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Fingerprint report - please pay special attention to the Conclusions and Recs which start on page 20.

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Checking Immigrant Visa Applicants for U.S. Criminal Histories:

A Report to the Senate committees on the Judiciary and Foreign Relations and the House committees on the Judiciary and International Relations
on
NCIC and fingerprint pilot programs for immigrant visa processing

Prepared by

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and

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Contents

Legislation

In 1994, Congress passed legislation (Sections 140(d) through (g), Public Law 103-236 as amended by Section 505 of Public Law 103-317) establishing two pilot programs, under which the Department of State and the Federal Bureau of Investigation (FBI) would screen prospective immigrants for prior criminal records. The first program, under Section 140(d), gave the Department of State the ability to check immigrant visa applicants against criminal records indexed in the FBI's Interstate Identification Index, which are available through the National Crime Information Center (NCIC). The second pilot program, under Section 140(e), requires the fingerprinting of aliens over the age of 16 applying for U.S. immigrant visas in ten selected countries, to determine if they have U.S. criminal records. Both programs were authorized to run until December 31, 1997.

The legislation also requires the Department of State and the FBI to jointly submit a report on the two programs' effectiveness to the Committee on International Relations and the Committee on the Judiciary of the House of Representatives, and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate. This report is submitted in fulfillment of that requirement.

Interstate Identification Index

Section 140(d) provided the Department of State access to the FBI's Interstate Identification Index (herein referred to as III) for the purpose of determining whether applicants for immigrant visas had criminal records indexed there. The Department of State was specifically prohibited from directly accessing the full content of the criminal record. Whenever a visa applicant is found to possibly match an index record, the Department of State must submit the applicant's fingerprints to the FBI to make a positive identification and, if appropriate, to obtain details of the criminal history.

Department of State access to III was provided at no cost. The legislation further directed that the day-to-day operation of the III criminal records checks would be run by an FBI employee temporarily assigned to the Department of State on a fully reimbursable basis.

Fingerprint pilot program

Section 140(e) established a second, concurrent program to check certain prospective immigrants for U.S. criminal histories. It requires the Department of State to fingerprint all immigrant visa applicants over the age of 16, "in the ten countries with the highest volume of immigrant visa issuance for the most recent fiscal year for which data are available," and to have those fingerprints analyzed by the FBI for U.S.

criminal histories before issuing a visa. The department was required to pay all appropriate fees to the FBI for each fingerprint check (currently $18 per fingerprint check).

The legislation further charged the Secretary of State with developing regulations that would implement this pilot program and "avoid undue processing costs and delays for eligible immigrants and the United States government." (Section 140(c)(2))

Separately, as part of the Diplomatic and Consular Programs appropriation, Congress granted the Department of State the authority to retain fees collected from visa applicants being fingerprinted as part of the immigrant visa process, and to use the proceeds of the fee to pay for administering the pilot programs.

The ten countries falling under the fingerprint pilot program are: Canada, Dominican Republic, El Salvador, Haiti, India, Ireland, Mexico, the People's Republic of China, the Philippines and Poland.

Background

Need for legislation

Until 1990, consular officers requested FBI criminal records checks on all immigrant visa applicants who had spent six months or longer in the United States. These requests were sent directly to the FBI, which performed a file search based on the subject's name and date of birth. When a match was found, the FBI would forward a summary of the criminal history to the visa processing post. The FBI did not charge a fee for these criminal records checks.[1]

In 1990, however, Congress reduced the FBI's budget by $30 million and authorized the FBI to collect user fees to pay for processing non-criminal justice, non-law enforcement record check requests from federal agencies.[2] The Department of Justice's Office of Legal Counsel determined that visa-related criminal record checks are not a criminal justice or law enforcement activity, but instead involve the administration of civil provisions of the Immigration Act, and that criminal records checks for the Department of State therefore would be subject to the fee.

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[1] In the past, consular officers also fingerprinted immigrants after they were approved for visas. However, the consular officer did not use the fingerprints for criminal records checks. The fingerprints were simply placed in the immigrant visa packets which aliens surrender to an Immigration Officer at the port of entry. This practice ceased in the 1980s.

[2] Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 1990, Public Law 101-162.

The Department of State lacked the funds necessary to pay the new user fees (estimated at more than $800,000 a year) and did not have the authority to retain a user fee of its own in order to pay the FBI fees. This forced the Department to cease U.S. criminal records checks on immigrant visa applicants.[3]

The III access provided in PL 103-236 resulted from several years of discussion between the Department of State, the FBI and Congress on how to best resume screening prospective immigrants for prior U.S. criminal histories.

Operation of the III namecheck pilot

The Interstate Identification Index is a cooperative effort between the FBI and state governments. Its role is to index, maintain and exchange automated criminal history record information with criminal justice agencies for criminal justice purposes, and with other agencies for specified purposes when authorized by federal law.

The III database contains an index of more than 24 million individuals with automated criminal history records held by states or the FBI. Thirty-one states participate directly in the III system, maintaining automated criminal history record information, and disseminating the information directly from their state systems. The FBI provides automated criminal history record information through III for the remaining 19 states, the District of Columbia, U.S. territories and Federal law enforcement agencies, and records submitted by certain foreign law enforcement authorities on U.S. citizens.

The FBI also maintains criminal history record information on an additional 10.5 million criminal offenders whose records are in the FBI's Criminal Justice Information Services (CJIS) Division's manual files. These records are not indexed in the III and not available through NCIC.

The states and the FBI have implemented a policy whereby positive identification by fingerprints must be established prior to dissemination of the criminal history record information through III for non-criminal justice purposes. This policy was implemented to enforce state laws that prohibit access to state record systems for reasons other than law enforcement or criminal justice purposes. This policy was also implemented because namechecks of the criminal history record system are unreliable as they produce both false negative and false positive results.

Since February 17, 1995, all immigrant visa applicants worldwide between the ages of 17 and 80 have been namechecked against III. An NCIC terminal was installed at the Department of State's National Visa Center (NVC) in Portsmouth, N.H., to

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[3] Only records checks for criminal arrest and conviction records ceased. A separate program of national security namechecks on certain visa applicants was unaffected.

allow direct, automated checks on the system. The operation of the NCIC terminal is supervised by an FBI employee on a fully-reimbursable assignment to NVC.

