

Testimony of Janice Jacobs
Deputy Assistant Secretary of State for Visa Services
House Committee on Government Reform
Subcommittee on National Security, Emerging Threats, and
International Relations
July 13, 2004

I appreciate the opportunity to testify today on the subject of visa revocations, where they fit into the overall strategy of strengthening the visa process as an anti-terrorism tool and the improvements we have made in the revocation process. The GAO has devoted substantial attention to this theme, starting with their reports from October 2002 and June 2003, and continuing with the recently released report on this subject.

While the Department of State does not agree with every conclusion reached in these reports, we have nonetheless used them to refine the revocation process. It cannot be overstated that border security is a multi-agency mission that requires information sharing, cooperation, and continuous analysis and procedural review so that we stay ahead of those individuals who would seek to enter the United States to do harm to Americans or our foreign visitors.

The Department of State revokes visas pursuant to the Secretary of State's statutory authority granted in Section 221(i) of the Immigration and Nationality Act (INA). We act when relevant derogatory information becomes available after a visa has been issued to an applicant who, based on information available at the time of application, was found eligible for that visa. Since 9/11, we have used this authority to revoke more than 1,250 visas based on information suggesting possible terrorist activities or links.

The use of the revocation authority is one element in a multi-layered, interlocking system of border security measures. Key elements in this border security system include the newly created Terrorist Threat Integration Center (TTIC) and the Terrorist Screening Center (TSC), which were built on and incorporated the Department's Intelligence and Research Bureau's TIPOFF program (INR/TIPOFF). The revocation process now supplements the terrorist watchlisting work of TSC, which provides the vast majority of the derogatory information on specific individuals that prompts the Department of State to revoke a visa for counterterrorism reasons.

Whenever TTIC provides TSC with derogatory information about an identifiable alien, TSC reviews the information and makes the appropriate watchlist entries in the Department's Consular Lookout and Support System (CLASS) database and the Department of Homeland Security's IBIS database *prior* to determining whether the subject has even been issued a visa. These lookouts immediately put safeguards in place that prevent further visa issuance or admission to the United States. The Consolidated Consular Database of 70 million visa records is then searched to determine if a visa was ever issued to a person who is a probable match with the individual in question.

If it appears that a visa might have been issued to a watchlisted alien, TSC forwards the derogatory information to the Visa Office (VO) of the Bureau of Consular Affairs, which manages the visa revocation process for the Department of State. Initially after 9/11, the majority of derogatory information came to CA from the Bureau of Intelligence and Research, which managed the TIPOFF terrorist database, but since December 2003, the majority of information has come from TSC. VO has also on occasion received information directly from other agencies, such as FBI and DHS, especially when the agencies suspected imminent travel of the individual. (VO also revokes visas for reasons unrelated to terrorist concerns.)

As soon as VO receives the derogatory information from TSC or other agencies, it places a revocation lookout ("VRVK" code) in CLASS, which replicates in real time to the DHS's IBIS lookout system. This action is taken by close of business on the same day that VO receives the derogatory information. The lookout is thus available to DHS inspectors at Ports of Entry into the United States should the person seek to enter the country. It alerts the inspectors that the visa is being reviewed for possible revocation, or has been revoked.

VO then reviews the derogatory information carefully to ensure that, among other things, the information pertains or may pertain to the individual who has been issued a visa. When the Department determines that there is a possible link between the person and the terrorist related information, the visa is formally revoked. When we determine that a visa should be revoked, we prepare a revocation certificate and a revocation cable to the embassy or consulate where the visa was issued. The certificate is the official document revoking the visa. The Deputy Assistant Secretary for Visa Services signs the revocation certificate. The cable to the post contains the language of the

revocation certificate and instructs the consular officer to attempt to call the visa holder in so that the revoked visa can be physically canceled.

