to answering any questions you may have.

STATEMENT OF
WILLIAM R. YATES
ACTING DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER
OF THE
IMMIGRATION SERVICES DIVISION
IMMIGRATION AND NATURALIZATION SERVICE (INS)

BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
JUDICIARY COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
2237 RAYBURN HOUSE OFFICE BUILDING

MAY 5, 1999, 10:00 A.M.

Thank you, Mr. Chairman and Members of the Subcommittee, for the opportunity to appear before you today to discuss this important issue. I last spoke before you on immigration benefit fraud on May 20, 1997. Today, I will discuss the Immigration and Naturalization Services' (INS') investments and initiatives in fraud detection since that time and their current status.

INS' Commitment to Fraud Prevention and Detection

The INS encounters two types of immigration fraud: fraud relating to applications or petitions for immigration benefits and document fraud. Fraud relating to petitions for immigration benefits (or immigration benefit fraud) is any misrepresentation of fact with the fraudulent intent to gain an INS benefit. Document fraud consists of the creation and or utilization of fraudulent documents to enter and/or remain in the United States. The former is particularly problematic, if undetected, in that it may result in the issuance of valid documents.

Immigration benefit fraud has increased both in scope and complexity in recent years. As INS has increased enforcement pressure at borders and at ports of entry aliens have increasingly resorted to immigration benefit fraud as an alternative means to enter and remain in the United States. Although immigration fraud is certainly not new, the volume and complexity of the fraud schemes and the exploitation of the benefit petition process by criminals and criminal organizations generate serious concern.

During the first half of FY 1999, INS received approximately 158,000 I-129s (Petitions for Nonimmigrant Worker) and completed approximately 146,000. INS denied a total of approximately 7% of the 146,000 petitions completed (for all reasons combined). This denial rate is consistent with prior year reports. For all fraud cases, including benefit fraud, Servicewide reports during the first 5 months of Fiscal Year 1999 indicate that presentations for prosecution far exceeded anticipated midyear goals. The actual number of fraud conspiracy investigations presented for prosecution Servicewide was 164 cases.

These cases accounted for the presentation of 247 principals for prosecution. For those fraud prosecutions involving immigration benefit fraud, the number of immigration benefit petitions related may be one or 10,000. INS has also increased Special Agent attention to fraud activities. Based on the hours reported during first 6 months of FY 1999, INS will devote the time of nearly 200 Special Agents to fraud.

The INS is committed to detecting fraud. The INS has increased programs to combat and prevent fraudulent visa petitions and student petitions that would result in the issuance of valid immigration documents if approved. INS has concentrated its efforts at detection of fraudulent visa petitions the Service Centers where the majority of nonimmigrant worker petitions are filed. The INS is also piloting a new database system for student petitions that may prove to be a powerful safeguard against student visa fraud. The INS also has several initiatives underway to combat and prevent the creation of fraudulent documents, including the Forensic Document Laboratory and the Integrated Card Production System.

Fraudulent Benefit Petition Detection and Prevention

Immigration Benefits Fraud in Nonimmigrant Petitions

While improvements in forensic document capability and improvements in the technology used to create permanent resident cards, and other INS documents, has combatted document fraud, these efforts have created potential for fraud in petitions for H1 (temporary skilled workers) and L1 (intracompany transferee, specifically designed for large, multinational companies) nonimmigrant visa programs. Prior to these anti-fraud document efforts, immigration documents used to be much more widely available in the counterfeit market.

INS' Service Centers receive approximately 98% of all nonimmigrant worker petitions filed with the Service. As a result, they have created anti-fraud operational units to detect and investigate fraudulent applications. The Service Centers have initiated several anti-fraud measures, including: a check by the Service Center of the requesting company and address in INFOTEK (a commercially available database of public source information that provides corporate record information, zoning for a provided address, etc.), site visits by either the Service Center or INS office closest to the petitioning company, and computer assisted link analysis. These measures are employed when the Service Center receives petitions from small or new companies with little or no prior petitioning record, and/or companies having problematic past records with the Service. During site visits INS verifies the legitimacy of the company and that the beneficiary is actually employed there and performing the duties specified in the petition. The Service Center's Special Agents conduct site visits in the local area for H1 and L1 petitions. For companies outside the Service Center commuting area, the Service Center transfers the case to a Special Agent assigned to the local office with jurisdiction. The Service Centers have substantially increased their ability to use automated systems to conduct immigration benefit fraud link analysis. Because the four Service Centers each cover large geographical areas, opportunities exist to uncover large scale regional fraud conspiracies. Intelligence research specialists assigned to the Service Centers use commercial database tools as well as data from INS systems to link individual fraud cases, then continue to provide support for field investigations and prosecutions.

H1-B Petitions

The H1-B category requires a baccalaureate or higher degree in a specialized field. Currently 115,000 persons are allowed to enter the United States (U.S.) annually under the H1-B classification. The individual must work in the specific job and for the requesting company. INS has received and processed these petitions for many years. Recently, however, anecdotal reports by INS Service Centers indicate that INS has seen an increase in fraudulent attempts to obtain benefits in this category. These fraud schemes appear to be the result of those wishing to take advantage of the economic opportunities available in the U.S. The INS encounters 2 primary types of H1-B fraud: either the fraud on the part of the requesting employer and/or the beneficiary.

Examples of fraud associated with the requesting company include instances where: the company is

non-existent and/or operating from a post office box, residence, apartment, or many companies are sharing one of the above. Often the requesting company acts as an employment agency, petitions for the foreign workers, but then attempts to find them other jobs, with associated additional fees, paid for by the intending company. In some cases, an existing company petitions for employees, but terminates them on arrival, enabling an otherwise ineligible person to enter into the U.S. These actions are accomplished both with and without the beneficiary's advance knowledge.

Beneficiary fraud involves the falsification of either the education or prior job experience of the petitioner. This information is difficult for INS to verify as it originates from foreign sources and the format or form for submission by foreign businesses and schools is not standardized. These documents are easily falsified and, currently, the INS must rely on the American Consulate personnel as the means of verification. The employer may not know that the information is false.

As an example, more H1-B visas are issued in India than anywhere else in the world. The American Consulate in Chennai, India (AmCon Chennai) processed 20,000 H1-Bs last fiscal year, more than any other post in India. As early as 1996, AmCon Chennai estimated that a significant percentage of their H1-B petitioners, almost all of whom were computer programmers, were misrepresenting their academic or professional credentials. The INS Service Centers worked with the AmCon Chennai in a joint effort aimed at verifying claimed education and work experience from the petition submitted to the INS. These joint efforts were initiated one year ago. Between the inception of the joint effort and March 31, 1999, of the 3,247 cases referred to AmCon Chennai's anti-fraud unit, they were unable to verify the authenticity of close to 45% of the claims made on the petitions. Twenty-one percent of the work experience claims made to the INS were confirmed to be fraudulent in this investigation. In the cases where we are unable to verify the authenticity of the claims, INS issued an "intent to deny" to the petitioner, providing the petitioner with the opportunity to refute or overcome the presumption through countervailing evidence. The investigation and joint effort continues.

L1 Petitions

The L1 category was designed to allow a foreign company to send executive or managerial personnel to a U.S. subsidiary. Some examples of fraud schemes found in this category include instances where the petitioning company is started in the U.S. with no parent company overseas, or where the petitioning company does not exist. In the first instance the parent company is either nonexistent, or has no relationship to the U.S. subsidiary. Often, multiple companies will use the same address, will lease store fronts, or will operate from post office box addresses, residences, or apartments.