NVC is a consolidated, administrative support facility. Approved immigrant visa petitions (the initial step in the immigration process) are forwarded to NVC from the Immigration and Naturalization Service (INS). NVC then mails preliminary information to the prospective immigrant and, when appropriate, forwards the petition to the overseas Foreign Service post (i.e., U.S. embassy or consulate) handling the immigrant visa case.

Just before sending the petition overseas, NVC runs the names and biographic data of the prospective immigrants and accompanying adult family members through NCIC. The names are checked against two databases -- the III, to check for possible criminal histories, and the NCIC Wanted Person File, to check for outstanding arrest warrants. This is an overnight process. When immigrant visa petitions are filed overseas, and thus do not pass through NVC, the visa processing post sends a telegraphic request to NVC for a namecheck of the two databases. The usual turnaround time on a telegraphic request is about three days.[4]

If the visa applicant's name appears to match a name in the Interstate Identification Index (referred to as an III "hit"), NVC sends the index record to the overseas post along with the immigrant visa petition. The index record does not disclose any details from the criminal record, not even the type of offense. Because the Department of State has no access through NCIC to the actual data in a criminal history file, the index record provides only name, date and place of birth, physical description and the state or locality holding the file. To obtain the criminal history record, and to positively verify whether the file belongs to the visa applicant, the post must fingerprint the applicant and submit the fingerprints to the FBI for analysis.

Screening applicants under the fingerprint pilot program

Other procedures are used at the 13 U.S. embassies and consulates processing immigrant visas under the separate fingerprint pilot program. At these posts -- located in the ten countries where the U.S. issues the greatest number of immigrant visas -- all immigrant visa applicants between the ages of 17 and 80 are fingerprinted and checked through the FBI's CJIS Division for possible U.S. criminal records, regardless of the III results.

The CJIS Division maintains a fingerprint database representing more than 35 million individuals with criminal history records, of which only 24 million have automated records indexed in the III and available through NCIC. Applicant

[4] Approximately 21 percent of the namechecks under this pilot were performed on petitions filed overseas, and thus handled by NVC through telegraphic requests.

fingerprints are compared to those in the database to determine if the applicant is identifiable with a criminal history record.

The criminal history records maintained by the CJIS Division are supported by the offender's arrest or confinement fingerprint cards. However, with the decentralization of the CJIS Division's record system, the ultimate goal is to have the respective III-participating states be responsible for maintaining and disseminating the records of their state's arrests and dispositions. Such states are known as National Fingerprint File (NFF) states.

Under the NFF program, a participating state forwards only the offender's criminal fingerprint card and identifying descriptive data to the FBI. The FBI uses the fingerprint card to establish positive identifications and to set a "pointer" to the NFF state that maintains the criminal history. Second and subsequent arrests of that offender in the NFF state are not forwarded to the FBI. The NFF state continues to build the record and agrees to disseminate it to authorized users for authorized purposes. Disseminations without positive fingerprint identification are essentially restricted to criminal justice agencies for criminal justice purposes, unless specifically authorized by Federal law.

Operation of the fingerprint pilot program

To maintain the integrity of the clearance process, applicants in the ten pilot program countries are fingerprinted at the embassy or consulate handling their case.[5] Posts in the pilot program countries offer daily or weekly hours for fingerprinting services. Applicants must present valid identification, usually a passport or national identity card. The applicant also pays a fee that is currently set at $25. (The Department of State is authorized to use proceeds from the fee to pay the FBI's $18 processing charge per fingerprint, and to recover the department's own administrative costs.) Once a week, posts send fingerprint cards to the FBI by commercial courier service. Fingerprint cards needing expedited handling, such as in medical or humanitarian emergencies, are sent by commercial courier service to the Department of State's Office of Visa Services (VO), which forwards them to a special handling unit at the FBI.

After the FBI completes its analysis and search, it annotates the fingerprint card with the search results. The FBI then forwards the card to NVC. If a visa applicant is found to have a criminal history record with the FBI, a copy of that criminal record is

[5] In Canada, the Department permits (on a trial basis) fingerprinting through an approved contractor. To protect against impostors, the contractor provides a digitized photograph of the person who was fingerprinted, taken at the time of fingerprinting. In addition, immigrant visa applicants in the Ukraine, Belarus, Latvia and Lithuania can submit fingerprints at U.S. embassies in those countries, even though their visa cases are processed in Warsaw, Poland.

also attached.[6] NVC then sends the results to the respective overseas posts by commercial courier service, no later than one week after receipt. Once received, the post will record the fingerprint search results in the applicant's immigrant visa file, and process the visa case to conclusion.

In cases with emergent humanitarian circumstances, the FBI relates fingerprint search results telephonically to VO, which then informs the post by e-mail or telephone.

Because of the additional work involved with taking, mailing and recording fingerprints, the Department of State provided additional clerical support to posts in the ten fingerprint pilot countries, funded through a portion of the user fee.

A post requesting a fingerprint check cannot complete processing on the immigrant visa until it receives the FBI's search results. This turnaround time (including transit to and from post) has varied during the course of the pilot program. During spring and summer 1995, most posts reported waits of eight to 10 weeks for fingerprint results. In fall 1995, this increased to nearly 12 weeks, due in part to the CJIS division's phased relocation to a new West Virginia facility. Enormous backlogs after the government shutdowns of early 1996 increased waiting times to more than 16 weeks in many cases. By spring 1996, waiting times fell to their present level, between eight and 12 weeks, depending on the post.

For the purposes of comparing the two programs, immigrant visa applicants in the fingerprint pilot countries are also namechecked on III. Posts were asked to maintain statistics on the number of discrepancies found between the two types of criminal record checks.

Scope of criminal records checks under the two programs

III namechecks and fingerprint submissions to the FBI only detect prior criminal records within the United States that have been submitted for inclusion in the FBI system. Neither III nor fingerprinting indexes criminal arrests or convictions outside the United States of non-U.S.citizens. Nor can either criminal record check reveal whether the applicant is a known or suspected terrorist (unless the terrorist has a U.S. arrest or conviction on file) or if he/she is under investigation.[7] Likewise, the NCIC Wanted Person File includes only those outstanding arrest warrants that local authorities have posted on the system.

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[6] The FBI plans to cease returning the actual fingerprint cards to NVC for applicants with no criminal record. Instead, the FBI will send a printed summary of their search results.