The Department works closely with its partners in the revocation process to make sure that the fact that a visa has been revoked is disseminated to those in other agencies who may need to carry out follow-up action. VO immediately sends the cable electronically to the appropriate post as well as to FBI and to Immigration and Customs Enforcement (ICE) within DHS. At the same time, VO emails the revocation cable to the Customs and Border Protection's (CBP) National Targeting Center (NTC) and to elements of CBP and ICE within DHS. We also fax the cable to the NTC. Through these means -- by cable, email and fax -- we inform our partners in the revocation process in a timely manner of each visa that is revoked. However, it is important to remember that long before all of this communication and coordination takes place, the revocation code has already been entered into the lookout system, along with TSC's original watchlist entry, and the traveler is not able to enter the United States.

We do NOT provide the alien with advance notice that we are considering revoking his visa. After we have revoked the visa, we ask the relevant consular post to attempt to contact the alien, but we are not in a position to determine whether the alien is in the United States or to find him and provide him with notice that the revocation has occurred. The revocation takes effect as stipulated in the revocation certificate, regardless of notice to the alien.

In evaluating the significance of visa revocations as a counterterrorism tool, it is important to remember the nature of the information underlying a revocation. The Department of State is continually receiving information that bears on the continued eligibility of aliens to hold their visas. In some cases the information, if it had been known during the application process, would almost certainly have led to a refusal. In other instances the information instead raises questions that would have led to additional inquiries and analysis before making a decision on the application. In still other cases the information pertains to actions taken by the alien after visa issuance; while it might not have affected the original adjudication, it does call into question whether the alien should continue to hold a visa. Information of all three kinds, when it is received subsequent to visa issuance, is used to revoke a visa when the visa holder may pose a

potential threat to the security of the United States as well as in other instances.

Here are several examples of the kinds of information we have acted on:

- In August 2003, we revoked the visa of an individual who bore a physical resemblance to an individual on an FBI Watch List. This action was taken even though we did not have definitive confirmation that the visa holder was the subject of the Watch List hit.
- In December 2003, we revoked the visas of five women, each of whom had the same name as a person identified as a suspected terrorist. Even though we lacked other information regarding the person of concern, we revoked the visas of all five individuals, aware that only one of them could be the suspected terrorist. While TSC attempts to ensure a probable match between an alien who has been watchlisted and a visa holder before flagging a case for possible revocation, identity issues may still result in revocations of visas held by more than one person.
- We have also revoked visas for individuals whose names were similar to names found in address books or computer files of suspected terrorists. As with the December 2003 example above, in these cases, we acted to revoke visas based on name similarities and without information to either confirm a match or to establish a nexus to terrorism.

In these kinds of cases, it is possible that our concerns are unfounded and that these persons would be eligible for visas upon re-application.

- On the other hand, sometimes we receive information that clearly renders the individual ineligible and that triggers the revocation process. In one instance, this involved the head of an investment bank who used the bank to funnel funds to a terrorist organization.

These examples illustrate that the information in question varies greatly in its specificity and accuracy. While that information may lead to a visa revocation, the fact that the visa was revoked does not necessarily mean that the person whose visa is revoked is a terrorist or is remotely related to

terrorism. In short, in almost all cases, the revocation has been prudential rather than based on a definitive finding that the alien is inadmissible. This is in part because, at the time of revocation, we are often unable to conclude with certainty that the visa holder is the subject of derogatory information.

Nevertheless, given the terrorism-related nature of the information that may relate to the visa holder, we deem it prudent to revoke the visa promptly after that information becomes available and to rely on the visa application process to resolve identity and other questions at a later time, should the visa holder wish to reapply for a visa. If the holder of the revoked visa reapplies for a visa at one of our embassies or consulates abroad, a consular officer carefully screens his application and, after consultation with the Department, determines eligibility. The alien whose visa was revoked may well be issued a new visa, if it is determined that the information that led to the revocation does not pertain to the alien or that the alien is in any event eligible.

