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Visa Issuances: Policy, Issues, and Legislation

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Summary

Since the September 11, 2001 terrorist attacks, considerable concern has been raised because the 19 terrorists were aliens who apparently entered the United States with temporary visas despite provisions in immigration laws that bar the admission of terrorists. Foreign nationals not already legally residing in the United States who wish to come to the United States generally must obtain a visa to be admitted, with certain exceptions noted in law. The report of the 9/11 Commission maintained that border security was not considered a national security matter prior to September 11, and as a result the State Department's consular officers were not treated as full partners in counterterrorism efforts. The 9/11 Commission has made several recommendations that underscore the urgency of implementing legislative provisions on visa policy and immigration control that Congress enacted several years ago.

As enacted, the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) further broadens the security and terrorism grounds of inadmissibility to exclude aliens who have participated in the commission of acts of torture or extrajudicial killings abroad or who are members of political, social, or other groups that endorse or espouse terrorist activity. It also includes provions to deploy technologies (e.g., biometrics) to detect potential terrorist indicators on travel documents; establish an Office of Visa and Passport Security; and train consular officers in the detection of terrorist travel patterns. The conferees retained the provision on visa revocation as a ground of inadmissibility but permit limited judicial review of removal if visa revocation is the sole basis of the removal.

As these more stringent visa policies have gone into force, however, new concerns have arisen about visa processing delays. Visa applicants often face extensive wait times for interviews. From September 2005 through February 2006, GAO found that 97 of DOS's 211 visa-issuing posts reported maximum wait times of 30 or more days in at least one month. Whether these delays are having a deleterious effect on travel and commerce has become an issue. Some now question whether sufficient resources and staff are in place to manage visa issuances in the post-September 11 world.

Meanwhile, nonimmigrant (i.e., temporary) visas issued abroad dipped to 4.9 million in FY2003 after peaking at 7.6 million in FY2001. The FY2005 data indicated an upturn, as 5.4 million nonimmigrant visas were issued. Combined, visitors for tourism and business comprised the largest group of nonimmigrants visas issued in FY2005, about 3.7 million down from 5.7 million in FY2000. Other notable categories were temporary workers (17%) and students or cultural exchange (9.4%). The number of legal permanent resident visas issued each year by consular officers abroad has held steady at about 0.4 million over the past decade.

DOS excluded 38,434 potential immigrants in FY2005 and refused 270,615 potential immigrants in FY2005 because their visa application did not comply with provisions in the INA. In terms of temporary visas, DOS excluded 25,212 potential nonimmigrants in FY2005 and refused almost 2 million potential nonimmigrants in FY2005 because the alien was not qualified for the visa.

Contents

List of Figures

List of Tables

Visa Issuances: Policy, Issues, and Legislation

Introduction

Following the September 11, 2001 terrorist attacks, considerable concern was raised because the 19 terrorists were aliens (i.e., noncitizens or foreign nationals) who apparently entered the United States on temporary visas. Fears that lax enforcement of immigration laws regulating the admission of foreign nationals into the United States makes the United States vulnerable to further terrorist attacks led many to call for revisions in the visa policy and changes in who administers immigration law. The report of the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) maintained that border security was not considered a national security matter prior to September 11, and as a result the State Department's consular officers were not treated as full partners in counterterrorism efforts. The 9/11 Commission made several recommendations that underscored the urgency of implementing legislative provisions on visa policy and immigration control that Congress enacted several years ago.

As these more stringent visa policies have gone into force, however, new concerns have arisen about visa processing delays. Visa applicants often face extensive wait times for interviews. Whether these delays are having a deleterious effect on travel and commerce has become an issue. Some now question whether sufficient resources and staff are in place to manage visa issuances in the post-September 11 world.

Foreign nationals not already legally residing in the United States who wish to come to the United States generally must obtain a visa to be admitted.[1] Under current law, three departments — the Department of State (DOS), the Department of Homeland Security (DHS) and the Department of Justice (DOJ) — each play key roles in administering the law and policies on the admission of aliens.[2] DOS's Bureau of Consular Affairs (Consular Affairs) is the agency responsible for issuing visas, DHS's Citizenship and Immigration Services (USCIS) is charged with approving immigrant petitions, and DHS's Bureau of Customs and Border Protection

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[1] Authorities to except or to waive visa requirements are specified in law, such as the broad parole authority of the Attorney General under §212(d)(5) of the Immigration and Nationality Act (INA) and the specific authority of the Visa Waiver Program in §217 of the INA.

[2] Other departments, notably the Department of Labor (DOL), and the Department of Agriculture (USDA), play roles in the approval process depending on the category or type of visa sought, and the Department of Health and Human Services (DHHS) sets policy on the health-related grounds for inadmissibility discussed below.

(CBP) is tasked with inspecting all people who enter the United States. DOJ's Executive Office for Immigration Review (EOIR) has a significant policy role through its adjudicatory decisions on specific immigration cases.

This report opens with an overview of visa issuances, with sections on procedures for aliens coming to live in the United States permanently and on procedures for aliens admitted for temporary stays.[3] It includes a discussion of visa screening policies, including inadmissibility, databases, an analysis of visa refusals, biometric visas and other major visa policy procedures. Summaries of key laws revising visa policy enacted in the 107th-109th Congresses follows. The final section analyzes selected issues in the 110th Congress, notably new technologies, impact on travel and commerce, and security concerns.

Overview on Visa Issuances

There are two broad classes of aliens that are issued visas: immigrants and nonimmigrants.[4] Those for whom visas are not required, including humanitarian admissions, such as asylees, refugees, parolees and other aliens granted relief from deportation, are handled separately under the Immigration and Nationality Act (INA). Those aliens granted asylum or refugee status ultimately are eligible to become legal permanent residents (LPRs).[5] Illegal aliens or unauthorized aliens include those noncitizens who either entered the United States surreptitiously (i.e., entered without inspection), or who violated the terms of their visas.

The documentary requirements for visas are stated in §222 of the INA, with some discretion for further specifications or exceptions by regulation as discussed below. Generally, the application requirements are more extensive for aliens who wish to permanently live in the United States than those coming for visits. The amount of paperwork required and the length of adjudication process to obtain a visa to come to the United States is analogous to that of the Internal Revenue Service's (IRS) tax forms and review procedures. Just as persons with uncomplicated earnings and expenses may file an IRS "short form" while those whose financial circumstances are more complex may file a series of IRS forms, so too an alien whose situation is straightforward and whose reason for seeking a visa is easily documented generally has fewer forms and procedural hurdles than an alien whose circumstances are more complex. There are over 70 U.S. Citizenship and Immigration Services (USCIS) forms as well as DOS forms that pertain to the visa issuance process.

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[3] For a broader discussion, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth Ellen Wasem.

[4] For background and analysis of visa issuance policy and activities, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

[5] For background and further discussion of humanitarian cases, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno; and CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*, by Ruth Ellen Wasem and Karma Ester.

Permanent Admissions

Aliens who wish to come to live permanently in the United States must meet a set of criteria specified in the INA.[6] They must qualify as:

- a spouse or minor child of a U.S. citizen;
- a parent, adult child or sibling of an adult U.S. citizen;
- a spouse or minor child of a legal permanent resident;
- an employee that a U.S. employer has gotten approval from the Department of Labor to hire;
- a person of extraordinary or exceptional ability in specified areas;
- a refugee or asylee determined to be fleeing persecution;
- a winner of a visa in the diversity lottery; or
- a person eligible under other specialized provisions of law.