[7] Consular officers use separate, unrelated namecheck procedures to identify known terrorists.

The FBI does not keep copies of fingerprints submitted in visa cases. As with all non-criminal fingerprint search requests, the FBI does not add visa applicant fingerprints to its database.[8]

The mere fact that a visa applicant is found to have a criminal history record on file with the FBI does not necessarily mean he or she can be denied a visa. Not all FBI criminal history records pertain to criminal convictions. Some records may pertain to non-criminal, administrative actions such as immigration proceedings, or may lack final dispositions.

Not all arrests or convictions render a foreign national ineligible for an immigrant visa. Under Section 212(a) of the Immigration and Nationality Act, a foreign national is ineligible for a visa if he or she is convicted of a crime of moral turpitude,[9] convicted of any law pertaining to a controlled substance, or believed to be trafficking in a controlled substance. In addition, a foreign national deported from the U.S. within the last five years[10], or excluded from the U.S. within the last year (though not persons who agreed to depart voluntarily) are ineligible for visas.

Other criminal convictions, such as minor offenses, along with arrests not resulting in convictions, and immigration proceedings not leading to deportation or exclusion, generally do not render an individual ineligible for an immigrant visa.

In certain visa categories, the Attorney General has authority to waive an ineligibility and to permit a visa to be issued despite a criminal conviction.

Statistics

After 17 months of operation, a total of 647,035 immigrant visa applicants were checked through either III or the fingerprint pilot program. Worldwide, 355 prospective immigrants were determined to be ineligible for visas based on U.S. criminal convictions or drug-related offenses uncovered through these two programs. Forty-six other cases were still pending resolution. Eighty-one of the refusals were subsequently granted waivers of ineligibility by INS, and obtained visas. The visa

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[8] Except, in compliance with the Privacy Act, the FBI must record any disclosures of criminal histories resulting from fingerprint search requests.

[9] Moral turpitude is generally defined as anything done contrary to justice, honesty, principle or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general. It is not merely a matter of breaking a law; the act itself must be inherently immoral. It generally includes more serious crimes against individuals, property or authority.

[10] or within 20 years if deported after a conviction for an aggravated felony.

denials resulting from the two programs amount to 0.05 percent of the total number of applicants screened.[11]

The names and personal descriptors of all 647,035 applicants were checked through III, which produced 57,407 hits on criminal history records possibly identical with the applicants (an 8.9 percent hit rate). Upon reviewing the hits[12], NVC found only 14,618 close enough matches to forward to visa processing posts. NVC did not break down how many of the hits were on applicants in the ten fingerprint pilot countries, and how many were in other countries.

Visa denials by program are as follows:

- In the countries outside the fingerprint pilot program (comprising 368,605 of the total applicants), fingerprinting was not always necessary to determine that III hits did not match applicants. [13] Fingerprints were submitted on 3,774 of the III hits, resulting in 462 applicants being identified as having records on file with the FBI. Of those matches, 54 led to visa denials (with 43 pending).

- In the ten fingerprint pilot program countries, fingerprints were submitted on all applicants between the ages of 17 and 80, regardless of III namecheck results (which amounted to 278,430 applicants). The fingerprint searches identified 3,326 applicants having records on file with the FBI. Of those hits, 301 resulted in visa denials (with three pending).

Discussion -- Department of State

The Department of State found the III namecheck (followed by a fingerprint check in the case of a "hit") to be a useful and inexpensive means of screening immigrant visa applicants for prior U.S. criminal histories. Moreover, the III checks are invisible to applicants, and except for individuals fingerprinted to confirm a possible III hit, caused no additional delay or cost. The III namechecks have certain limitations, which will be discussed below, but generally their usefulness far outweighs their drawbacks.

Routinely fingerprinting all immigrant visa applicants in the ten pilot program countries produced the opposite results. The process has been costly and inefficient,

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[11] Analysis of the two programs is based on a 17-month period, from March 1, 1995 through July 26, 1996.

[12] These III namechecks are supervised by an FBI employee on assignment to NVC.

[13] In countries outside the fingerprint pilot program, consular officers have the option to waive fingerprints when the physical description on the III response clearly does not match the visa applicant. In all other instances, they must follow up the III hit by submitting fingerprints.

and in most cases, provided no different information than did the simpler, cheaper III namecheck. In only one of the ten countries did routine fingerprinting uncover a significant number of adverse U.S. criminal records that would not also have been identified by III checks.

The legislation establishing the ten-country fingerprint pilot program dictated that the program should avoid undue processing delays or costs to eligible applicants and the U.S. government. Unfortunately, the Department of State found that fingerprinting all immigrant visa applicants caused both undue delays and costs in all ten pilot countries.

III criminal records checks were successful, but greater access needed

The Department of State found III criminal record checks to be successful in identifying criminal aliens, although the number was quite small. The process could be more effective, however, if the Department had full, direct access to the content of criminal records indexed in the III.

During the trial program, the Department of State operated worldwide III criminal record checks on immigrants for about $185,000 per year. (This figure includes related NVC operations, salary for the FBI employee assigned to NVC, supplies, phone charges, equipment and FBI charges for fingerprint searches arising from III hits; it excludes initial start-up costs.)

In countries outside the fingerprint pilot program, most visa applicants were cleared through III without delay. When III returned a possible hit on an applicant, however, procedures to follow up and confirm that hit (i.e., submitting fingerprints to the FBI) proved to be cumbersome. Many eligible applicants waited several months or more for fingerprint results, only to discover the records contained nothing relevant under U.S. immigration law to their visa eligibility.

III namechecks produced an enormous number of false hits. As noted above, NVC found only 25 percent of the 57,407 III hits were close enough matches to warrant forwarding them to visa processing posts. A total of 3,788 individuals were positively identified as having adverse records. However, the majority related to offenses that are not considered visa ineligibilities under U.S. immigration law. Of the adverse records identifiable with visa applicants, only 355 ultimately led to visa denials, with an additional 46 cases still pending resolution.[14]

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[14] Number of III hits based on NVC workload statistics; number of positive matches based on FBI fingerprint search statistics; number of visa denials based on reporting from overseas immigrant visa processing posts.