INS often relies upon consular offices and embassies overseas to verify the foreign parent company information. Nationals most commonly encountered by the INS utilizing the above L1 schemes are from China, Russia, and Brazil. Of the site checks done by the Texas Service Center on 108 Chinese companies in the Houston, TX area that had submitted petitions for L1 employees, 37 were determined to be involved in fraudulent schemes similar to those listed above, and the case was referred to the adjudications section with a recommendation to issue an "intent to deny".

Coordinated Interagency Partnership Regulating International Students (CIPRIS)

The INS and the Department of State have encountered visa fraud in the current, paper-based process for establishing visa eligibility for F, M, and J student or exchange visitor and their dependents. Because there is no system against which the consular officer can check, and because verifying the authenticity of each individual form I-20 (Verification of Nonimmigrant Student Status Eligibility) or IAP-66 (Certificate of Exchange Status Eligibility) is impractical, some aliens may use forged forms and counterfeit supporting documents to obtain F, M, and J visas. In cases where the forged forms and/or counterfeit supporting documents are suspect or are submitted to posts with historically high fraud rates, then individual beneficiaries are interviewed. Consular officers will check the beneficiary's eligibility documents with the alleged school or exchange sponsor to verify the legitimacy of the I-20/IAP-66.

Once issued a visa, the alien travels to the United States and applies for admission through a Port of Entry (POE). The alien is admitted on the basis of a valid visa and the I-20/IAP-66 forms and supporting

evidence. The POE transmits the master copy of the form I-20/IAP-66 for data entry into either the INS' Student Schools (STSC) data system or the United States Information Administration's Exchange Visitor Information System (EVIS). Once the master copy of the I-20/IAP-66 has been data-entered, the school or exchange program reconciles the list against their records. Some aliens, posing as F, M, or J students or exchange visitors are, therefore, able to enter the U.S. because these systems are not connected to consulate posts or POE's. INS is usually alerted to this fraud long after the malafide alien has been admitted to the U.S.

The Coordinated Interagency Partnership Regulating International Students (CIPRIS) system is an electronic interactive process that has the potential to reduce all F, M, or J visa fraud as described above. In CIPRIS, the school or sponsor creates the eligibility record and transmits it via the Internet to the INS' CIPRIS data system. The CIPRIS system verifies the legitimacy of the school/sponsor, and the Designated School Official/Exchange Program's Responsible Officer, as well as the program information listed on the alien's petition against this record, and sends a notice to the alien overseas. The alien brings the notice to the Consulate, along with evidence in support of their visa petition.

At the Consulate, the consular officer verifies the legitimacy of the alien's record in CIPRIS. If the school/sponsor record is not in CIPRIS at the time of visa petition, the alien's visa petition is denied. If a record exists in CIPRIS, the consular officer then interviews the petitioner and verifies the authenticity of supporting evidence and enters the decision in CIPRIS. If approved, the visa information, passport information, and photo/fingerprint of the alien are downloaded into CIPRIS, and the system notifies the school/sponsor of the alien's visa issuance. At the time the alien appears at the POE for admission, the inspector is able to verify the visa, passport, and appearance of the alien against the data in CIPRIS. The inspector updates the system to reflect whether the alien was admitted, deferred or denied admission. This action results in the notification of the school/sponsor from CIPRIS via the Internet. When the alien enrolls or registers at the school/exchange program, the school/exchange program, via the Internet, updates the alien's record in CIPRIS. If the alien fails to enroll, the school/exchange sponsor updates the alien's record in CIPRIS, and CIPRIS flags the record as a "no show" initiating look out procedures by the Service.

CIPRIS is a joint partnership effort of the INS, the Department of State, the United States Information Agency, and the Department of Education, working in close relationship to schools, universities and exchange programs. CIPRIS is currently being pilot tested at the INS Atlanta Port of Entry and district office, the Texas Service Center, Department of State and United States Information Agency headquarters, and 21 pilot institutions located in the states of Georgia, Alabama, North and South Carolina.

Fraudulent Document Detection and Prevention

Forensic Document Laboratory

The INS Forensic Document Laboratory (FDL) provides a wide variety of forensic document analysis and support services to all INS programs in the enforcement of the immigration laws. Support is also provided to other Federal, State, and local agencies in joint operational initiatives involving immigration fraud. FDL services include: the scientific examination of questioned document evidence; the provision of testimony as expert witnesses in judicial proceedings and hearings; technical advice and assistance in major criminal cases involving fraudulent documents; training programs in the detection of fraudulent documents; the identification of document evidence; the production and dissemination of "Document Intelligence Alert" bulletins; collection of document exemplars; real-time assistance via the Photophone network in resolving questions concerning suspect travel documents and identity documents; and guidance to INS Headquarters program managers and foreign immigration authorities on policies and procedures involving document fraud.

Visa fraud is one such area in which FDL staff support INS field personnel. The INS Field Offices request forensic examinations of suspect immigration and identity documents used in status claims. Field personnel also utilize the Photophone network to obtain immediate assistance from FDL Intelligence staff in determining the disposition of suspect documents. In addition, the FDL provides

advice and assistance to the Department of State Office of Fraud Prevention Programs and the Bureau of Diplomatic Security in common efforts to enforce the immigration laws.

The INS Service Centers also have small forensic document labs on site because of the large number of petitions and documents received. These labs are able to focus on the less complex and more common detections and rely on the support and expertise of the FDL for the more complex cases.

Creation of New INS Documents with Heightened Security

Over the last several years, the INS has initiated processes to create new and more secure immigrant documents to both prevent the creation of counterfeit documents and to increase detectability of counterfeit documents. These initiatives include the creation of new permanent resident cards, employment authorization cards, and LaserVisas (in conjunction with the Department of State).

These documents take advantage of improvements in technology; making them more difficult and significantly more expensive to counterfeit.

Recent INS Fraud Prosecution Efforts

The following case scenarios illustrate the variety and extent of immigration fraud that the INS must combat.

In Los Angeles this past November, INS undercover agents executed a search warrant for two storage facilities and seized more than 2,000,000 counterfeit identification documents. These documents included resident alien cards, Social Security cards, and driver's licenses from 9 states. The INS Forensic Document Laboratory has linked counterfeit documents seized in more than 80 other INS cases from across the country as being manufactured by the same organized crime group that was responsible for producing the stockpile seized in the Los Angeles raid. Commissioner Meissner has said of the operation, "We put out of business what we believe to be the largest organized crime group responsible for manufacturing and distributing phone identification documents in the United States."

Also in Los Angeles, a college student from Taiwan was found to be arranging marriages for other F1 students in exchange for the student obtaining a reduction in tuition costs.

An undercover investigation conducted jointly by INS and the Office of the Inspector General led to a 19 count indictment against an Alcohol Tobacco and Firearms Agent, an attorney, and two immigration brokers in March 1998. Those indicted had attempted to bribe an INS officer with \$82,100 to obtain resident alien cards for 35 Korean families. The aliens paid \$350,000 to obtain the cards to the indicted.

INS is committed to improving our fraud detection and prosecution and is actively pursuing joint ventures with other agencies to better utilize resources and technology. I appreciate the opportunity to testify before you today. I will be happy to take any questions you may have at this time.

- Robert - Grithery
- Janet - Paddy

Conf Call - 6/22

Open to his ideas.

Plus Executive Authority -

NO OED TO more than 1 county

What's the Presidenti -

Alan

Access

- No refund of ~~§ 203~~ § 203 applicants no final decisions - may be corrected - leave very much open. Upgrade fee - for something else full application (new) ~~no~~ ^{some} additional fee.
- Would need regulations ~~to~~ to implement
- Do feel still ~~not~~ need this language

EWR

- Some cost would be ~~compared~~ incurred - if party feel higher -

"Parity" in the name of the bill = Relief #



Cathy.St.Denis@usdoj.gov
07/01/99 06:45:00 PM

Record Type: Record

To: Irene Bueno/OPD/EOP
cc:
Subject: Re: Visa Waiver Program

Irene -- does this cover it?