Petitions for immigrant (i.e., LPR status), are first filed with USCIS by the sponsoring relative or employer in the United States. If the prospective immigrant is already residing in the United States, the USCIS handles the entire process, which is called "adjustment of status." If the prospective LPR does not have legal residence in the United States, the petition is forwarded to Consular Affairs in their home country after USCIS has reviewed it. The Consular Affairs officer (when the alien is coming from abroad) and USCIS adjudicator (when the alien is adjusting status in the United States) must be satisfied that the alien is entitled to the immigrant status. Many LPRs are adjusting status from within the United States rather than receiving visas issued abroad by Consular Affairs, as **Figure 1** indicates. Although over 1 million aliens became LPRs in FY2005, less than 400,000 immigrant visas were issued abroad that year.

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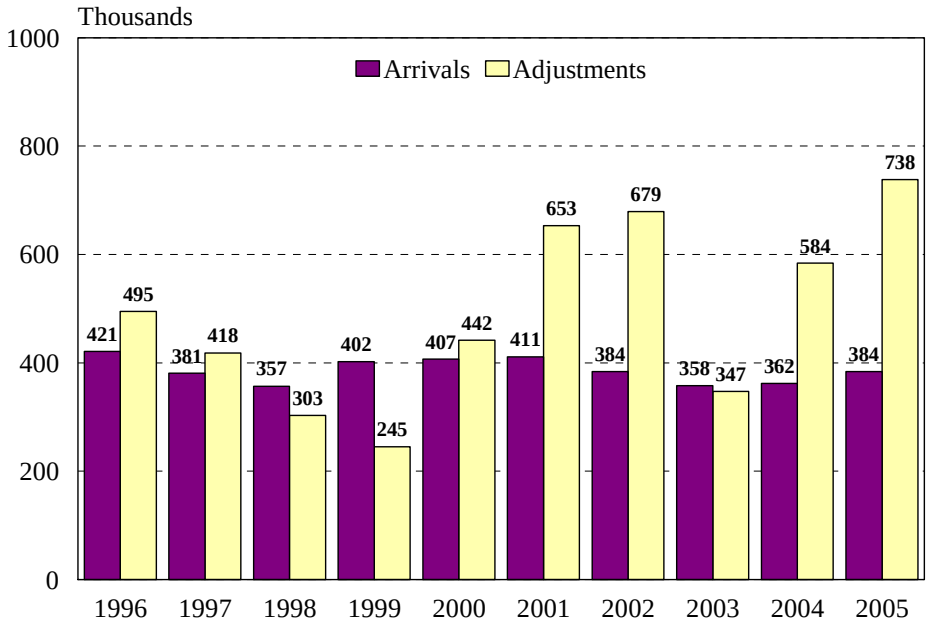
[6] For a full discussion of these policies, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

Figure 1. Immigrant Arrivals and Adjustments of Status, FY1996-FY2006



Source: *Statistical Yearbook of Immigration,* U.S. Department of Homeland Security, Office of Immigration Statistics, (multiple years).

A personal interview is required for all prospective LPRs.[7] The burden of proof is on the applicant to establish eligibility for the type of visa for which the application is made. Consular Affairs officers (when the alien is coming from abroad) and USCIS adjudicators (when the alien is adjusting status in the United States) must confirm that the alien is not ineligible for a visa under the so-called "grounds for inadmissibility" of the INA, which include criminal, terrorist, and public health grounds for exclusion discussed below.[8]

[7] 22 C.F.R. §42.62.

[8] For a recent review of the Bureau of Consular Affair's role in visa processing, see U.S. General Accounting Office, *Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool*, GAO-03-132NI, Oct. 21, 2002.

Temporary Admissions

Aliens seeking to come to the United States temporarily rather than to live permanently are known as nonimmigrants.[9] These aliens are admitted to the United States for a temporary period of time and an expressed reason. There are 24 major nonimmigrant visa categories, and 70 specific types of nonimmigrant visas are issued currently. Most of these nonimmigrant visa categories are defined in §101(a)(15) of the INA. These visa categories are commonly referred to by the letter and numeral that denotes their subsection in §101(a)(15), e.g., B-2 tourists, E-2 treaty investors, F-1 foreign students, H-1B temporary professional workers, J-1 cultural exchange participants, or S-4 terrorist informants.

As with immigrant visas, the burden of proof is on the applicant to establish eligibility for nonimmigrant status and the type of nonimmigrant visa for which the application is made. Nonimmigrants must demonstrate that they are coming for a limited period and for a specific purpose. Specifically §214(b) of the INA presumes that all aliens seeking admission to the United States are coming to live permanently; as a result, nonimmigrants must demonstrate that they are not coming to reside permanently. The Consular Affairs officer, at the time of application for a visa, as well as the Customs and Border Protection Bureau (CBP) inspectors, at the time of application for admission, must be satisfied that the alien is entitled to a nonimmigrant status.[10] The law exempts only the H-1 workers, L intracompany transfers, and V family members from the requirement that they prove that they are not coming to live permanently.[11] USCIS and CBP play a role determining eligibility for certain nonimmigrant visas, notably H workers and L intracompany transfers. Also, if a nonimmigrant in the United States wishes to change from one nonimmigrant category to another, such as from a tourist visa to a student visa, the alien files a change of status application with the USCIS. If the alien leaves the United States while the change of status is pending, the alien is presumed to have relinquished the application.

Personal interviews are generally required for foreign nationals seeking nonimmigrant visas. Interviews, however, may be waived in certain cases; prior to the September 11, 2001, terrorist attacks, personal interviews for applicants for B visitor visas reportedly were often waived.[12] This waiver formed the basis for the controversial and allegedly fraud-prone "Visa Express" in Saudi Arabia (now suspended) where travel agents pre-screened visa applicants and submitted petitions on behalf of the aliens.[13] After September 11, 2001, the number of personal interviews rose significantly as part of broader efforts to meet national security goals.

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[9] For a full discussion and analysis of nonimmigrant visas, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem and Chad C. Haddal. (Hereafter cited as CRS Report RL31381, *Temporary Admissions*.)

[10] 22 C.F.R. §41.11(a).

[11] §214(b) of the INA; 8 U.S.C. §1184(b).

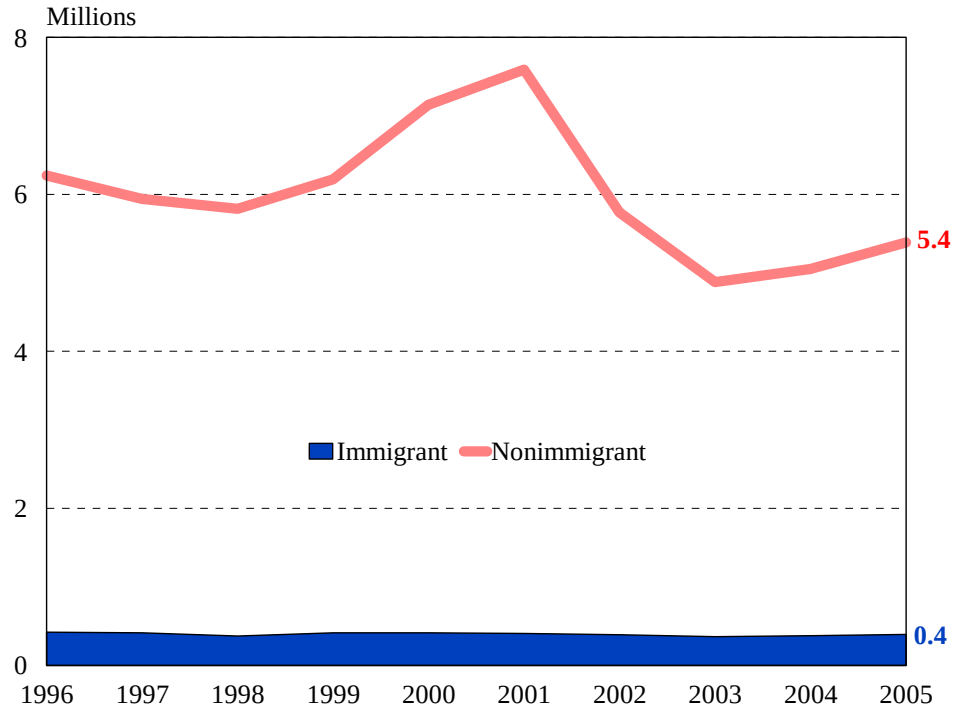
[12] 22 C.F.R. §41.102.