In other words, only 0.6 percent of the probable hits initially reported by the III criminal record checks turned out to be useful in visa processing. The remainder were either false hits (not identifiable with the applicants) or dealt with offenses that were not legally relevant to visa eligibility. Many of these cases could have been resolved without fingerprints, and thus, without delaying the visa applicant, if the consular officer had known more about the criminal history from the outset.

Along with criminal offenses, III indexes records for immigration violations. A past immigration violation will not render a foreign national ineligible for an immigrant visa, unless an actual order of deportation or exclusion is issued. The majority of immigration violations identified by III did not involve deportation or exclusion, and thus were irrelevant to visa adjudication. Likewise, III reported numerous minor offenses and arrests lacking convictions – all usually irrelevant under immigration law. In such instances, fingerprinting to follow up the III hit was an unnecessary delay for an eligible applicant.

The Department of State is concerned about delays caused by the large number of III hits having no relevance to visa eligibility. For a consular officer, all III index records generally look alike -- that is, none of the index records reveal the type or severity of the offense, nor even whether the individual was convicted. Thus, the consular officer is forced to fingerprint all applicants with possible III hits, and then wait 8 to 12 weeks for the results of the fingerprint check.

The Department believes that expanding its NCIC access to give consular officers a criminal history record along with an III hit could help the officer discount most irrelevant records without resorting to fingerprints. The visa cases could then move forward without undue delay. While III hits constituted a small portion of our caseload, providing the consular officer with additional information would eliminate time-consuming, unnecessary processing steps for many eligible applicants.

Consular officers would not be permitted to refuse immigrant visas based solely on the III response, however. Officers would still be responsible for proper follow-up. The expanded information would be used only to screen out applicants who could be issued visas without further inquiry. An immigrant visa would not be refused unless the applicant admitted to the criminal record reported by III, or until a subsequent fingerprint analysis positively matched him/her to the criminal record.

FBI comment:

The FBI strongly opposes allowing name/descriptor-based III access for immigrant visa issuance purposes based on national security as well as law enforcement concerns. The fact that name-based criminal record checks alone produce, at best, inconclusive results is well known throughout law enforcement. Based on the number of criminal history records that contain aliases, it is apparent that it is also well known in the criminal community.

The FBI criminal history record system is fingerprint-based because fingerprints are a reliable means of identification. The only way to conclusively determine whether the system contains a criminal history record for a particular individual is through the submission and processing of an individual's fingerprints. Consequently, the states and the FBI, based on a recommendation of the CJIS Advisory Policy Board and approved by the Director of the FBI, have implemented a policy whereby positive identification by fingerprints must be established prior to dissemination of III criminal history record information through the III for non-criminal justice purposes.

This policy was also implemented to enforce various state laws that prohibit access to their criminal record systems for other than law enforcement or criminal justice purposes. In every instance, the policy derives from the fact that, as stated above, name checks of the criminal history record system are unreliable in that they produce both false negative and false positive results.

NCIC Wanted Person File checks were useful

During the 17-month test period, all immigrant visa applicants between the ages of 17 and 80 were also namechecked against NCIC's Wanted Person File. This database contains information on outstanding arrest warrants and fugitives sought by participating domestic law enforcement agencies. More than 640,000 immigrant visa applicants were checked on this system. It produced 115 possible matches. As of September 1, only 33 of the individuals had appeared for interviews at visa issuing posts. Fifteen were identified as the subjects of outstanding warrants; 18 applicants were not the persons sought in the warrants. Although some of the no-shows might be guilty parties who feared being caught, others might be processing their immigrant status with the INS in the U.S., or no longer interested in the visa.

In almost all cases, the law enforcement agencies seeking the fugitives were not interested in extradition from the foreign country. Most simply requested that a visa not be issued.[15] Most of the individuals identified as fugitives have failed to pursue their immigrant visa applications. In one case, the U.S. Consulate General in Ciudad Juarez cooperated with U.S. Customs to apprehend a wanted drug trafficker. The consulate was also able to arrange for U.S. marshals to meet and apprehend two other fugitive aliens at the border.

Despite the small number of persons identified, the NCIC Wanted Person File is a useful tool to prevent fugitives from obtaining immigrant visas undetected. Like the III

[15] This is often problematic. Except for drug trafficking cases, an applicant must be convicted of a crime to be ineligible for a visa under the criminal exclusions. Being arrested or charged with a crime in itself does not constitute a visa ineligibility, although certain acts may trigger exclusions under other sections of the law. Issuing an immigrant visa to a known fugitive would require close coordination with INS and the requesting law enforcement agency to ensure the fugitive's apprehension at the U.S. port of entry.

criminal records check, a Wanted Person File check causes no additional delay or cost to qualified applicants. When used in conjunction with III, it causes no additional cost to the U.S. government.

FBI comment:

The FBI notes, however, that this is only a name-based check. A visa applicant subject to a warrant under a different name would not be identified by the NCIC Wanted Person check. If the wanted person's fingerprints were on file with the FBI, and his/her FBI number was entered into the Wanted Person file, a fingerprint check would disclose both the Wanted Person entry and the criminal history, even if the applicant is now using a different name.

The fingerprint pilot program generated limited results

The greatest deficiency of the fingerprint pilot program was that it produced relatively few meaningful results. The Department of State processed more than 278,000 immigrant visa applicants in the ten pilot program countries. In nine of the ten countries, fingerprinting all applicants virtually duplicated the results obtained by III checks.[16] In those countries, consular officers found only 18 cases in which the fingerprint search discovered a criminal history not also identified through the III check. Mexico was the one exception, where fingerprinting provided a larger number of criminal histories that were not disclosed through the III check.

The 18 cases in which applicants would have defeated a III check alone were: 13 cases processed by Santo Domingo, two by San Salvador, and one each by Manila, Montreal and Guangzhou. (The Guangzhou case, though, appears to be a data input error by the arresting agency, not a deliberate attempt by the applicant to conceal the record.) Those cases break down to 10 drug trafficking, three drug possession (one with no conviction) and five non-drug criminal offenses. The non-drug offenses included one shoplifting and one petty theft.