Forward Header

Subject: Re: Visa Waiver Program
Author: Maria T Cardona at HQ-COM-006
Date: 7/1/99 9:12 AM

Cathy, these are the responses from Mike Cronin's shop. Could you forward to Irene??

Subject: Re: Visa Waiver Program
From: Michael J Hrinyak at HQ-INP-001
Date: 6/30/99 1:30 PM

The system changes to include the passport number require coordination with USCS (IBIS). It could take up to 24 months to accomplish this since their priorities are not always our priorities.

The EONS working group will be meeting to review the current legislation and to discuss how it can be strengthened to better address law enforcement and process concerns within the next two weeks. It would take at least until the end of the year to prepare and clear a full legislative proposal.

Reply Separator

Subject: Visa Waiver Program
Author: Michael D Cronin at HQ-INP-001
Date: 6/30/99 8:44 AM

Mike, pls. handle

Forward Header

Subject: Visa Waiver Program
Author: Maria T Cardona at HQ-COM-006
Date: 29/06/99 20:11

Eyleen, Mike, could you please follow-up on the following two questions from the White House regarding the Visa Waiver issue?? Let me know when you get answers so we can forward to the DPC.

Thanks. Maria

Subject: Visa Waiver Program
From: Cathy St Denis at HQ-COM-004
Date: 6/29/99 4:02 PM

Maria -- I'll try and find out, but I need the Q&A to do so...please have someone email or send up ASAP...thanks!

Forward Header

Subject: Visa Waiver Program
Author: Irene_Bueno@opd.eop.gov_at_inetgw2 at wtgate
Date: 6/29/99 11:50 AM

I received the talking points on this issue.

Follow up questions -

- (bullet #5) - when is the INS expected to complete it's review and make recommendations?
- (bullet #6) when is the DOJ/EONS working group expected to provide suggestions for strengthening the program?

Let me know. Thanks.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

LEGISLATIVE REFERENCE DIVISION
ECONOMICS , SCIENCE , AND GENERAL GOVERNMENT BRANCH

TO:

Julie Fernandez

FROM: INGRID SCHROEDER
phone: (202) 395-3883
FAX: (202) 395-3109

DATE: 2/4/98

NUMBER OF PAGES (including this cover sheet): 6

COMMENTS:

Please provide comts on your sign-off.

Thanks

Please call (202) 395-3454 to report any difficulties with transmission of this fax.

FROM :KONICA

703-653-8027

1798.01-23

10:15

11505 P.02/07

Draft

January 23, 1998

Dear Senator Torricelli:

I have been asked to respond to your letter to Secretary Albright regarding possible reform of the Visa Waiver Pilot Program (VWPP) and the inclusion of Korea and Portugal as VWPP participants. Senators Inouye, Murkowski and Akaka co signed your letter, and I am sending each of them this same reply.

The existing VWPP legislation, which mandates objective criteria that are not country specific, has worked extremely well. These criteria have ensured that nations have received equitable treatment in line with the historical principles of the United States. Strict adherence to the criteria has enabled representatives of the Department of State overseas to respond honestly and straightforwardly to requests for inclusion from numerous friendly countries that do not meet the criteria.

While the Department of State takes national security concerns into consideration when nominating countries for inclusion in the VWPP, the primary criterion is the refusal rate. The low two percent refusal rate was set by the Congress to ensure that only countries that pose a minimal risk of illegal immigration participate in the program. The Attorney General's authority to designate, from that first group, only those countries that would not compromise U.S. law enforcement interests ensures that only countries that do not pose a security threat are admitted to the program.

To date, the refusal rate is the only reasonably reliable indicator of potential immigrant intent. Statistics on the continuing qualification rate as mandated by statute (i.e., the combined denial of admission, withdrawal of application and violation of admission statistics, commonly referred to as the "overstay rate") are not available. While potential VWPP participants cannot be nominated for inclusion in the program unless/until they satisfy the statutory requirement to have or be in the process of developing a machine readable passport program, this is a technical requirement separate from the low refusal rate and law enforcement criteria. (I note that while machine readable passports can enhance anti-fraud efforts, they are used primarily to handle travelers more efficiently during the entry process.)

The Honorable
Robert G. Torricelli,
United States Senate.

FROM : KONICA

703-553-0027

1998-01-23

10:15

#505 P.03/07

Korea and Portugal unfortunately do not qualify for nomination to the VWPP under the current statute, based on their nonimmigrant visa refusal rates. However, if the Congress were to change the qualifying criteria, the Department of State would of course reconsider their qualifications under the new criteria.

If you need additional information, please do not hesitate to contact us again.

Sincerely,

Barbara Larkin

FROM MONITOR

703-647-4462

1998.01-23

12:12

MRS P. DR/07

United States Senate
WASHINGTON, DC 20510

26431

DEC - 5 1997

November 14, 1997

The Honorable Madeleine K. Albright
Secretary
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Madam Secretary:

We are writing to bring to your attention the need to reform the Visa Waiver Pilot Program (VWPP).

The Congress recently reauthorized the VWPP for 6 months. In this regard, significant attention has been focused on proposals that would allow more visitors to the United States without the often cumbersome and time-consuming process of applying for visas. We feel that citizens of certain countries, specifically Portugal and the Republic of Korea, should be allowed to enter the United States without visas, based upon their meeting other significant important criteria as required by law, such as machine-readable passports to reduce the possibility of unauthorized entry and to enable relevant federal agencies to monitor and report unauthorized overstays.

FROM :KONICA

703-SSJ-0027

1998,01-23

18:16

#525 P.06/07

The Honorable Madeleine K. Albright
November 14, 1997
Page 2

It is our understanding that both the State Department and the Justice Department have expressed concern about security issues associated with the expansion of the VWPP. We believe that national security must be an overriding concern when there are legitimate national security issues.

However, we find these concerns, in the cases of Portugal and the Republic of Korea, are not warranted. In fact, if you review the reason why visas are denied in Portugal and the Republic of Korea, you find that consular officers, historically, have rarely refused visas for Portuguese and South Korean travelers for terrorism and drug trafficking because these countries pose minimal terrorism and drug trafficking threats. Individuals in any nation committed to violating U.S. terrorism, immigration or drug trafficking laws are unlikely to be deterred by visa requirements and the existing processing system. The primary consequence of the current system is long delays, resulting in alternative travel and tourism destinations, and a lower level of business activity with one of our largest trade partners. Although we feel that there is adequate authority under current law to address enforcement problems, we would certainly support additional authority if it is deemed necessary to address concerns of expanding the program. However, machine-readable passports should provide an additional and valuable enforcement tool.

On September 15, 1997, the United States Senate passed S. 1178 which extends and revises the VWPP. We firmly believe that the Administration, in particular the State and Justice Departments, should

FROM :KONICA

703-553-8027

1998.01-23

18:16

NSDS P.07/07

The Honorable Madeline K. Albright
 November 14, 1997
 Page 3


review its past position on this issue and support a broader admissions policy and criteria that would allow the visas-free entry of citizens of Portugal and the Republic of Korea.

An overstay rate should be the primary criteria for participation in the VWPP, and should eventually replace the antiquated visa application refusal rate criteria. The House and Senate measures require that accurate overstay statistics be compiled so that such rates could be monitored for enforcement. We feel an overwhelming case has been made for Portugal and the Republic of Korea to participate in the program immediately, subject to compliance with overstay criteria currently being reviewed by the Congress.