[13] U.S. Department of State, *Myths and Facts about U.S. Immigration Standards for Saudi Arabian Immigrants*, Fact Sheet issued July 8, 2002.

DOS issued interim regulations on July 7, 2003, that officially tightened up the requirements for personal interviews and substantially narrowed the class of nonimmigrants eligible for the waiver of a personal interview. Prior to implementation of P.L. 108-458, personal interview waivers might have been granted only to children under age 16, persons 60 years or older, diplomats and representatives of international organizations, aliens who were renewing a visa they obtained within the prior 12 months, and individual cases for whom a waiver was warranted for national security or unusual circumstances.[14]

Nonimmigrant visas issued abroad dipped to 4.9 million in FY2003 after peaking at 7.6 million in FY2001. The FY2005 data indicated 5.4 million nonimmigrant visas were issued. Earlier in the decade, as **Figure 2** illustrates, DOS typically issued about 6 million nonimmigrant visas annually. The number of immigrant visas issued each year by consular officers abroad has held steady at about 0.4 million over the past decade. The growth in nonimmigrant visas issued in the late 1990s was largely attributable to the issuances of border crossing cards to residents of Canada and Mexico and periodic lifting of the ceilings on temporary worker visas.

Figure 2. Visas Issued to Immigrants and Nonimmigrants, FY1996-FY2005



Source: CRS presentation of DOS Bureau of Consular Affairs data.

Combined, visitors for tourism and business comprised the largest group of nonimmigrants visas issued in FY2005, about 3.7 million down from 5.7 million in

[14] *Federal Register*, vol. 68, no. 129, July 7, 2003, pp. 40127-40129.

FY2000. Other notable categories were temporary workers (17%) and students or cultural exchange (9.4%).[15] Depending on the visa category and the country the alien is coming from, the nonimmigrant visa may be valid for several years and may permit multiple entries. USCIS reported 33.7 million nonimmigrant entries in FY2000, 27.9 million in FY2002, and 32.0 million in FY2005.[16]

Visa Waiver Program. Not all aliens are required to have a visa to visit the United States. Indeed, most visitors enter the United States without nonimmigrant visas through the Visa Waiver Program (VWP). This provision of INA allows the visa documentary requirements to be waived for aliens coming as visitors from 27 countries (e.g., Australia, France, Germany, Italy, Japan, New Zealand, and Switzerland). Thus, visitors from these countries are not required to obtain a visa from a U.S. consulate abroad. Since aliens entering through VWP do not have visas, CBP inspectors at the port of entry are responsible for performing the background checks and making the determination of whether the alien is admissible.[17]

Waiving the Documentary Requirements. In addition to the Visa Waiver Program, there are a number of exceptions to documentary requirements for a visa that have been established by law, treaty, or regulation.[18] The INA also authorizes the Attorney General and the Secretary of State acting jointly to waive the documentary requirements of INA §212(a)(7)(B)(i), including the passport requirement, on the basis of unforeseen emergency in individual cases.[19] In 2003, the Administration scaled back the circumstances in which the visa and passport requirements are waived.[20]

Grounds for Exclusion

All aliens must undergo reviews performed by DOS consular officers abroad and CBP inspectors upon entry to the United States. These reviews are intended to

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[15] For additional analysis, see CRS Report RL31381, *Temporary Admissions*.

[16] These nonimmigrant admissions data are based on aliens entering with I-94 petitions for nonimmigrants. The DHS Office of Immigration Statistics estimates that the total number of nonimmigrants who actually entered legally were 247.5 million in FY2000, 193.2 million in FY2002, and 175.4 million in FY2005. U.S. Department of Homeland Security, Office of Immigration Statistics, *2005 Yearbook of Immigration Statistics*, (2006).

[17] See CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

[18] See CRS Congressional Distribution Memorandum, *Waiving the Documentary Requirements for Visas and Passports to Enter the United States*, by Ruth Ellen Wasem and Andorra Bruno, Oct. 27, 2003.

[19] INA §212(d)(4)(A). The Homeland Security Act (P.L. 107-296) transferred most immigration-related functions from DOJ to DHS. It is uncertain as of this writing whether this waiver authority remains, in whole or in part, with DOJ and the Attorney General or with the Secretary of DHS.

[20] For additional information about these exceptions, see 8 C.F.R. §212.1; 22 C.F.R. §41.1; and 22 C.F.R. §41.2.

ensure that they are not ineligible for visas or admission under the grounds for inadmissibility spelled out in the INA.[21] These criteria are

- health-related grounds;
- criminal history;
- security and terrorist concerns;
- public charge (e.g., indigence);
- seeking to work without proper labor certification;
- illegal entrants and immigration law violations;
- ineligible for citizenship; and,
- aliens previously removed.[22]

Some provisions may be waived or are not applicable in the case of nonimmigrants, refugees (e.g., public charge), and other aliens. All family-based immigrants and employment-based immigrants who are sponsored by a relative must have binding affidavits of support signed by U.S. sponsors in order to show that they will not become public charges.

Databases. Consular officers use the Consular Consolidated Database (CCD) to screen visa applicants. Records of all visa applications are now automated in the CCD, with some records dating back to the mid-1990s. Since February 2001, the CCD stores photographs of all visa applicants in electronic form, and more recently the CCD has begun storing finger prints of the right and left index fingers. In addition to indicating the outcome of any prior visa application of the alien in the CCD, the system links with other databases to flag problems that may impact on the issuance of the visa.

For some years, consular officers have been required to check the background of all aliens in the "lookout" databases, specifically the Consular Lookout and Support System (CLASS) and TIPOFF databases. There is also the "Terrorist Exclusion List" (TEL) which lists organizations designated as terrorist-supporting and includes the names of individuals associated with these organizations.[23]

Consular officers also send suspect names to the FBI for a name check program called Visa Condor. Visa Condor is part of the broader Security Advisory Opinion

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[21] §212(a) of the INA.

[22] For a fuller analysis, see CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia; and CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion of liens*, by Michael John Garcia and Ruth Ellen Wasem.

[23] For background and analysis, see CRS Report RL32120, *The 'FTO List' and Congress: Sanctioning Designated Foreign Terrorist Organizations*, by Audrey Kurth Cronin.