In Ciudad Juarez, which handles immigrant visa processing in Mexico, the majority of the 217 visas denials based on information obtained from FBI criminal records were identified through fingerprints and not through the III criminal records check. Many of these discrepancies, according to post, occurred in cases involving older parents of U.S. citizens, whose arrests date from the 1960s and early 1970s, and who lacked any recent criminal activity.[17]

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[16] As a way to compare the effectiveness of the two programs, applicants in the ten pilot program countries were subjected to both a full fingerprint search and a III criminal record check. These counts exclude records containing only an apprehension for immigration violation, unless it resulted in an order of exclusion or deportation. Immigration arrests not followed by deportation or exclusion do not render immigrant visa applicants ineligible under immigration law.

[17] Post was unable to provide an exact breakdown.

It is not surprising that old arrests would not trigger a III hit. The III contains automated arrest records on individuals arrested for the first time from 1974 onward. The FBI has been adding older records to the automated database, but not systematically. Pre-1974 arrests are often converted from manual to automated records when an individual undertakes new criminal activity. It is unlikely, for example, that a 1968 arrest record for an individual with no subsequent arrests would have been added to the III.

The Department of State finds criminal histories from the 1960s and 1970s to be of limited use in the context of immigrant visa processing. Although the passage of time does not erase the conviction for immigration purposes, applicants with convictions more than 20 years ago and with no subsequent criminal activity, who have family members in the U.S., often obtain waivers of ineligibility from the Attorney General (through INS) and can thus be issued immigrant visas. Only individuals with drug convictions or the most serious of criminal convictions would be denied waivers in such cases.

Why did Ciudad Juarez's experience with fingerprinting differ from other posts in the pilot program? III and fingerprinting identify aliens with prior criminal histories in the U.S. Because of Mexico's close proximity and the enormous volume of travel between our two countries, a relatively large number of individuals living in Mexico have past arrests in the U.S. Over the last three years, the U.S. has deported 58,216 individuals back to Mexico on charges related to drugs or criminal convictions. This amounts to 75 percent of all criminal deportations during that time period.

By comparison, other countries in the pilot program found few applicants with prior U.S. criminal records. At the U.S. Embassy in the Philippines, for example, 17 months of fingerprint checks led to only two visa denials. The Department of State believes this can be explained in part by the small number of persons who are returned to the Philippines because of U.S. criminal activity. Over the last three years, only 210 Filipinos were deported from the U.S. for criminal reasons.

The Department of State believes fingerprinting produced results among Mexican applicants, and not other pilot program nationalities, because there is a significant number of persons in Mexico who have prior U.S. criminal records. This is further supported by noting that the second largest number of discrepancies between III and fingerprint results (13) occurred among visa cases at the U.S. Embassy in the Dominican Republic. Over the last three years, the U.S. deported 2,861 nationals of the Dominican Republic because of criminal activity.

The ten countries in the pilot program were selected by volume, not by the likelihood a visa applicant may have a U.S. criminal record. Despite this, the

Department believes the ten countries represent a cross-section of the world -- ranging from countries like Mexico and the Dominican Republic, with relatively high numbers of criminal visa refusals, to countries like Ireland and India, with relatively low numbers of criminal visa refusals. The results obtained in this cross-section of the world argue that fingerprinting all applicants was not useful everywhere.

The fingerprint pilot program created unacceptable delays

Fingerprinting adds an additional delay of two to four months to an immigrant visa application -- often after the applicant has already waited years for his/her case to become current under the law's established system of priority dates and annual ceilings. Collecting fingerprints earlier in the visa process is not feasible. First, a criminal history search done one or two years prior to visa issuance would be an inadequate clearance. Second, much of the Department of State's initial visa processing has been standardized and centralized at NVC for budgetary reasons; a separate structure to fingerprint applicants before their cases are otherwise considered current and active would undermine many of the economies of scale the NVC operation achieves.

Even before these two pilot programs, immigrating to the United States could be a lengthy process. Families are separated for years because the demand for immigrant visas far exceeds the annual ceilings set by law. There are more than 3.6 million individuals on the waiting list for visas, nearly all coming to join U.S. citizen or legal resident spouses, children, parents or siblings.

Moreover, fingerprinting has severely increased the time necessary to process visas in categories without waiting lists -- spouses, children and parents of U.S. citizens. Elsewhere in the world, embassies and consulates can handle applicants in these "immediate relative" categories quickly, sometimes in a matter of weeks. In the fingerprint pilot posts, however, even immediate relative cases take a minimum of three to four months because of the additional time necessary to obtain fingerprint results from the FBI. This severely disadvantages U.S. citizens who wish to legally bring their spouses, children or parents to join them.

In some visa categories, applicants who qualify as children of U.S. citizens or legal residents lose their right to immigrate when they turn 21 years old. The fingerprinting requirement has made it difficult and sometimes impossible to expedite visas for applicants nearing their 21st birthday.

Visa applicants comprise a very small part of the FBI's overall fingerprint identification workload. The Department of State recognizes it would be unreasonable to establish special processing procedures for visa-related clearances. Nonetheless, the CJIS Division did provide invaluable support in thousands of visa cases requiring either research to locate missing clearance results, or expedited handling to address a humanitarian situation or meet a fast approaching 21st birthday.

The FBI notes that the implementation in 1999 of their new Integrated Automated Fingerprint Identification System will dramatically reduce the time it takes the CJIS Divisions to process a fingerprint card -- to an average of 24 hours. If this goal is achieved, the Department of State estimates the total turnaround time for an overseas embassy and consulate to obtain fingerprint responses would drop to about 4 to 6 weeks.

The fingerprint pilot program resulted in undue costs

In FY 1996, fingerprinting all prospective immigrants in the ten pilot program countries cost the Department of State an estimated $3.7 million. The bulk of the expenses ($3.2 million) were processing fees paid to the FBI. Other expenses include costs that can be directly identified and attributed to the fingerprint pilot program, such as supplies, postage, commercial courier service and additional clerical positions.

Based on these costs, the Department estimates that expanding fingerprinting to all immigrant visa posts could cost in excess of $13 million per year.

Neither of these figures include other indirect costs, generally support and other activities by employees not directly assigned to fingerprint operations. Such costs often involve collateral duties by employees funded through other appropriations, so cannot be broken out and calculated.

During FY 1996, the Department will collect an estimated $4.4 million in user fees from visa applicants being fingerprinted. The apparent surplus revenue is due in part to the time lag between fee collection by overseas posts and payment to the FBI. Applicants pay the user fee when the post takes their fingerprints. The FBI bills the Department only after the fingerprint search is completed. Some of the FY 1996 surplus covered a shortfall in the previous year's fee revenues. Other surplus fee revenues will carry forward to help offset FY 1997 expenses.