We urge you to review and revise your Department's position on participation of Portugal and the Republic of Korea in the VWPP. We look forward to hearing from you on this matter at your earliest convenience.

Sincerely,


 DANIEL K. INOUE


 FRANK H. MURKOWSKI


 DANIEL K. AKAKA


 ROBERT G. TORRICELLI

→ Immigration
Visa Waiver

Total Pages: _____

LRM ID: IMS95

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Friday, June 13, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Ingrid M. Schroeder
PHONE: (202)395-3883 FAX: (202)395-3109

SUBJECT: JUSTICE Testimony on Visa Waiver Pilot Program

*Ingrid M. Schroeder
for Jukes*

DEADLINE: 2pm Monday, June 16, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: State Department is also testifying at this hearing.

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LRM ID: IMS95SUBJECT: JUSTICE Testimony on Visa Waiver Pilot Program

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109
 Office of Management and Budget
 Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

HQCIR

U.S. Department of Justice
Immigration and Naturalization Service



DRAFT (6-13-97)

TESTIMONY OF

MICHAEL D. CRONIN

**ASSISTANT COMMISSIONER FOR INSPECTIONS
IMMIGRATION AND NATURALIZATION SERVICE**

before the

HOUSE JUDICIARY COMMITTEE

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

Regarding

THE VISA WAIVER PILOT PROGRAM

June 17, 1997

06/13/97 14:53

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MUCIK

Mr. Chairman and Members of the Subcommittee, I welcome the opportunity to testify on the Visa Waiver Pilot Program (VWPP). During the last nine years, this Program has become a regular part of the inspection and admission process for visitors from 25 countries. It is appropriate for Congress to review the Program, even as the Administration has begun an interagency evaluation of its operation and its effect on U.S. tourism and law enforcement activities.

Development and Expansion of the Visa Waiver Pilot Program.

The Visa Waiver Pilot Program was established by the Immigration Reform and Control Act of 1986. Under its provisions, visitors for pleasure or business from countries designated jointly by the Attorney General and the Secretary of State, who meet express statutory criteria may enter the United States without a visa for a period of ninety days. They are required to waive in writing any right to the review of an immigration officer's determination that they are inadmissible or removable from the United States. They may only contest removal based on an application for asylum. They are also required, if arriving by air or sea, to travel on a transportation line which is signatory to an agreement with the Immigration and Naturalization Service permitting the line to transport passengers under the

Program, and they are required to be in possession of a round-trip or onward ticket.

The four criteria for inclusion of countries in the program are:

- 1) that they offer reciprocal privileges to United States citizens;
- 2) that they have had a nonimmigrant visitor visa refusal rate of under 2 percent for the previous two years and under 2.5 percent for any one of these two years;
- 3) that they certify that they issue or are in the process of developing a machine-readable passport; and
- 4) that the Attorney General make a determination that inclusion of the country in the Program does not pose a law enforcement risk to the United States.

The Act further provides that the Attorney General, in consultation with the Secretary of State, may refrain from including countries in the Program or remove them for any reason, including national security.

Applicants for admission under the program must complete a Form I-94W, answering questions regarding their admissibility to the United States and

executing the waiver noted above. They are examined by immigration officers who are aware that these individuals have not been screened through a visa process. The officers check the names of these applicants against a lookout database. These officers may open and pursue any appropriate line of inquiry to make a determination concerning the individual's admissibility.

From its inception in 1988 through fiscal year 1995, the Program grew from one to 25 participating countries. In Fiscal Year 1995, seventy-six percent of nonimmigrants from participating countries entered under this program. This was over 10 million travelers, or just under one-half of all documented nonimmigrants.

Prior to the statutory modifications made by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the agencies involved in making the necessary determinations for addition of countries to the program had developed a process for the inclusion of countries. The Bureau of Consular Affairs of the Department of State makes the necessary threshold determinations of eligibility, i.e., that the visa refusal rates are within the statutory criteria; that the country is issuing or intends to issue a machine readable passport; and that the country extends or will extend reciprocal privileges to U.S. travelers. Before

making a recommendation that a country be included in the Program, the Bureau of Consular Affairs considers any other relevant foreign relations or national security issues. Upon receipt of a recommendation from the Department of State that a country be included in the Program, the Department of Justice requests information from the Immigration and Naturalization Service and the Federal Bureau of Investigation concerning immigration, criminal, and national security considerations and data. As necessary, a team may be dispatched to the country to consult with its law enforcement and criminal justice organizations and to review such activities as border control and passport issuance procedures. Upon analysis of this information, a recommendation is made to the Attorney General as to inclusion or rejection of the country. Under IIRIRA, the authority to designate a country to participate in the Program was vested solely in the Attorney General, in consultation with the Secretary of State.

The number of persons applying for admission under the Visa Waiver Pilot Program who are refused entry grew, through Fiscal Year 1994, in a manner consistent with the growth of the Program, from 22 persons in 1988 to 1,876 persons in 1994. This number increased significantly in Fiscal Years 1995 and 1996, by approximately 2,000 persons a year, to 7,011 refusals in 1996. This

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recent increase appears attributable in part to the fraudulent use of travel documents from countries in the Program, which will be discussed below. However, statistics relating to the apprehension and removal of nationals of Visa Waiver countries, as shown on the attached chart, indicate that these countries remain low-risk for immigration law violations.

The Success of the Visa Waiver Pilot Program.

The Visa Waiver Pilot Program has grown tremendously and has proven extremely popular with nationals of visa waiver countries and with travel and tourism interests. It has significantly reduced consular workload but has not markedly degraded facilitation at United States ports-of-entry. Port-of-entry enforcement capabilities have been enhanced by the addition of select data from the Consular Lookout and Support System (CLASS) to the Interagency Border Inspection System (IBIS) database. The Program has remained a high priority of travel and tourism advocacy groups and professional associations, including the White House Conference on Tourism.

Concerns about the Visa Waiver Pilot Program.

VWPP fraud is advantageous to the prospective illegal entrant in the same way

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it is for the legitimate traveler -- entry to the United States can be achieved with nothing but a passport. A significant enforcement concern relating to the Program is the targeting of the passports of Visa Waiver countries by document vendors and alien smugglers. As the Department of State has increased the fraud resistance of the United States nonimmigrant visa, the attractiveness of using VWPP passports for non-VWPP nationals seeking to enter the United States illegally has also increased. With the introduction of the machine-readable nonimmigrant visa, which includes biographical information and the bearer's digitized photograph, the Department of State has enhanced the security of any passport containing the visa regardless of the country of issuance. The attraction of smugglers to VWPP passports is encouraged by several factors, including limited security features present in some VWPP passports (which simplify the alteration and forgery of them) and the existence of multiple passport-issuing authorities and procedures in some VWPP countries.

The use of lost or stolen blank VWPP passports is one of the gravest fraud problems facing the INS today. There is also a large supply of stolen blank VWPP passports on the market today. INS Intelligence has received reports dealing with the increasing involvement of international organized crime groups in the theft of these documents and their vending to smuggling rings or individual aliens.

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INS has worked with the airline industry to develop criteria for the use of electronic ticketing on international flights to the United States. Under recent direction from INS Headquarters, visa waiver applicants may use electronic tickets provided that they can, upon demand, present some proof of onward travel arrangements and provided that, also upon demand, participating transportation lines cooperate with INS requests for verification of travel arrangements.

Administration Review of the Visa Waiver Pilot Program.