(SAO) system that requires a consular officer abroad to refer selected visa cases, identified by law enforcement and intelligence information, for greater review by intelligence and law enforcement agencies.[24]

With procedures distinct from the terrorist watch lists, consular officers screen visa applicants for employment or study that would give the foreign national access to controlled technologies (i.e., those that could be used to upgrade military capabilities), and refers foreign nationals from countries of concern (e.g., China, India, Iran, Iraq, North Korea, Pakistan, Sudan, and Syria).[25] This screening is part of a name-check procedure known as Visa Mantis, which has the following stated objectives: stem the proliferation of weapons of mass destruction and missile delivery systems; restrain the development of destabilizing conventional military capabilities in certain regions of the world; prevent the transfer of arms and sensitive dual-use items to terrorist states; and maintain U.S. advantages in certain militarily critical technologies. Mantis checks are performed by DOS's Bureau of Nonproliferation in coordination with the FBI, and other federal agencies.

Janice Jacobs, Deputy Assistant Secretary of State for Consular Affairs, reported during a congressional hearing in October 2003, that the once paper-based process of checking suspect names with other federal agencies and departments had moved toward the interoperable system mandated by the Enhanced Border Security and Visa Reform Act.

> We are also piloting a one million dollar project to allow for seamless electronic transmission of visa data among Foreign Service posts, the Department of State and other Washington agencies. The other agencies will no longer receive a telegram but a reliable data transmission through an interoperable network that begins with the Consular Consolidated Database. Using the Consular Consolidated Database as an electronic linchpin will improve data integrity, accountability of responses in specific cases, and statistical reporting.[26]

Aliens Refused Visas. As **Table 1** presents, the immigrant petitioners DOS refused on the basis of the §212(a) grounds for exclusion totaled 67,269 in FY2000, 40,606 in FY2002, and 38,434 in FY2005. In FY2000 and FY2002, most immigrant petitioners who were rejected on INA exclusionary grounds were rejected because the DOS determined that the aliens were inadmissible as likely public charges. In FY2005, the lack of proper labor certification was the leading ground for refusal. The

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[24] U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on International Operations and Terrorism, *The Post 9/11 Visa Reforms and New Technology: Achieving the Necessary Security Improvements in a Global Environment*, hearing, Oct. 23, 2003. (Hereafter cited as Senate Subcommittee on International Operations and Terrorism, *The Post 9/11 Visa Reforms*.)

[25] U.S. General Accounting Office, *Export Controls: Department of Commerce Controls Over Transfers of Technology to Foreign Nationals Needs Improvement*, GAO-02-972, Sept. 2002.

[26] Senate Subcommittee on International Operations and Terrorism, *The Post 9/11 Visa Reforms*.

other notable category encompassed prior violations of immigration law and previous orders of removal from the United States, which was at 23.9% in FY2005.[27]

Table 1. Immigrants Refused Visa by Grounds of Inadmissibility

Grounds for exclusion	Potential immigrants refused by State Department					
	FY2000		FY2002		FY2005	
Health	1,528	2.3%	1,176	2.9%	1,968	5.1%
Criminal	736	1.1%	885	2.2%	1,401	3.6%
Terrorism and security	32	0.1%	27	0.1%	63	0.2%
Public charge	46,450	69.1%	17,848	44.0%	9,559	24.9%
Labor certification	8,194	12.2%	10,046	27.7%	11,721	30.5%
Immigration violations	3,414	5.1%	6,698	16.5%	4,504	11.7%
Ineligible for citizenship	4	—	4	—	2	—
Previously removed or illegal presence	6,900	10.3%	3,909	9.6%	9,195	23.9%
Miscellaneous	7	—	13	—	21	0.1%
Total §212(a) inadmissible	**67,269**	**—**	**40,606**	**—**	**38,434**	**—**
Ineligible for visa applied for due to other reasons	205,742	—	194,255	—	270,615	—

Source: CRS analysis of DOS Bureau of Consular Affairs data.

While the grounds of inadmissibility are an important basis for denying foreign nationals admission to the United States, it should be noted that more immigrant petitions who are rejected by DOS — 270,615 in FY2005 — were rejected because their visa application did not comply with provisions in the INA (most of these being §221(g) noncompliance) included in the last category listed in **Table 1**.

Refusals of *nonimmigrant* petitions presented in **Table 2**, have a somewhat different pattern as previous immigration law violations has been the leading category. Violation of criminal law emerged as a more common ground for refusal among nonimmigrant petitioners than it was for immigrant petitioners. Prior orders of removal from the United States was also among the leading grounds for refusals. The overwhelming basis for denying nonimmigrant visas, however, was that the alien was not qualified for the visa, largely due to the §214(b) presumption discussed earlier in this report.

[27] Although consular decisions are not appealable or reviewable, some aliens are able to bring additional information that may be used to overcome an initial refusal.

Table 2. Nonimmigrants Refused Visa by Grounds of Inadmissibility

Grounds for exclusion	Potential nonimmigrants refused by State Department					
	FY2000		FY2002		FY2005	
Health	177	0.7%	390	1.2%	238	0.9%
Criminal	4,370	18.2%	6,554	20.6%	7,454	29.6%
Terrorism and security	224	1.0%	133	0.4%	333	1.3%
Public charge	825	3.4%	2,069	6.5%	1,341	5.3%
Immigration violations	14,263	60.0%	17,070	53.7%	1	—
Documentation problems	1,143	4.8%	1,123	3.5%	8,822	35.0%
Previously removed or illegal presence	2,930	12.2%	4,428	13.9%	6,977	27.7%
Miscellaneous	9	—	15	0.1%	4	—
Total §212(a) inadmissible	**23,953**	**100%**	**31,793**	**100%**	**25,212**	**100%**
Ineligible for visa applied for due to other reasons	2,428,248	—	2,560,526	—	1,941,374	—

Source: CRS analysis of DOS Bureau of Consular Affairs data.

Comparable data from DHS on aliens deemed ineligible for immigrant status or inadmissible as a nonimmigrant based upon §212(a) are not available. As a result, the DOS data presented above understate the number and distribution of aliens denied admission to the United States.

Biometric Visas

Aliens who are successful in their request for a visa are then issued the actual travel document. As of October 2004, all visas issued by the United States use biometric identifiers (e.g., finger scans) in addition to the photograph that has been collected for some time. As required by law, the biometric visa is an integral part of the entry-exit system (known as US-VISIT) maintained by DHS's immigration inspectors. The biometric visas are then to be matched against the fingerprint image scanned during the US-VISIT system when the alien arrives in the United States.[28]

Revoking Visas

After a visa has been issued, the consular officer as well as the Secretary of State has the discretionary authority to revoke a visa at any time.[29] A consular officer must revoke a visa if

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[28] CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program*, by Lisa M. Seghetti and Stephen R. Viña.

[29] §221(i) of the INA; 8 U.S.C. §1201(i).