Although user fees provide the Department of State with funding to administer the fingerprint pilot program, there is no efficient mechanism for calculating and charging the indirect costs to this account. The department found that fingerprinting is inherently labor-intensive. It creates work at many levels, not just in taking and mailing the fingerprints. Consular officers, senior Foreign Service National staff, public and Congressional inquiries units overseas and in Washington devoted significant time to fingerprint-related requests. Because such activities are in addition to the employees' principal functions, the workhours they devoted to the fingerprint pilot could not be easily identified, and generally were not reimbursed from user fee proceeds. The Department was forced to absorb these indirect costs during a time of continued budget austerity.

The fingerprint pilot program also generated additional, excessive costs to eligible visa applicants. In the past, applicants made only one trip to the visa processing post --

for the visa interview followed by (if found eligible) visa issuance. In countries like China, India or Mexico, this often entails a long trip for persons of limited financial means. The fingerprint pilot program forced applicants to make two trips to the visa processing post -- first to submit fingerprints, and a return months later for an interview and visa issuance. In most of the pilot program countries, there are no outside agencies closer to applicants' homes which could provide reliable or secure fingerprinting services.

The fingerprint pilot program caused inefficiencies in visa operations

Twelve of the 13 visa processing posts in the fingerprint program found the pilot to be ineffective and burdensome. While all the posts share the goal of better identifying criminal aliens, all felt the III criminal record checks sufficiently fulfilled that goal. The posts called the fingerprint pilot program a serious drain on their resources at a time of increasing visa demand and slashed budgets.

At the consulate in Guangzhou, for example, fingerprint-related inquiries comprised half of all correspondence. Handling expedited and missing fingerprints occupied ten percent of their consular officers' weekly workhours. Santo Domingo likewise said its public inquiries staff was "inundated" by fingerprint questions. Montreal found the program caused significant processing delays, as well as increased stress among applicants and their U.S. citizen sponsors. Manila expended significant amounts of employee time answering complaints, inquiries and requests for special exceptions. Other posts echoed identical concerns.

Posts also criticized the long delays fingerprinting caused prospective immigrants who are spouses, children or parents of U.S. citizens -- especially for the many individuals who had never been to the United States and thus could not possibly have U.S. criminal histories. Manila noted that frustrations among applicants and U.S. citizen family members led to a great deal of unnecessary friction and contentiousness in the visa process. While Manila felt the III namecheck process was worth continuing, they believed the resources devoted to fingerprinting all immigrant visa applicants could be better utilized elsewhere.

Only the consulate general in Ciudad Juarez considered the fingerprint pilot program to be worth the cost and additional work, although as noted some of the criminal records uncovered through fingerprints dated from before 1974. Ciudad Juarez is the Department's largest immigrant visa issuing post. Given the post's large number of applicants, along with the ease and volume of travel between Mexico and the U.S., it is not surprising that the consulate would encounter more adverse records than other visa processing posts. It is interesting to note that Ciudad Juarez was the only pilot program post where a significant number of pre-1974 criminal histories were being uncovered. Only one other post, Santo Domingo, reported a single pre-1974 criminal history not on III.

Discussion -- Federal Bureau of Investigation

Fingerprints aid in preserving U.S. national security and law enforcement interests

The process of issuing a visa is the first line of defense in preventing an influx of criminal, terrorist or intelligence-related activity in the United States. This line of defense has become increasingly important as the U.S. law enforcement community faces the difficulty of investigative responsibility resulting from the increasing influx of foreign visitors.

The increasing number of foreign visitors involved in criminal and/or terrorist activity has resulted in the need for increased resources within the FBI for investigative purposes. Congress has recognized this by increasing the FBI's appropriations to meet this growing problem. As transnational crime escalates worldwide and nonimmigrant visa applicants commit crimes while visiting the U.S., the number of foreign nationals represented in the FBI's fingerprint database of U.S. criminal history records is expected to grow correspondingly. The FBI has determined that in some instances visa applicants are tutored by organized crime figures on how to evade detection as to their prior criminal records. The only way to ensure that these criminals do not defeat the system is through the submission and processing of fingerprints.

It is incumbent on all United States agencies to proactively and aggressively work together to ensure the protection of U.S. national security and law enforcement interests. In recent years, the FBI has expanded its criminal and terrorist investigative activities and is establishing new Legal Attache offices throughout the world. As the agency responsible for issuing immigrant visas, the Department of State is in a position to reduce the number of immigrant visas issued to criminal applicants through the fingerprint process.

The FBI notes the Department of State takes the position that the cost, in terms of time and resources, outweighs the relatively small percentage of applicants who are detected by submission of fingerprints who would not be detected by name-based checks only. Although this is certainly an economically sound approach, the FBI takes the position that any number of individuals who enter the U.S. with prior disqualifying criminal records tends to pose a threat to law enforcement and potentially to the national security. In fact, as noted above, because of organized crime influence, it is arguable that those that go undetected may very well be the ones about whom we should be most concerned.

In short, the FBI opposes the idea of balancing costs against the percentage of applicants with disqualifying criminal records who may evade detection and obtain immigrant visas. This, we believe, would result in a high probability of allowing these criminals into the U.S., albeit that the number may be relatively small.

Namechecks are inadequate clearances

Through enactment of the Immigration and Nationality Act, Congress requires the Department of State to deny visas to those applicants with certain criminal records. Reliance on namechecks alone results in missed identifications of criminal records, as the statistics on immigrant visa applicants from Mexico, and other countries to a lesser extent, clearly show. It is extremely easy for persons with criminal records to use false identities or make minor changes to identifying data to evade a "hit" on a computer name check. On the other hand, a fingerprint comparison is absolute and will conclusively identify any visa applicant that has a criminal record on file.

Any criminal history record system contains countless records on individuals with the same names and dates of birth and, in some cases, the same Social Security Administration account number. Therefore, a namecheck is, at best, an inconclusive means of conducting a criminal history check.