As noted above, the Program appears to have worked extremely well for travelers from low-risk countries. However, some issues and concerns persist. The Department of Justice recently, in response to recommendations for the inclusion of two new countries in the Program, conducted an intra departmental review of the Visa Waiver Pilot Program to assess the risks associated with further expansion of the Program, including incremental effects of program expansion on the effectiveness of ports-of-entry. That review will now be expanded to an interagency working group which will evaluate the Program as a whole, its extension, the continued designation of current countries, and criteria to be applied to determinations about the addition of further countries to the Program.

Nonimmigrant Information System and Visa Overstay Rates.

Sec. 217(c)(3)(i) and (ii) of the INA indicate that a qualification for continued participation in the Visa Waiver Pilot Program (VWPP) is that the number of nationals of a member country who were denied admission at the time of arrival or withdrew their application for admission, and the number of nationals of that country who violated the terms of such admission during the previous fiscal year remain below 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

Data are collected in the Nonimmigrant Information System (NIIS) on the number of withdrawals for VWPP countries, and can be provided for each year since the beginning of the program (1988). Similarly, comprehensive data on VWPP refusals can be provided.

Data are available in NIIS from 1988-92 for VWPP countries whose nationals violated their terms of admission (as measured by nonimmigrant visa overstay rates). These data are estimates of overstay rates which are based on "apparent overstay" numbers from NIIS. INS developed a methodology that reduces the number of apparent overstays by the "system error" known to exist in NIIS. The

system error (historically about 8-10 percent for all countries) is caused by collection, keypunching, and processing problems (including difficulties in matching arrival and departure records). This methodology was refined as a result of review by the General Accounting Office in 1995.

Nonimmigrant overstay rates have not been estimated since July 1994 (when calculation of fiscal year 1993 rates were attempted) due to inconsistent numbers of apparent overstays in NIIS. Because of the magnitude and variation of apparent overstays since 1992, the INS' established methodology cannot currently be used to produce overstay rates with the required level of reliability to make relative comparisons among countries. The numbers of apparent overstays have been reviewed every 6 months through February 1997 in attempts to estimate defensible nonimmigrant overstay rates; however, data from NIIS continue to be inadequate for this purpose.

From the 1994 realization that corrective action was required, plans were made to rewrite the NIIS software to improve data integrity, identify new requirements and convert the old database. This development effort began in 1995 and continued until the new system was introduced in July, 1996. The regular production operation of

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the new system was encumbered by the process of converting the old database of admissions, withdrawals, and departures from 1983 through June, 1996. Backlogs caused by the necessity of maintaining dual processing were not completed until May, 1997.

We hope to have completed and introduced corrective actions to the NIIS by the end of the calendar year.

INS is presently performing numerous tasks related to the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 which deal with automation, card technology, biometrics, and departure management. This work will result in significant improvement in INS's ability to track arrivals and departures, identify overstays, and generate accurate overstay statistics.

Recommendations:

As Congress considers extension of the VWPP, INS has several recommendations. As we have stated in the past, INS recommends that legislation be enacted to require Visa Waiver Pilot Program countries to introduce highly fraud-resistant, machine-readable passports by a date certain. Current language does not refer to fraud resistance and some countries have failed to introduce machine-readable documents to date. It should be noted that the initial 8 VWPP countries

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entered the program before this requirement was introduced by the Immigration Act of 1990

The provisions requiring transportation lines to be signatory to agreements with INS and requiring air and sea passengers to be in possession of onward tickets have posed some difficulties in relation to private and military conveyances. Individuals familiar with other countries' less regulated visa waiver schemes seldom focus on the noted U.S. requirements. It may be appropriate to review the Program provisions with the aim of accommodating private and military conveyances.

Given the interagency review to be completed under Department of Justice direction, and given the need to integrate into this Program many changes mandated by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the INS recommends that the Program not be made permanent but that it be retained as a pilot program. INS would, however, support a multi-year extension of the Program.

This completes my testimony. I would be glad to respond to any questions you may have.

Chart 1.
 Nonimmigrants Admitted by Selected Class of Admission for Countries in the VWPP:
 Fiscal Years 1988-95