- the alien is ineligible under INA §212(a) as described above to receive such a visa, or was issued a visa and overstayed the time limits of the visa;
- the alien is not entitled to the nonimmigrant visa classification under INA §101(a)(15) definitions specified in such visa;
- the visa has been physically removed from the passport in which it was issued; or
- the alien has been issued an immigrant visa.[30]

The Foreign Affairs Manual (FAM) instructs: "in making any new determination of ineligibility as a result of information which may come to light after issuance of a visa, the consular officer must seek and obtain any required advisory opinion." This applies, for example, to findings of ineligibility under "misrepresentation," "terrorist activity" or "foreign policy." FAM further instructs: "pending receipt of the Department's advisory opinion, the consular officer must enter the alien's name in the CLASS under a quasi-refusal code, if warranted."[31] According to DOS officials, they sometimes prudentially revoke visas, i.e., they revoke a visa as a safety precaution. A "prudential revocation" is undertaken with a relatively low threshold of national security information to ensure that all relevant or potentially relevant facts about an alien are thoroughly explored before admitting that alien to the United States.[32]

Following September 11, 2001, the U.S. General Accounting Office (GAO, subsequently renamed the Government Accountability Office) reviewed 240 cases of visa revocations and identified several problems. It found that the appropriate units within the Federal Bureau of Investigation (FBI) and the former INS were not always notified, that "lookouts" were not consistently posted on the watch lists of suspected terrorists; that 30 foreign nationals whose visas had been revoked entered the United States and may still remain; and that the FBI and the former INS were not routinely taking action to investigate, locate the individuals, or resolve the cases.[33]

DOS responded to the GAO study by arguing that it was not fair or accurate to suggest that all persons whose visas were revoked were terrorists or suspected terrorists. In many such instances, DOS reports that it finds that the national security information does not pertain to the alien whose visa was revoked (a mistaken identity due to incomplete identifying data), or that the information can be explained in a way that clarifies the question at hand and eliminates the potential threat. In these cases, the consular officers re-issue the visa and purge the alien's name from the lookout system. DOS maintains that the problem has been fixed in the creation last year of

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[30] 22 C.F.R. §41.122 Notes N1.

[31] 22 C.F.R. §41.122 Notes PN3.

[32] Testimony of Janice L. Jacobs, Deputy Assistant Secretary of State for Visa Services, in U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Border Security and Citizenship, *Visa Issuance, Information Sharing and Enforcement in a Post-9/11 Environment: Are We Ready Yet?* hearing, July 15, 2003.

[33] U.S. General Accounting Office, *New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process*, GAO 03-798, June 18, 2003.

a revocation code that is shared with the relevant agencies via IBIS when a visa is prudentially revoked. It reportedly was put into place in December 2002, and DOS asserts that it has verified that each and every revocation for calendar year 2003 was properly coded and entered into CLASS and IBIS, and was available almost simultaneously to law enforcement and border inspection colleagues.[34]

A spokesperson for DHS's Immigration and Customs Enforcement Bureau (ICE) disputed GAO's findings. He stated that its records indicate that the National Security Unit (NSU) in ICE received information on 10 leads involving visa revocations and that the NSU conducted follow-up investigations in all 10 cases. He reported that NSU concluded that there was insufficient evidence under current civil and criminal immigration law to allow ICE to take action against the visa holders.[35]

A subsequent GAO report, issued in July 2004, concluded that additional actions were needed to address weakness in the visa revocation process. In this report, GAO stated: "our analysis of visas revoked based on terrorism concerns from October through December 2003 revealed that weaknesses remained in the implementation of the visa revocation process, especially relating to the timely transmission of information among federal agencies." GAO also pointed out that "(w)ith respect to an alien already present in the United States, the Department of State's current visa revocation certificate makes the revocation effective only upon the alien's departure." DHS officials maintain that they would be unable to place the alien in removal proceedings based solely on a visa revocation that had not yet taken place.[36]

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[34] Jacobs, testimony on *Visa Issuance, Information Sharing and Enforcement*.

[35] Testimony of Michael T. Dougherty, Director of Operations, Bureau of Immigration and Customs Enforcement, Department of Homeland Security, in U.S. Congress, Senate Committee on the Judiciary Subcommittee on Immigration, Border Security and Citizenship, *Visa Issuance, Information Sharing and Enforcement in a Post-9/11Environment: Are We Ready Yet?* hearing, July 15, 2003.

[36] U.S. General Accounting Office, *Border Security: Additional Actions Needed to Eliminate Weaknesses in the Visa Revocation Process*, GAO-04-795, July 13, 2004.

Recent Legislative Actions

Legislation in the 107th Congress

Congress's plenary authority over immigration policy derives from Article 1, §8 of the U.S. Constitution, and the legislative branch has long taken the lead in immigration policy. The 107th Congress enacted several major laws that included significant revisions to visa policy administration and issuances. The key visa provisions in these major laws are summarized below.[37]

USA PATRIOT Act. The USA PATRIOT Act (P.L. 107-56) was a broad anti-terrorism measure that included several important changes to immigration law, including specific visa policy matters. Foremost, it expanded the definition of terrorism and the designation of terrorist organizations used to determine the inadmissibility and removal of aliens. The act further sought to improve the visa issuance process by mandating data sharing so that consular officers have access to relevant electronic information. These provisions authorized the Attorney General to share data from domestic criminal record databases with the Secretary of State for the purpose of adjudicating visa applications.[38]

The USA PATRIOT Act additionally mandated that by October 1, 2003, all aliens applying for admission under the VWP must have machine-readable passports. However, the act allows the Secretary of State to waive the requirement until September 30, 2007 if he finds that the country is making progress towards instituting machine-readable passports and preventing passport fraud.[39] Amendments to these provisions and progress in implementation are discussed elsewhere.[40]

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[37] For a detailed analysis of key immigration provisions in recent laws, see CRS Congressional Distribution Memorandum, *Selected Provisions in the USA PATRIOT Act (P.L. 107-56); the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173); the FY2002 Supplemental Appropriations Act (P.L. 107-206); and the Consolidated Appropriations Resolution, FY2003 (P.L. 108-7)*, by Lisa M. Seghetti, Ruth Ellen Wasem, Alison Siskin, and Karma Ester, Oct. 17, 2003.

[38] The USA PATRIOT Act included provisions to expand the foreign student tracking system and authorized appropriations for the foreign student monitoring system. It also required that the foreign student tracking system be fully operational by Jan. 1, 2003. For a more detailed discussion, see CRS Report RL32188, *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)*, by Alison Siskin.

[39] On Sept. 24, 2003, the Secretary of State postponed the machine-readable passport requirement for 21 countries until Oct. 26, 2004. These 21 countries requested the extension and certified that they were making progress towards issuing fraud resistant, machine-readable passports. Five countries (Andorra, Brunei, Liechtenstein, Luxembourg, and Slovenia) did not request extensions, and Belgium was ineligible to receive an extension.

[40] The Visa Waiver Permanent Program Act (P.L. 106-396) gave permanent authority to the Visa Waiver Program (VWP), which was established as a temporary program by the Immigration Reform and Control Act of 1986 (P.L. 99-603). P.L. 106-396 included provisions designed to strengthen documentary and reporting requirements, including the

(continued...)

Enhanced Border Security and Visa Entry Reform Act. The Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173, hereafter referred to as the Border Security and Visa Reform Act) expressly targeted the improvement of visa issuance procedures. Among its provisions, it required the development of an interoperable electronic data system to be used to share information relevant to alien admissibility and removability and the implementation of an integrated entry-exit data system. It also requires that all visas issued by October 2004 have biometric identifiers. In addition to increasing consular officers' access to electronic information needed for visa issuances, it expanded the training requirements for consular officers who issue visas.[41]

The Border Security and Visa Reform Act placed new requirements on the VWP, specifically mandating that the government of each VWP country certify by October 26, 2004 that it has established a program to issue tamper-resistant, machine-readable passports with a biometric identifier. The act also requires all VWP countries to certify that they report in a timely manner the theft of blank passports, allowing the Secretary of DHS to remove a country from the program if it is determined that the country is not reporting thefts of blank passports.