Internally, there are very clear Standard Operating Procedures (SOP) for visa revocations that have been continually updated over time as the process has been refined and as DHS has clarified the mission and operating practices of its new institutional structure. We have shared the SOP with our revocation partners. VO has a designated revocation officer, who reviews incoming requests to make sure they meet the standard for prudential revocation, and a revocation assistant who prepares all of the appropriate documents. We have internal accountability built into the process as the revocation assistant must complete a checklist of steps taken which is reviewed and verified by a senior officer before the case can be closed.

Our current SOP reflects lessons learned following the attacks of 9/11, when we were inundated with a large amount of derogatory information from a number of agencies. In the haste to respond to these requests, the VO staff concentrated on executing the relevant documents to effect revocations as quickly as possible. After the initial period of heavy revocation activity ended and we began to receive information on a more regular basis, we established a system of revocation record keeping that is excellent. Our database systems have always been the single official electronic record of cases revoked. We now also maintain a master spreadsheet that contains information on all visas that have been revoked since 9/11, and we have established a designated location for easy access to all of the revocation case files.

Finally, I would like to address the issues surrounding the question of when our revocations take effect. The INA allows the Secretary to revoke visas effective retroactively to the date of issuance. We do not, however, normally exercise that authority fully. Instead, we generally revoke visas effectively immediately with the caveat that, if the alien is in the United States, the revocation will take effect upon his departure. This approach was agreed to a number of years ago among the Department of Justice, the former Immigration and Naturalization Service, and State to minimize the likelihood that persons in the U.S. would be permitted to block the revocation process in our courts. Since 9/11, we have worked closely with INS and then the Department of Homeland Security to evaluate when and under what circumstances it might be appropriate and helpful to DHS for the Department of State to make its revocations effective immediately or even retroactively for persons physically present in the United States.

We have agreed that revoking visas effective immediately when an alien is at a port of entry could be helpful to DHS by allowing it to deny entry on the ground that the alien does not have a valid visa, without having to establish that the alien is also of security concern. We have also agreed that revoking a visa retroactively to the time of issuance could be helpful to DHS in the case of an alien in the United States, by allowing it to place the alien in removal proceedings on the ground that he entered without a valid visa. Because these scenarios raise a number of legal and other issues, however, we have agreed that State should revoke visas in this way only on a case-by-case basis, after receiving a request from DHS.

For example, in February 2004 at DHS's request we revoked effectively immediately the visas of two individuals who had been stopped by DHS at a port of entry but who had not yet been admitted. These individuals had been paroled into the custody of law enforcement, the first because of possession of prohibited items on board a commercial airliner and the second because of an apparent attempted export of sensitive technology. If for any reason the criminal charges were not pursued, DHS would be able to deny these aliens admission on the ground that they did not have valid visas and return them to the country from which they came.

To date, we have not received a request to revoke a visa retroactively. We understand that DHS will make such requests only in unusual cases,

when it has confirmed the presence in the United States of an alien who may post a significant security risk.

Our approach to the issue of the effective date of a visa revocation is designed to manage the litigation risks involved in removing aliens based on visa revocations and to avoid steps that will weaken our ability to use revocations flexibly and aggressively to protect homeland security. We do not want to raise the threshold of information on which we act. We do not want to create a situation in which we must provide notice to the alien before we act. We do not want a situation in which courts start second-guessing our revocation decisions. DHS and we are in agreement that a case-by-case approach is the best way to ensure these results while protecting homeland security.

The tragedy of September 11 strengthened the resolve of all the parts of the federal government to take every step in our power to safeguard our borders, and spurred us to think through improvements in our procedures for visa work. Visa revocations are an important tool in maintaining the security of our borders and our nation. We and our colleagues at the Department of Homeland Security are committed to furthering our mutual efforts to keep persons who would do us harm out of our country. I thank you again for the opportunity to testify here today and am now ready to take your questions.