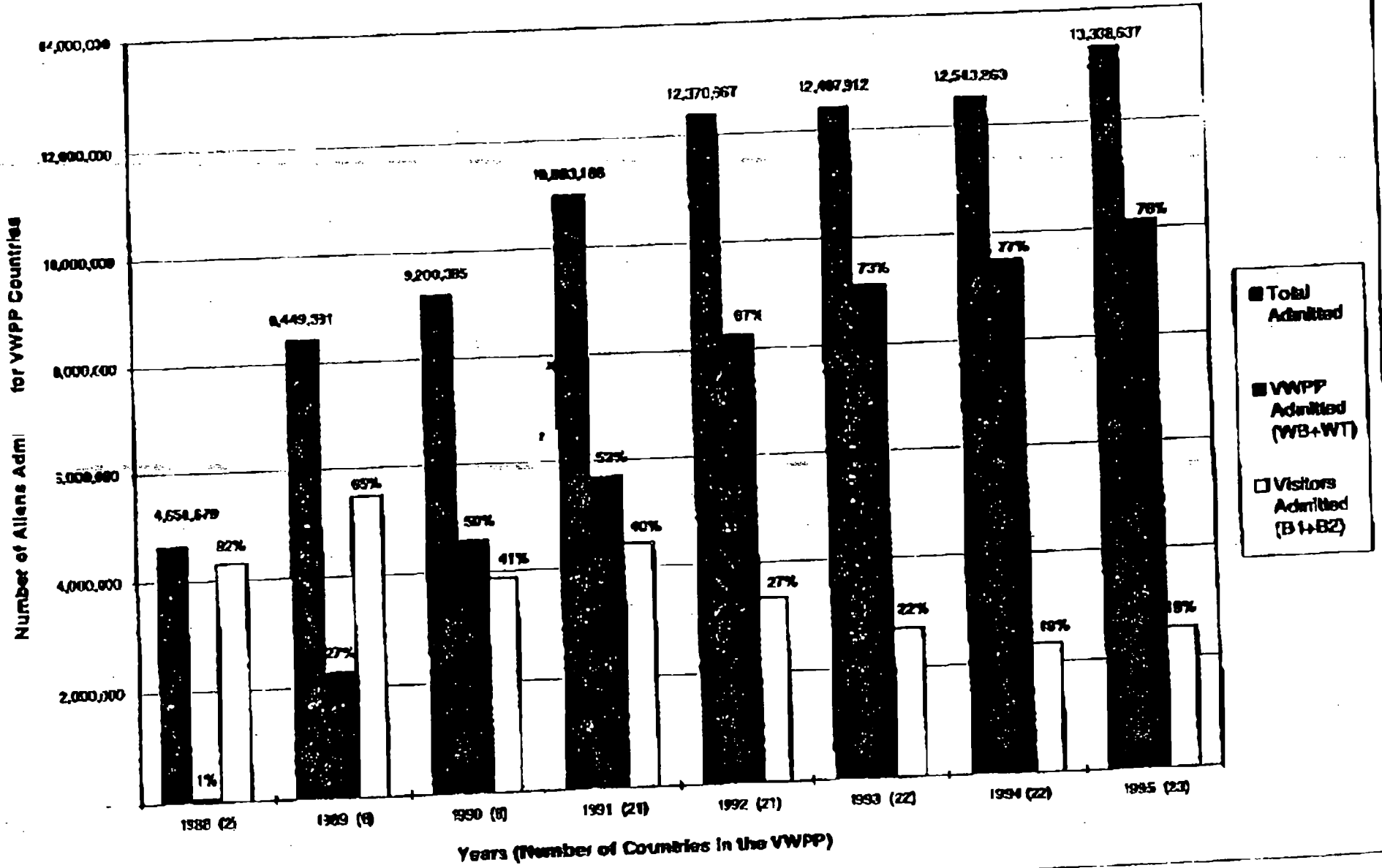
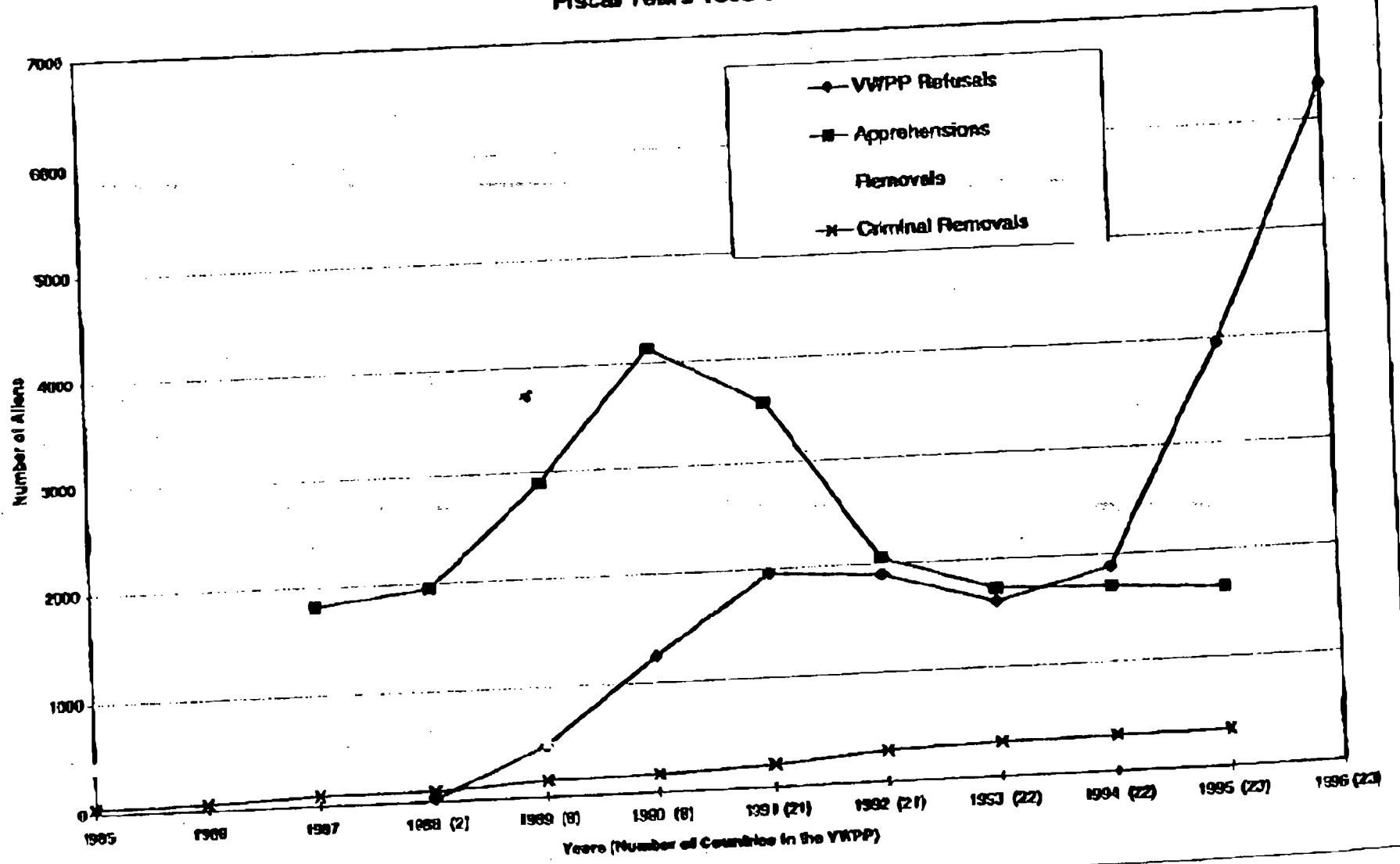


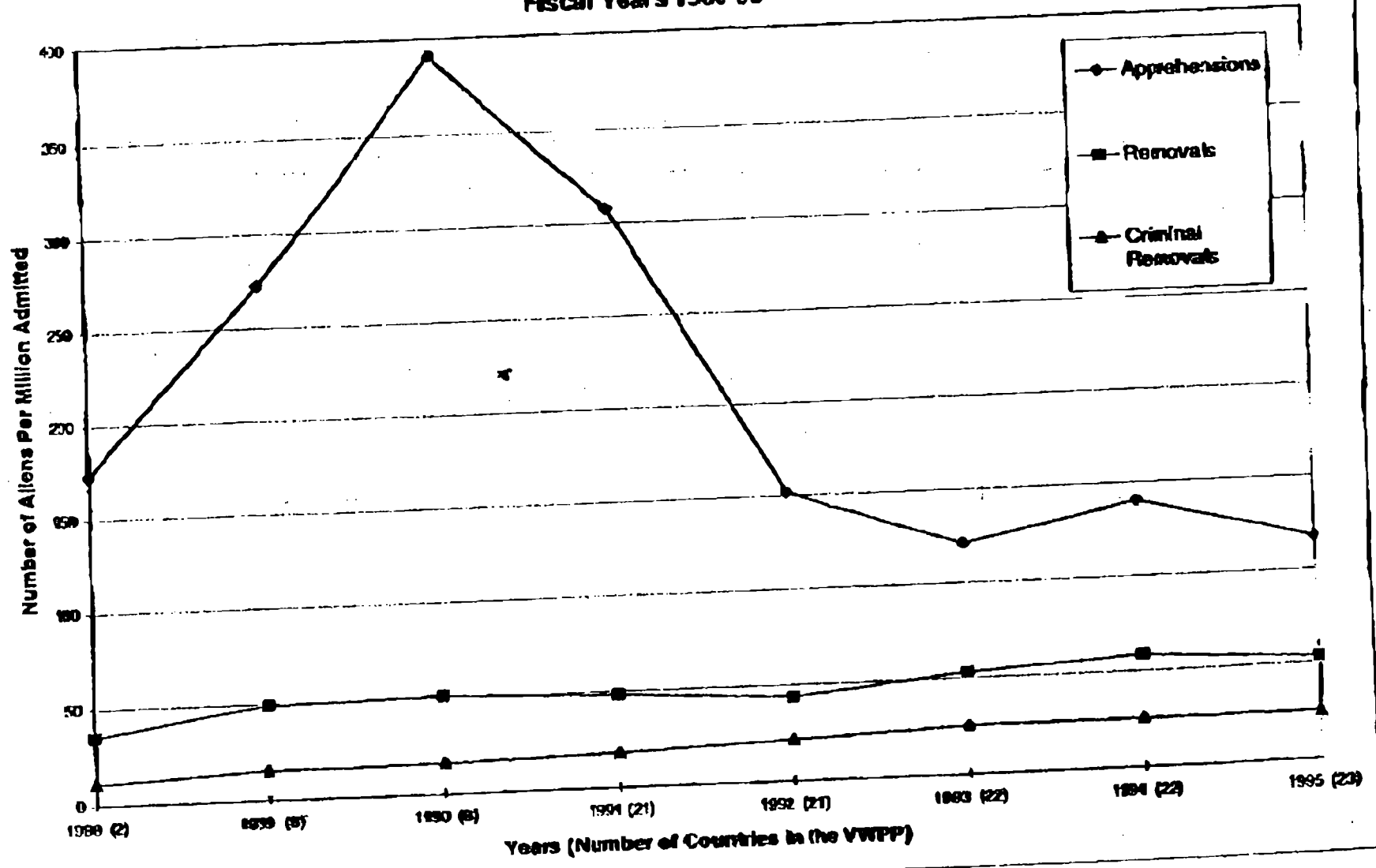
Chart 2.
Enforcement Statistics for Countries in the VWPP:
Fiscal Years 1985-96



NOTE: Apprehension data are not available by country prior to 1987. VWPP began in 1988. Only VWPP Refusal data available for FY96 (4th Quarter projected).