Homeland Security Act. Prior to establishment of the DHS, two departments — the DOS through Consular Affairs and the DOJ through INS — each played key roles in administering the law and policies on the admission of aliens. At that time, the INA gave DOS responsibility for issuing visas abroad, and specifically assigned such decisions to consular officers.[42] The Homeland Security Act of 2002 (P.L. 107-296) states that DHS through the Directorate of Border and Transportation Security issues regulations regarding visa issuances and assigns staff to consular posts abroad to advise, review, and conduct investigations, and that DOS's Consular Affairs will continue to issue visas.[43] The memorandum of understanding that

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[40] (...continued)
mandates that all entrants under the VWP have machine-readable passports by October 1, 2007, that all VWP entrants be checked against lookout systems, and that arrival/departure data for all VWP entrants be collected at air and sea ports of entry. See CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

[41] To close perceived loopholes in the admission of foreign students and to expand on the provisions in IIRIRA, the Border Security and Visa Reform Act required the establishment of electronic means to monitor and verify the status of the students and exchange visitors. See CRS Report RL32188, *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)*, by Alison Siskin.

[42] Under current law, consular decisions are not appealable, and critics of transferring the visa function to DHS warned that this adjudication might become subject to judicial appeals or other due process considerations if DHS assumed responsibility.

[43] The President's proposal for DHS, H.R. 5005 as introduced, would have bifurcated visa issuances so that DHS would set the policies, giving the DHS Secretary exclusive authority through the Secretary of State to issue or refuse to issue visas and retaining responsibility for implementation in DOS. When the House Select Committee on Homeland Security marked up H.R. 5005 on July 19, 2002, it approved compromise language on visa issuances that retained DOS's administrative role in issuing visas, but added specific language to (continued...)

implements the working relationship between DOS and DHS's three immigration-related bureaus was signed September 29, 2003.

Legislation in the 108th Congress

9/11 Commission Findings and Recommendations. The report of the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) offered its assessment of how visa and immigration inspection failures contributed to the terrorist attacks. The 9/11 Commission contended that "(t)here were opportunities for intelligence and law enforcement to exploit al Qaeda's travel vulnerabilities." The report went on to state: "Considered collectively, the 9/11 hijackers

- included known al Qaeda operatives who could have been watchlisted;
- presented fraudulent passports;
- presented passports with suspicious indicators of extremism;
- made detectable false statements on visa applications;
- made false statements to border officials to gain entry into the United States; and
- violated immigration laws while in the United States."[44]

The report maintained that border security was not considered to be a national security matter prior to 9/11, and as a result neither the State Department's consular officers nor the former INS's inspectors and officers were considered full partners in national counterterrorism efforts.[45]

The 9/11 Commission made several recommendations that underscore the urgency of implementing legislative provisions on visa policy and immigration control that Congress enacted several years ago. They also suggest areas in which Congress may wish to take further action. The specific recommendations are:

- Targeting travel is at least as powerful a weapon against terrorists as targeting their money. The United States should combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility.
- The U.S. border security system should be integrated into a larger network of screening points that includes our transportation system and access to vital facilities, such as nuclear reactors.

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[43] (...continued)
address many of the policy and national security concerns raised during hearings. An amendment to move the consular affairs visa function to DHS failed when the House passed H.R. 5005 on July 26.

[44] U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, Executive Summary, pp. 13-14, July 2004.

[45] *The 9/11 Commission Report*, Executive Summary, p. 14, July 2004.

- The Department of Homeland Security, properly supported by the Congress, should complete, as quickly as possible, a biometric entry-exit screening system, including a single system for speeding qualified travelers.
- The U.S. government cannot meet its own obligations to the American people to prevent the entry of terrorists without a major effort to collaborate with other governments.[46]

Other 9/11 Commission recommendations, notably those related to intelligence policy and structures, have been the focus thus far of congressional consideration and media attention. The 9/11 Commission prepared a subsequent report that deals expressly with immigration issues.[47]

Intelligence Reform and Terrorism Prevention Act. Legislation implementing the 9/11 Commission recommendations (S. 2845, H.R. 10, S. 2774/H.R. 5040 and H.R. 5024) had various provisions that would affect visa issuances. The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L.108-458), a compromise version of these bills that included some — but not all — of the immigration provisions under consideration, was signed on December 17, 2004.

Most notably, House-passed S. 2845 would have expanded the terror-related grounds for inadmissibility and deportability to include additional activities, such as receiving military-type training by or on behalf of a terrorist organization.[48] P.L. 108-458 would make deportable any alien who has received military training from or on behalf of an organization that, at the time of training, was a designated terrorist organization.

Among the other provisions in the 9/11 Commission implementation bills were: acquire and deploy technologies (e.g., biometrics) to detect potential terrorist indicators on travel documents; establish an Office of Visa and Passport Security; and train consular officers in the detection of terrorist travel patterns. H.R. 10 (as reported by the House Judiciary Committee on September 27 and passed by the House as S. 2845 on October 8, 2004) included provisions to establish an Office of Visa and Passport Security in the Bureau of Diplomatic Security of the Department of State to target and disrupt individuals and organizations at home and in foreign countries that are involved in the fraudulent production, distribution, or use of visas, passports and other documents used to gain entry to the United States. It also would have clarified that all nonimmigrant visa applications are reviewed and adjudicated by a consular officer, and would assign anti-fraud specialists to the top 100 posts that experience the greatest frequency of fraudulent documents. P.L. 108-458 establishes a Visa and Passport Security Program within the Bureau of Diplomatic Security at the Department of State.

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[46] For a discussion of these recommendations, see *The 9/11 Commission Report*, Chapter 12.4, pp. 383-389, July 2004.

[47] U.S. National Commission on Terrorist Attacks Upon the United States, *Monograph on 9/11 and Terrorist Travel,* Aug. 2004.

[48] CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion of Aliens*, by Michael John Garcia and Ruth Ellen Wasem.

As passed by the Senate on October 8, 2004, S. 2845 — as well as House-passed H.R. 10 — would increase the number of consular officers by 150 over the preceding year, annually FY2006 through FY2009. Both bills also had provisions aimed at improving the security of the visa issuance process by providing consular officers and immigration inspectors greater training in detecting terrorist indicators, terrorist travel patterns and fraudulent documents.[49] These provision were retained by the conferees in P.L. 108-458.

Personal Interviews. On a related matter, concerns have been raised that consular officers did not personally interview many aliens to whom they issue nonimmigrant visas. By-passing the personal interview, especially for visitors coming for purportedly short periods of time, was advocated by some as an efficiency of staffing and resources. Critics assert that this cost savings comes at too high a price in terms of national security. While some argue that checking an alien's name in a database is no substitute for a face-to-face interview, others assert that the value of a brief personal interview is overrated as a security precaution and that time is better spent doing more thorough background checks. DOS's interim final regulations that increase the type and number of aliens required to have a personal interview have sparked concern that the waiting times to obtain a visa will increase dramatically. H.R. 3452 and H.R. 3522 would have, among other provisions, required all visa applicants to be interviewed.

Senate-passed S. 2845 had provisions to narrow the authority to waive the personal interview for nonimmigrant visas to children under age 12, persons 65 years or older, diplomats and representatives of international organizations, aliens who are renewing a visa they obtained within the prior 12 months, and individual cases for whom a waiver is warranted for national interest or unusual circumstances (as determined by the Secretary of State). S. 2845, as passed by the House, had provisions to clarify that all nonimmigrant visa applications are reviewed and adjudicated by a consular officer. P.L. 108-458 requires an in-person consular interview of most applicants for nonimmigrant visas between the ages of 14 and 79; requires an alien applying for a nonimmigrant visa to completely and accurately respond to any request for information contained in the application; and clarifies that all nonimmigrant visa applications are reviewed and adjudicated by a consular officer. It also places at least one full-time anti-fraud specialist at diplomatic and consular posts deemed high-fraud unless there is a full-time employee of the DHS trained to do such tasks.