It is the FBI's position that the inadequacy of a namecheck is well established, as is the potential for criminals to avoid detection by using multiple identities. For example, an individual previously arrested using an alias and then furnishing his or her true name for a visa (or vice versa) would be missed if the criminal record check is done by name rather than through the submission of fingerprints. Of equal concern is the fact that a single variation in the numerical descriptive information provided by a visa applicant, for example, an alteration of the date of birth by one day, would allow an individual with a long criminal history record to avoid detection through the namecheck procedure. Reliance on a namecheck affords ineligible visa applicants an easy opportunity to obtain a visa to the U.S.

Namechecks alone miss criminal records

According to Department of State statistics, a total of 647,035 individuals from both the ten fingerprint pilot countries and the non-pilot program countries were screened in connection with their immigrant visa applications. FBI statistics show that fingerprints were processed for 278,430 applicants in the ten pilot program countries (i.e., those with the highest immigrant visa volume). Of the 278,430 fingerprints processed, 3,326 were matched with criminal history records, or 1.195 percent.[18]

For the remaining 368,605 applicants in countries outside the fingerprint pilot program, FBI statistics show 3,774 fingerprints submitted for processing. They produced 462 matches with criminal history records. Therefore, only 0.125 percent of the immigrant visa applicants in these countries were matched with criminal records.

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[18] A small unknown number of fingerprint checks had not been completed at the time these figures were gathered.

Presuming the same percentage of applicants from non-pilot program countries have criminal history records as those from the ten pilot program countries, 4,404 applicants in the non-pilot program countries should have matched with criminal history records rather than 462. Therefore, the FBI estimates, there may have been 3,942 applicants in those countries that would have matched criminal history records if fingerprints had been submitted on all applicants. However, since applicants in those non-pilot program countries were not required to submit fingerprints, the FBI notes it is all but impossible to determine the actual effectiveness of the III namecheck program. In those non-pilot program countries, fingerprints were submitted only on applicants with III hits. Further, it is impossible to know how many applicants in the non-pilot program countries have criminal records but avoided detection by providing false identification documents either at the time of application for the immigrant visa or at the time of arrest.

Department of State comment:

The Department of State finds the above FBI analysis flawed for several reasons. First, it is mistaken to presume that the two groups of countries (those in the fingerprint pilot program and those not) should have a similar percentage of hits. The ten pilot program countries should have a higher rate of matches to criminal records because this group includes Mexico. As noted earlier, Mexico comprises three-fourths of the criminal deportations from the U.S. Likewise, the vast majority of apprehensions for immigration violations (included above as fingerprint "matches") are nationals of Mexico. Among the 355 visa denials discussed in this report, 60 percent were applicants at the U.S. immigrant visa post in Mexico.

Further, the Department believes comparing the numbers of criminal record hits inaccurately measures results in the context of visa processing. As noted earlier, only certain types of criminal records, not all hits, render an applicant ineligible for an immigrant visa under U.S. law. Many of the hits discovered on visa applicants were non-criminal immigration violations, which generally do not lead to visa denial.

Conclusions

- Both agencies find Department of State access to the NCIC Wanted Person File to be a valuable tool. It will assist consular officers in identifying visa applicants who are subject to outstanding warrants, and aid U.S. law enforcement agencies in locating persons who are wanted but may not have existing criminal records.

Beyond this, the two agencies have differing conclusions based on their analyses of the programs:

FBI conclusions

- U.S. national security and law enforcement interests are better served when fingerprinting of all immigrant visa applicants is required. Criminal and terrorist activities by foreign nationals are increasing in the United States. Those foreign nationals who have disqualifying U.S. criminal history records should be on notice that their criminal records will be located because fingerprints are required. On the other hand, if the Department of State continues to rely only upon namechecks of the fingerprint-based system of criminal records, these individuals gain an easy opportunity to immigrate to the U.S. using aliases or dates of birth differing from those indexed in the III. In addition to the concerns about deliberate efforts, approximately one-third of individuals represented in the fingerprint-based system of criminal records are not indexed in the III. To allow the Department of State to base immigrant visa decisions on the results of III namechecks is setting what may prove to be a dangerous precedent, in that it would send an inaccurate message to other agencies that namechecks of the III produce reliable results.

- The FBI notes that the Department of State is willing to rely on namechecks of III to save time and costs knowing that, although relatively small, a number of immigrant visa applicants with disqualifying criminal records may gain entry to the United States. The FBI concludes that even though relatively small in number these same applicants, especially those who resort to fraud and deception to gain entry to the U.S., present a potential threat to national security and law enforcement. Thus, to balance costs in terms of time and resources against national security and law enforcement interests would be, at best, inappropriate.

- The FBI notes that providing the Department of State access to full III criminal histories through NCIC would be contrary to existing policy as established through the CJIS Advisory Policy Board process. This policy recognizes various state laws prohibiting dissemination of criminal history record information for non-criminal justice purposes without a positive fingerprint identification.

- It is the FBI's position that a fingerprint comparison is the only way to positively determine whether an immigrant visa applicant has a criminal history record. Congress enacted laws denying an immigrant visa to persons who have certain criminal convictions. The only way to ensure those applicants who have criminal records under an alias name or different date of birth do not avoid detection is through submission and comparison of fingerprints. The FBI believes the applicants that use aliases, change their identity or use false documentation when applying for an immigrant visa are the most important to keep out of the U.S. Reliance on a namecheck will not accomplish this important task.

- If Congress decides to not require fingerprinting of all immigrant visa applicants, it should consider basing the fingerprint requirement on applicants from those countries where criminal and/or terrorist activity threaten the national security of the U.S., as opposed to the countries with the highest number of persons applying to immigrate to the U.S. Only two of the countries currently on the list of the ten highest immigrant visa issuance countries are also countries identified by the FBI's Criminal Investigative and National Security divisions where criminal and/or terrorist activity most threaten the national security of the U.S.

Department of State conclusions

- The enforcement of U.S. immigration law is best served if fingerprinting is targeted to specific high-risk countries, or to applicants identified by an III namecheck. Immigration laws have two goals – to screen out undesirable foreign nationals and to facilitate the entrance of qualified travelers and immigrants. Congress recognized this in the pilot program legislation, instructing us to "avoid undue processing costs and delays for eligible immigrants." These dual goals -- security and facilitation -- demand a screening process that can be effective without becoming an unnecessary burden on the vast number of qualified immigrants. The Department believes this can be achieved through a targeted program of fingerprinting at selected points, with universal III and NCIC Wanted Person File screening of immigrant visa applicants.