06.13.97 FKI 10:11 FAX 202 544 0000

Chart 3.
Enforcement Statistics (Per Million Admitted) for Countries in the VWPP:
Fiscal Years 1988-95



Total Pages: _____

LRM ID: IMS181**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001****Monday, October 27, 1997****LEGISLATIVE REFERRAL MEMORANDUM**

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference
OMB CONTACT: Ingrid M. Schroeder
PHONE: (202)395-3883 FAX: (202)395-3109

SUBJECT: JUSTICE Report on S1178 Visa Waiver Pilot Program Reauthorization Act of 1997

DEADLINE: 4pm Tuesday, October 28, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Please note that Justice opposes S. 1178 (see page 1 - first paragraph). The VWPP is set to expire on November 7th.

DISTRIBUTION LIST**AGENCIES:**

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EOP:

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Michael Delch
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LRM ID: IMS181 SUBJECT: JUSTICE Report on S1178 Visa Waiver Pilot Program Reauthorization Act of 1997

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109 Office of Management and Budget Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date) _____ (Name) _____ (Agency) _____ (Telephone)

The following is the reponse of our agency to your request for views on the above-captioned subject:

- _____ Concur
_____ No Objection
_____ No Comment
_____ See proposed edits on pages _____
_____ Other: _____
_____ FAX RETURN of _____ pages, attached to this reponse sheet



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

Draft

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This presents the views of the Department of Justice on S. 1178, the "Visa Waiver Pilot Program Reauthorization Act of 1997" (Visa Waiver Reauthorization Act), as passed by the Senate. Although we support the goals of the Visa Waiver Pilot Program (VWPP), we oppose the enactment of the Visa Waiver Reauthorization Act for the reasons discussed below. *

We have reviewed S. 1178 in this Department's capacity as the designated chair of an interagency working group (IWG) convened at the direction of the Attorney General in consultation with the Secretary of State. Since July 1997, the IWG has met to develop a protocol to formalize the procedures for nomination and approval of visa waiver pilot countries and to examine the criteria that should be established as conditions for a country's admission to the program. The consensus within the IWG is that changing the statutory criteria at this point is premature and that we should not propose changes in those criteria until we have the benefit of further study. The consensus is also that any extension of the Visa Waiver Pilot Program (VWPP) should be for no longer than two years, so that the program can remain a pilot program and not become more permanent without additional action by the Congress. Unfortunately, we do not believe the Reauthorization Act is consistent with this approach.

We are particularly concerned with Section 2 of the Reauthorization Act, which would amend section 217(c) of the Immigration and Nationality Act (INA) to raise threshold visa refusal rates on which acceptance into the program is based. At this point, we do not believe that we have had sufficient experience with the Visa Waiver Pilot Program to warrant changing the threshold standards. In addition, the VWPP extension would be for three, not two years.

The Reauthorization Act would also change the basic approval formula for the second time in as many years. When Congress first enacted the VWPP, the Attorney General and the Secretary of

State shared the responsibility of designating countries as visa waiver pilot countries. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) later amended Section 217(c) to provide that "the Attorney General, in consultation with the Secretary of State," had the authority to designate participating countries. S. 1178 would once again grant to "the Secretary of State, in consultation with the Attorney General" the authority to designate participating countries, but would grant the Attorney General the authority to redesignate a country's participation in the program.

After numerous meetings over the last several months, the IWG has reached consensus on formal procedures to address the designation process under the IIRIRA formulation. Enactment of S. 1178 would require that the IWG formulate a new set of procedures to accommodate the dual revised authorities of the Secretary of State and the Attorney General -- the authority of the former to designate countries in the first instance, and that of the latter to redesignate participating countries.

In addition to the general policy concerns discussed above, we also have more specific technical concerns with the Visa Waiver Reauthorization Act. Attached to this letter is a compilation of minor amendments to the Reauthorization Act that the Immigration and Naturalization Service (INS) has concluded would be required if the Reauthorization Act is to maintain consistency with the present Visa Waiver Pilot Program. These changes are also necessary in order to provide data on the rates of violation of terms of admission that are intended to be the basis for redesignation for or disqualification from the program.

Because many aliens are admitted for periods of time that go beyond the fiscal year in which they are admitted, calculation of violation (or overstay) rates needs to be made for persons who were required to depart within a given fiscal year. Ninety days following the end of a fiscal year would be the minimum amount of time required to receive data on departures from the airlines and ports of entry, enter it into the data base, process and match records of arrival and departure, and, finally, to evaluate data, estimate violation rates, and prepare a report to the Committees on the Judiciary. Subparagraph 217(c)(3)(A)(II)(ii), as amended by the Reauthorization Act, would specify that "as of September 30, 1999, estimates of violation rates shall be based on the automated entry-exit control system mandated by Section 110 of Public Law 104-708." Even if the implementation date for this entry-exit control system is not delayed as previously requested by the Department, the system would contain only information on required departures for that portion of the nonimmigrants who had been admitted to the United States prior to April 1, 1999, for

persons on B-1 and B-2 visas, and prior to July 1, 1999, for persons who were admitted under the VWPP. The INS has apprised the drafters of S. 1178 of these concerns and they have agreed to work toward perfecting language that would accomplish the desired reporting.

Finally, Section 3 of the Reauthorization Act compresses the time frame for the Report on the Automated Entry-Exit Control System from that which the Department requested in the Technical Amendments to the IIRIRA proposed bill which we previously transmitted to the Committee. While the INS has preparations and funding in place for a pilot test of an automated arrival-departure management system for pedestrians on the southern border, INS needs additional time and funding for similar pilot tests for vehicles on both the southern and northern land borders. The Department recommends that the Attorney General be required to commence pilot tests on both the northern and southern borders within six months after the date of enactment and to report on the tests within twelve months after the date of enactment.

For the above reasons, the Department of Justice opposes S. 1178 as passed by the Senate. As we noted above, however, we have apprised the drafters of that bill of our concerns, and they have expressed a willingness to work with us toward resolving them. We would also be pleased to work with your Committee toward enactment of an appropriate and acceptable extension of the VWPP authority.

Thank you for the opportunity to present our views on this matter. If we may be of additional assistance, do not hesitate to contact us. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report. s

Sincerely,

Andrew Foia
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

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10/27/97

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10/02/97 20:41 2025145231

HQCIR

003/003

Technical Corrections to S. 1178:

In Section 2(a) revising Section 217(c) of the Act,

subparagraph 217(c)(2)(E) should be titled "VIOLATION OF STATUS AND DISQUALIFICATION";

in subparagraph 217(c)(2)(E)(I), strike "excluded from" and insert "refused";

in subparagraph 217(c)(2)(E)(II), insert after "nonimmigrant visitors" the phrase, "who were required to depart";

in subparagraph 217(c)(3)(A)(I), strike "excluded from" and insert "refused";

in subparagraph 217(c)(3)(A)(II), insert after "nonimmigrant visitors" the phrase, "who were required to depart".

→ Immigration
Visa Waiver

Total Pages: 8

LRM ID: IMS91

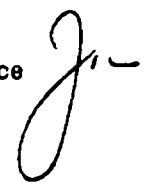
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, June 13, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference
OMB CONTACT: Ingrid M. Schroeder
PHONE: (202)395-3883 FAX: (202)395-3109



SUBJECT: STATE Oversight Testimony on Visa Waiver Pilot Program

DEADLINE: 5pm Friday, June 13, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Justice will also be testifying at this hearing.