Visa Revocation and Removal. An ongoing issue has been the legal process for removing aliens whose visas have been revoked. Under current law the grounds for removal are similar — but not identical — to the grounds for inadmissibly discussed above, and include national security and related grounds as well as document fraud. Some have maintained that a foreign national should be immediately removed if the visa that enabled his or her entry has been revoked. They have recommended that grounds for removal in INA §212(a) should be amended to expressly state visa revocation as a basis for deportation. Some further argue that

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[49] CRS Report RL32616, *9/11 Commission: Current Legislative Proposals for U.S. Immigration Law and Policy*, by Michael John Garcia and Ruth Ellen Wasem.

aliens whose visas are revoked should not be entitled to a hearing before an immigration judge to determine if the alien should be deported. Others have asserted that current law balances the broader discretion given to the consular officers abroad with the explicit standards of the grounds for inadmissibility and the legal process for removing aliens from the United States. They further have maintained that consular officers often make "prudential revocations" of visas that they subsequently re-issue and that anecdotal cases of mistaken identities suggest that the alien screening databases are not sufficiently precise to be the basis for removal without a hearing.

On July 15, 2004, legislation (S. 2661) was introduced to amend the INA to make the revocation of visas and of other documentation authorizing admission administratively and judicially unreviewable. It also would have added revocation of visas to those grounds of inadmissibility supporting deportation (thus making aliens subject to such revocation immediately removable). A similar provision was included in S. 2845 (§3008) as passed by the House. The conferees retained the provision on visa revocation as a ground of inadmissibility, but P.L.108-458 permits limited judicial review of removal if visa revocation is the sole basis of the removal.

Other Security Concerns. The Anti-Atrocity Alien Deportation Act of 2003 (H.R. 1440/S. 710) would have, among other things, further broadened the security and terrorism grounds of inadmissibility to exclude aliens who have participated in the commission of acts of torture or extrajudicial killings abroad. In addition to denying visas to such aliens, these bills also would have made aliens already in the United States removable on the same grounds. The Senate Judiciary Committee reported S. 710, filing a written report on November 24, 2003 (S.Rept. 108-209). An amendment with similar language to S. 710 was approved when the House considered and passed S. 2845 on October 8, 2004. These provisions were included in P.L. 108-458.

Citing problems implementing the technology, the Bush Administration sought extensions in installing the biometric readers/scanners required by the Enhanced Border Security and Visa Entry Reform Act of 2002.[50] The 108th Congress enacted P.L. 108-299 (H.R. 4417), which amended the law to extend by one year (to October 26, 2005) the deadline for installing at all U.S. ports of entry equipment and software capable of processing machine-readable, tamper-resistant entry and exit documents and passports that contain biometric identifiers. It also extended by one year the deadline for VWP countries to certify that they are issuing machine-readable, tamper-resistant passports that contain biometric and document authentication identifiers comporting with specified standards, and VWP participants who are issued passports on or after the new deadline to present passports that comply with such requirements.

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[50] Letter to Representative James Sensenbrenner from the Secretary of Homeland Security, Thomas Ridge, and the Secretary of State, Colin Powell, dated Mar. 17, 2004. The letter is available at [http://www.house.gov/judiciary/ridge031704.pdf]; see also U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Border Security and Claims, *Should Congress Extend the October 2004 Statutory Deadline for Requiring Foreign Visitors to Present Biometric Passports?* hearing, Apr. 21, 2004.

Legislation in the 109th Congress

At the time Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), some congressional leaders reportedly agreed to revisit certain immigration and document-security issues in the 109th Congress that had been dropped from the final version of the legislation. Many of these dropped provisions were introduced as H.R. 418, the REAL ID Act of 2005 and ultimately folded into the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (H.R. 1268, P.L. 109-13).

The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437), as passed by the House in December 2005, had a few provisions that would have revised visa policies. The Comprehensive Immigration Reform Act of 2006 (S. 2611), as passed by the Senate in May 2006, also contained provisions aimed at revising visa policies. When the 109th Congress closed, these major immigration reform proposals were left pending.

REAL ID Act. The REAL ID Act (P.L. 109-13, Division B) expands the terrorism-related grounds for alien inadmissibility and deportation, as well as the meaning of certain terms used in the INA to describe terrorist activities or entities, to cast a wider net over groups and persons who provide more discrete forms of assistance to terrorist organizations, particularly with respect to fund-raising and soliciting membership in those organizations. The REAL ID Act makes activities such as espousal of terrorist activity and receipt of military-type training from, or on behalf of, a terrorist organization grounds for exclusion. At the same time, the REAL ID Act provides the Secretary of State and the Secretary of Homeland Security with authority to waive certain terrorism-related INA provisions that would otherwise make a particular alien inadmissible or cause a group to be designated as a terrorist organization.[51]

Denying Entry. Under current law (INA §243(d)), the Secretary of State is required to deny visas to nationals of countries, when informed by the Attorney General that the country has denied or delayed accepting its citizens, nationals, or residents whom the United States ordered removed. H.R. 4437 would have rewritten this provision to authorize the Secretary of DHS, after consultation with the Secretary of State, to deny the admission of nationals of countries that deny or delay accepting their citizens, nationals, or residents whom the United States ordered removed. In other words, it would have shifted implementation from visa issuances at consulates abroad — where reportedly the Attorney General has never invoked §243(d) — to alien admissions at U.S. ports of entry. If enacted, foreign nationals who have visas but are from uncooperative countries would be denied admission when they arrive at ports of entry if the Secretary of DHS so deemed.

In comparison, S. 2611 would have authorized the Secretary of DHS to instruct the Secretary of State to deny a visa to any citizen, subject, national, or resident of a country that has denied or delayed accepting its citizens whom the United States ordered removed, until the country accepts its citizens.

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[51] For additional information, see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion of Aliens*, by Michael John Garcia and Ruth Ellen Wasem.

Grounds of Inadmissibility. H.R. 4437 would have expanded the criminal grounds for inadmissibility and deportation (including for alien gang members).[52] Likewise, S. 2611 contained comparable provisions that would have revised the grounds for inadmissibility. In addition, S. 2611 would have expanded the terrorism-related grounds for inadmissibility to cover *any* incitement or advocacy of terrorist activity (current law only expressly covers incitement in certain circumstances).[53]

Issues in the 110th Congress

Implementing New Technologies

As noted earlier, the legislation implementing the 9/11 Commission recommendations has specific provisions on the acquisition and deployment of technologies to facilitate document authentication and detection of potential terrorist indicators on travel documents (including biometrics) to all consulates, ports of entry, and immigration benefits offices. P.L. 108-458 requires improvements in technology and training to assist consular and immigration officers in detecting and combating terrorist travel. DHS is required to fully integrate all databases and data systems that process or contain information on aliens that are maintained by DHS, DOS, and DOJ, and these data are to be fully integrated as an interoperable component of the entry and exit data system (US-VISIT).

Since the September 11, 2001 terrorist attacks, considerable concern has been raised because the 19 terrorists were aliens who apparently entered the United States legally on temporary visas. Although the INA bars terrorists, consular officers issuing the visas and immigration inspectors working at the borders did not have access to all the law enforcement and intelligence databases that might identify potential terrorists. As discussed above, Congress has enacted several major laws requiring information sharing and interoperable databases. Whether these provisions are being successfully implemented remains an important policy question.[54]

Many assert that the need for all agencies involved in admitting aliens to share intelligence and coordinate activities is essential for U.S. immigration policy to be effective in guarding homeland security. Some maintain that the reforms Congress

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[52] For background on the present immigration consequences of criminal activity, as well as the changes that H.R. 4437 would have made to such consequences, see CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia.