- The III proved itself to be an effective tool for screening applicants in the visa processing environment. Further, III criminal records checks are relatively invisible to visa applicants, and do not add to the processing time for eligible applicants.

- The Department of State's inability to access the full content of III criminal histories through NCIC caused unnecessary delays to thousands of eligible visa applicants. If a consular officer knew from the outset that a particular III record did not relate to an offense that would render the applicant ineligible for a visa, the officer could avoid unnecessarily fingerprinting the applicant.

- In nine of the ten fingerprint pilot program countries, III and fingerprint screening produced nearly identical results in identifying criminal aliens. Fingerprinting, however, caused unnecessary delays and cost to eligible visa applicants and their U.S. citizen or resident families. It imposed an additional layer of bureaucracy onto the visa process.

- While recognizing the FBI's argument that criminals might apply under false identities, the fingerprint pilot program demonstrated that such instances were minimal. In its ten countries -- representing a cross-section of the world -- the pilot program subjected more than 278,000 applicants to both III namechecks and fingerprint clearances. Comparing the results, the Department found that (with the exception of Mexico) fingerprinting uncovered only 18 applicants with disqualifying criminal records who would have avoided detection if III was used alone. In Mexico, there were less than 200 such discrepancies out of 59,500 applicants.

- The Department shares the FBI's objective to stop criminal and terrorist elements from establishing legal residence in the U.S. Fingerprinting, however, is not a panacea. Its effectiveness is limited to identifying only those persons who already have criminal records in the U.S. It does not identify terrorists, drug traffickers or organized crime figures who are not U.S. citizens and who have never been arrested in this country. These problems must be, and are being, addressed through other means. We also note that if a criminal can falsify an identity with the ease the FBI assumes, he could just as easily document an impostor to provide fingerprints in his place, thus defeating even a fingerprint check. One should not expect more out of a process than it can possibly accomplish.

- The Department notes that Congress mandated the fingerprint pilot program specifically to test the effectiveness of fingerprinting all immigrant visa applicants. The results of the pilot argue that fingerprinting can be a useful visa processing tool, but only when targeted to certain countries, or to applicants identified through a III namecheck. Expanding fingerprinting to all countries would produce minimal benefits at a high cost to the U.S. citizen families of qualified applicants.

- If fingerprinting is targeted to specific countries, the Department agrees the selection should not be based on immigrant visa volume, but on criteria developed jointly by the Department and the FBI.

Recommendations

The two agencies have differing recommendations based on their analyses of the two programs.

FBI recommendations

- Fingerprinting of all immigrant visa applicants should be required.
- National Visa Center access to the Interstate Identification Index should be discontinued if fingerprints are required of all immigrant visa applicants.
- If Congress decides not to require fingerprinting all immigrant visa applicants, it should at a minimum require fingerprinting of applicants from countries identified by the FBI's Criminal Investigative and National Security divisions where criminal activity threatens the national security of the U.S., which may or may not include the ten countries with the highest number of immigrant visa applicants. However, based on existing policy as established through the CJIS Advisory Policy Board process which recognizes various state laws prohibiting dissemination of criminal history record information for non-criminal justice purposes without positive fingerprint identification, the FBI cannot support Department of State access to the full content of criminal history records through the III.
- National Visa Center access to the NCIC Wanted Person File should continue.

Department of State recommendations

- National Visa Center access to the Interstate Identification Index and the NCIC Wanted Person File should continue.
- NVC should be provided automated access to the full content of Interstate Identification Index criminal history records.
- If continued, fingerprinting of all prospective immigrants should be implemented only in those countries where it can be of some benefit – for example, those countries which are significant sources of criminal aliens. The Department of State and the FBI should jointly determine in which countries fingerprinting could be beneficial in the context of visa processing. In other countries, fingerprinting should be limited to positive verification of III index hits, or to instances when a consular officer believes it is otherwise necessary for the administration of U.S. immigration law.

Appendix A - Legislation

Public Law 103-236 (April 30, 1994), as amended by Public Law 103-317 (August 26, 1994)

Section 140

(d) ACCESS TO THE INTERSTATE IDENTIFICATION INDEX

(1) Subject to paragraphs (2) and (3), the Department of State Consolidated Immigrant Visa Processing Center shall have on-line access, without payment of any fee or charge, to the Interstate Identification Index of the National Crime Information Center solely for the purpose of determining whether a visa applicant has a criminal history record indexed in such Index. Such access does not entitle the Department of State to obtain the full content of automated records through the Interstate Identification Index. To obtain the full content of a criminal history record, the Department shall submit a separate request to the Identification Records Section of the Federal Bureau of Investigation, and shall pay the appropriate fee as provided for in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1990 (Public Law 101-162).

(2) The Department of State shall be responsible for all one-time start-up and recurring incremental non-personnel costs of establishing and maintaining the access authorized in paragraph (1).

(3) The individual primarily responsible for the day-to-day implementation of paragraph (1) shall be an employee of the Federal Bureau of Investigation selected by the Department of State, and detailed to the Department on a fully reimbursable basis.

(e) FINGERPRINT CHECKS--

(1) Effective not later than March 31, 1995, the Secretary of State shall in the ten countries with the highest volume of immigrant visa issuances for the most recent fiscal year for which data are available require the fingerprinting of applicants over sixteen years of age for immigrant visas. The Department of State shall submit records of such fingerprints to the Federal Bureau of Investigation in order to ascertain whether such applicants previously have been convicted of a felony under State or Federal law in the United States, and shall pay appropriate fees.

(2) The Secretary shall prescribe and publish such regulations as may be necessary to implement the requirements of this subsection, and to avoid undue processing costs and delays for eligible immigrants and the United States Government

(f) Not later than December 31, 1996, the Secretary of State and the Director of the Federal Bureau of Investigation shall jointly submit to the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives, and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate, a report on the effectiveness of the procedures authorized in subsections (d) and (e).

(g) Subsections (d) and (e) shall cease to have effect after December 31, 1997.

Appendix B - Abbreviations

CJIS - Criminal Justice Information Services, Federal Bureau of Investigation

FBI - Federal Bureau of Investigation

III - Interstate Identification Index

INS - U.S. Immigration and Naturalization Service

NCIC - National Crime Information Center

NFF - National Fingerprint File

NVC - National Visa Center

VO - Office of Visa Services, Department of State