DISTRIBUTION LIST

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- 118-TREASURY - Richard S. Carro - (202) 622-0650

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- Evan T. Farley
- Louisa Koch
- Kimberly A. Maluski
- Jose Cerda III
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LRM ID: IMS91SUBJECT: STATE Oversight Testimony on Visa Waiver Pilot Program

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

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STATEMENT OF
ASSISTANT SECRETARY MARY A. RYAN
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

June 17, 1997

Mr. Chairman and Members of the Committee:

I am delighted to have been invited today to testify on behalf of the Department of State about the nonimmigrant visa waiver program. I can say without reservation that this program is a resounding success. It has bolstered the U.S. economy through the expedited admission of millions of legitimate short term visitors for business, thus allowing for the negotiation of contracts for the provision of American goods and services to the world. It has provided a welcome boost to the U.S. tourism industry, which employs thousands of American citizens, through the visa-free admission of millions of foreign tourists. In addition, it has enabled the U.S. government to use its limited resources more efficiently and productively during a period of budgetary constraint. We strongly urge that this highly effective program be made permanent.

During the 1980's, economic prosperity in Europe and Japan and the growing interdependence of the world's economy contributed to an explosion in international travel. The State Department found itself in the position of devoting increasing resources to visa issuance which was virtually perfunctory. Let there be no mistake about it--a British national applying for a visa to visit the U.S. in 1987 was not required to go to the Embassy, let alone have a visa interview. Yet, even this perfunctory processing consumed major personnel resources owing to the sheer volume of visa issuance.

The visa waiver pilot program was a logical response to that situation. It was instituted pursuant to the Immigration Reform and Control Act of 1986. Its objective was to determine if a selective waiver of the nonimmigrant visa requirement would improve the use of U.S. government resources and encourage travel to the United States, without diminishing U.S. border security. The program waives the visa requirement only for touristic or business trips of ninety days or less in duration. Others, such as students and temporary workers, from qualifying countries all still need visas to travel to the U.S. It went into effect on July 1, 1988, in eight countries jointly designated by the Secretary of State and the Attorney General. Under joint administration of the Secretary of State and the Attorney General the program has now expanded to encompass 25 countries which have met the statutory criteria.

The program simultaneously helped U.S. business, generated growth in the U.S. tourist industry and allowed the State Department to redirect its consular resources to higher risk situations like the newly independent states in the former Soviet Union. The visa waiver program was not just a win/win situation, it was a win for business, a win for tourism and a win for effective management of the Department of State.

Strict criteria for participation were established to ensure that the test program would not entail unacceptable risks to our ability to control our borders. To qualify for the program, nations must:

- Have a minimal nonimmigrant visa refusal rate;
- Issue or agree to issue a machine readable travel document;

- Reciprocate the visa waiver by permitting visa-free entry to Americans for business or tourism.

Furthermore, before any country is designated as a participant, the Attorney General must determine that U.S. law enforcement interests would not be compromised by the designation. Formal and informal consultations take place within the border security community before a country is nominated. A number of countries have the requisite refusal rates and machine readable documents but have not been accepted for the program because of law enforcement or security concerns.

The criteria laid out in the legislation have worked astoundingly well. The established requirements have ensured that only low fraud, low risk countries, such as Germany, the United Kingdom, Japan, France and Norway, have been designated as participants. Strict adherence to the criteria has enabled representatives of the Department of State overseas to respond honestly and straightforwardly to requests from numerous friendly nations to be part of the program by noting their current inability to meet the criteria. Most significantly, the criteria have ensured that nations have received equitable treatment in line with the historical principles of the United States. We strongly support continued adherence to these criteria which have maintained the integrity of the program over the years. Any proposal to dilute the qualifying criteria must be carefully evaluated to see if it is consistent with the program's stated aims and U.S. border security interests.

Safeguards have been included in the program to deter the admission of ineligible aliens. The mere fact that a country participates in the visa waiver program does not

mean that all of its citizens will be admitted to the United States upon application or that, if admitted under the waiver program, they will be granted all the privileges they would enjoy if they were admitted with visas. They first must not be excludable under the Immigration and Nationality Act. In addition, they have severely limited appeal rights to decisions by the Immigration and Nationality Service to deny their entry, and they must have a round-trip ticket so that they can depart immediately if found excludable. All individuals applying for admission, including those in the visa waiver program, are subject to the same look-out checks at the port of entry that they would be subjected to at the time of visa issuance overseas.

The Department of State and the INS share data to ensure that all information on ineligible aliens is available to both agencies. I am convinced that application of the criteria for admission outlined in the legislation plus our enhanced data share programs offer U.S. agencies appropriate control over those seeking admission without visas. Based on the information we have available, issuing visas to all of the travelers who entered under the visa waiver would have been a considerable drain on resources without any discernible benefit to our national security.

Some would argue that this program weakens U.S. border security, I would advance the counter argument. The visa waiver program was not and is not a "loser" for U.S. border security. Indeed, rather than weakening border security, the visa waiver program has strengthened it, because it has allowed the Department of State to focus its resources upon those countries and regions where fraud potential is greatest. The resource savings were applied to the opening of posts and staffing of consular sections in the

former Soviet Union and to administering legislatively-mandated immigrant visa lottery programs. In addition, the Department has been able to move personnel previously engaged in relatively pro forma nonimmigrant visa adjudication into straight anti-fraud work or to adjudicatory positions in immigration-push countries.

So what would be the resource implications for the Department of State if the visa waiver program were ended? It is almost impossible to calculate and daunting to contemplate. We have eliminated positions in visa waiver countries and even closed many consulates, especially in Western Europe, which used to provide perfunctory visa services. The cost of reestablishing these posts and positions would be significant. Since 1988 when the visa waiver program began, the demand for nonimmigrant visas in non visa waiver countries has grown considerably. The resources which were reprogrammed to these countries are essential to providing adequate service and maintaining anti-fraud initiatives.

Estimating what it would cost to the U.S. to restore consular services to all the nations that currently participate in the visa waiver program is admittedly an inexact science. However, one rough measure would be based on the number of foreigners who entered the U.S. in 1996 using the visa waiver program. Last year some 12.4 million aliens entered the U.S. on the visa waiver program. The current Machine Readable Visa application fee is \$70, based on a 1991 cost of service study. Even if only half the aliens who entered the U.S. last year required a visa (since some of those visitors probably entered more than once in 1996 and some would be dissuaded from traveling here by a visa requirement), that would mean that the additional cost to the U.S. would be over

\$120 million--and that does not even cover the cost of expanding facilities or hiring and training all of the additional staff the Department would require. Our business and tourism would suffer, the cost to the U.S. government would be high, and U.S. border security would not be improved. As I noted earlier, I really don't even like to think about it.

While the government has benefited enormously from the visa waiver program, it has been the U.S. economy that really won the gold ring on this ride. The World Tourism Organization statistics for 1996 show that the United States was the second most popular international tourist destination with 44.8 million arrivals but number one as far as tourism receipts go. International tourists spent \$64.4 billion here in 1996. Lots of them entered the U.S. on the visa waiver program.

In closing, I would like to stress once again the value of the visa waiver program to U.S. government operations, to the U.S. travel and tourism industry and to our relations with participating countries. Even a short disruption of this vital program would have disastrous economic, political and resource implications for the U.S. government. We urgently need to have this program made permanent. It has proven itself.

Thank you for your attention. I will be pleased to take your questions.