[53] For background on the current terrorism-related grounds for inadmissibility and deportation, along with a more detailed discussion of how H.R. 4437 would have altered the terrorism-related provisions of the INA, see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion and Removal of Aliens*, by Michael John Garcia and Ruth Ellen Wasem.

[54] For evaluations, see U.S. General Accounting Office, *Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing*, GAO-03-322, Apr. 15, 2003; and U.S. General Accounting Office, *Border Security: Challenges in Implementing Border Technology*, GAO-03-546T, Mar. 12, 2003.

made in the mid-1990s requiring all visa applicants to be checked in the "look out" databases were inadequate because the databases across the relevant agencies were not interoperable and the various agencies were territorial with their data. They maintain that, in the long run, the most efficient and effective guard against the entry of aliens who would do us harm is an interagency and inter-departmental database that is accessible in "real time" to consular officers, immigration inspectors, and key law enforcement and intelligence officials.

Others point to the cost, time, and complexity of developing interoperable databases. They cite the difficulty thus far in determining what biometric identifiers are most appropriate for screening aliens.[55] They point out competing technologies of the existing databases in which various key agencies have already heavily invested. Some maintain that success of the interoperable database technology depends on 100% inclusion of aliens applying for visas and seeking admission, but that the sheer scope of such a system poses "real time" implementation issues. They also warn that if intelligence data become too accessible across agencies, national security may actually be breached because sensitive information may be more likely to fall into the wrong hands.

Document Security and Visa Malfeasance

In response to the 9/11 Commission recommendation that the United States combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility, the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) established a Visa and Passport Security Program. The role of this Department of State program is to target and disrupt individuals and organizations at home and in foreign countries that are involved in the fraudulent production, distribution, or use of visas, passports, and other documents used to gain entry to the United States. Oversight of this program and its integration with other federal agencies monitoring terrorist travel remains an issue.

On a related matter, a 2005 GAO report found DOS's consular processes vulnerable to visa malfeasance and concluded that DOS had not developed automated software to sort and analyze abnormalities in visa issuances that could indicate potential malfeasance. The Bureau of Diplomatic Security substantiated 28 visa malfeasance cases between 2001 and 2004 involving U.S. employees. DOS reportedly agreed with the conclusions of the GAO report and has been taking steps to implement the recommendations.[56]

Impact on Tourism and Commerce

A perceived slowdown in visa issuances has sparked concern among the travel and business communities. A 2004 study conducted for a group of international trade

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[55] U.S. Congress, Senate Committee on the Judiciary Subcommittee on Technology, Terrorism and Government Information, *Border Technology: Keeping Terrorists Out of the United States — 2003*, hearing, Mar. 12, 2003.

[56] U.S. Government Accountability Office, GAO-06-115, *Border Security: More Emphasis on State's Consular Safeguards Could Mitigate Visa Malfeasance Risks*, October 6, 2005.

associations estimated that problems with visas have cost U.S. exporters $30.7 billion in revenue and indirect costs since July 2002.[57] Some have expressed concern about the dependence of their operational success on "the timeliness, predictability and efficiency of our visa and immigration system."[58] These business representatives have claimed that security checks such as the Visa Mantis and Visa Condor programs have caused delays in the issuance of visas that could strain international business relationships.[59]

The critics maintain that the scope of the alleged problem is multifaceted and not limited to initially bringing people from abroad to work in the United States. Companies that employ nonimmigrants who must renew their visas are affected as well. In addition, foreign customers of U.S. firms typically travel here for plant visits and design meetings, to inspect products prior to their shipment abroad, and for training on the equipment being produced by the U.S. company. Similarly, some U.S. companies hold conferences annually for foreign distributors of their products, and there have been accounts of visitors from abroad being unable to secure visas in time to attend the events.[60] For the same reason, conference and trade show planners reportedly are reconsidering whether to hold meetings in the United States.[61]

Others argue that the impact of the more stringent visa policies on business has been exaggerated, sparked by problems because the new screening procedures and databases were not fully operational. These observers maintain that the visa reforms are essential for national security and that business-related travel will normalize once everyone is familiar with the new procedures. Some speculate that generalized travel concerns after the September 11 terrorist attacks and the slow down in the U.S. economy were key factors in the reduction in nonimmigrant visas issued in FY2002 and FY2003. They maintain that the upturn in visas issued over FY2004 and FY2005 is evidence that the trend is reversing.

Deputy Assistant Secretary for Visas Services Tony Edson addressed these competing concerns during a 2006 hearing before the U.S. House of Representatives Committee on Governmental Reform.

> The Department of State and our partners at the Department of Homeland Security have a fundamental commitment to meeting our security needs while maintaining the openness of the United States. The Department is cognizant of the economic benefits to the United States generated by international visitors.

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[57] The Santiago Group, *Do Visa Delays Hurt U.S. Business?* June 2, 2004.

[58] Testimony of Randel K. Johnson, Vice President of Labor, Immigration and Employee Benefits of the U.S. Chamber of Commerce, in U.S. Congress, House Committee on Government Reform, *Impact of the Visa Process on Foreign Travel to the U.S.*, hearing, July 10, 2003. (Hereafter cited as Johnson, testimony on *Impact of the Visa Process on Foreign Travel*.)

[59] U.S. General Accounting Office, *Border Security: Improvements Needed to Reduce Time Taken to Adjudicate Visas for Science Students and Scholars*, GAO-04-371, Feb. 2004.

[60] Dan Haar, "Feeling Pinch of Visa Rules; Firms Say Delays Costing Millions," *Hartford Courant*, Sept. 30, 2003.

[61] Evelyn Iritani, "U.S. Firms Feel the Pinch of Tighter Border Security," *Los Angeles Times*, Feb. 18, 2003.

> Travel and tourism contributed $104.8 billion to the U.S. economy in 2005. International students contributed $13 billion in revenues to our nation's economy. Beyond the economic benefits, the Department of State understands that the United States is preeminent in business, academia and scientific research because we attract talented people from the far reaches of the globe.[62]

During that same 2006 hearing, however, GAO reported on significant delays in visa processing. From September 2005 through February 2006, GAO found that 97 of DOS's 211 visa-issuing posts reported maximum wait times of 30 or more days in at least one month. More specifically, GAO disclosed "at 20 posts, the reported wait times were in excess of 30 days for this entire 6-month period. Further, in February 2006, 9 posts reported wait times in excess of 90 days."[63] Deputy Assistant Secretary Edson acknowledged before Congress in 2006: "As we address these trends with post-9/11 visa security requirements, we have witnessed skyrocketing consular workloads." Deputy Assistant Secretary Edson addressed these concerns by reporting on progress being made in the particular cases of India and China. "The Department is responding to the dramatic increase in visa demand with a combination of more efficient management practices and increases in staffing and physical space in consular sections."[64] Oversight of these matter continue to be an of ongoing interest to Congress.

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[62] U.S. House of Representatives, Committee on Government Reform, Testimony of Deputy Assistant Secretary for Visa Services Tony Edson, April 4, 2006.

[63] U.S. General Accounting Office, *Border Security: Reassessment of Consular Resource Requirements Could Help Address Visa Delays*. GAO-06-542T April 4, 2006.

[64] U.S. House of Representatives, Committee on Government Reform, Testimony of Deputy Assistant Secretary for Visa Services Tony Edson, April 4, 2006.