SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS
AND INTERNATIONAL RELATIONS
Christopher Shays, Connecticut
Chairman
Room B-372 Rayburn Building
Washington, D.C. 20515
Tel: 202 225-2548
Fax: 202 225-2382
E-mail: hr.groc@mail.house.gov

July 8, 2004

MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging Threats, and International Relations

From: Thomas Costa, Professional Staff

Re: Briefing memo for the hearing *Visa Revocations II: Still Porous, Slow to Fix* scheduled for Tuesday, July 13, 2004 at 10:00 a.m. in room 2247 Rayburn House Office Building.

PURPOSE OF THE HEARING

To examine the process of revoking visas.

HEARING ISSUES

1. **How is visa revocation information shared between the Departments of State and Homeland Security?**

2. **What is the status of efforts to strengthen the visa revocation process?**

BACKGROUND

In the course of completing an earlier report, "Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool" (GAO-03-132NI), the General Accounting Office (GAO) discovered 200 foreign nationals suspected of terrorist involvement had received visas granting them access to the United States since September 11, 2001 due to a lapse in a background check system. In part due to duplicative records, this number was later reduced to 105. Those visas were subsequently revoked.

At the request of the Subcommittee, and a similar request by Senator Charles E. Grassley (R-IA), GAO undertook an investigation of the 105 known revoked visas as well as all other visas revoked on terrorism grounds since September 11, 2001. (**Attachment 1**) GAO released the report, "Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process" (GAO-03-798), at a June 18, 2003 Subcommittee hearing entitled, "Visa Revocations: Catching the Terrorists Among Us." (**Web Resources 1 and 2**)

The report highlighted the lack of sufficient policies and procedures on how the Departments of State, Homeland Security, and Justice coordinate and use the visa revocation process as an antiterrorism tool. GAO recommended the Secretary of Homeland Security, in conjunction with the Secretary of State and Attorney General:

- develop specific policies and procedures for the interagency visa revocation process to ensure that notification of visa revocations for suspected terrorists and relevant supporting information is transmitted from State to immigration and law enforcement agencies, and their respective inspection and investigation units, in a timely manner;

- develop a specific policy on actions that immigration and law enforcement agencies should take to investigate and locate individuals whose visas have been revoked for terrorism concerns and who remain in the United States after revocation; and

- determine if persons with visas revoked on terrorism grounds are in the United States and, if so, whether they pose a security threat. (**Web Resource 1**)

At the hearing, Members noted the inability of Homeland Security personnel to remove aliens with revoked visas – often suspected terrorists – from the US and requested the Departments of State and Homeland Security (DHS) take the steps required to address the problem. (**Web Resource 1**)

The Subcommittee requested a follow-up investigation of reform efforts undertaken by State and the DHS Bureaus of Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) in response to the hearing. (**Attachment 2**) GAO will release a new report, "Border Security: Additional Actions Needed to Eliminate Weaknesses in the Visa Revocation Process" (GAO-04-795) at the hearing and testify that the Departments of State and Homeland Security still lack effective policies and procedures for handling visa revocations and have made little progress in efforts to expedite the removal of suspected terrorists in the US whose visas have been revoked. (**Attachment 3**)

Additional background information can be found in the June 18, 2003 hearing briefing memorandum (**Web Resource 3**) and the printed record (**Web Resource 2**).

DISCUSSION OF HEARING ISSUES

1. How is visa revocation information shared between the Departments of State and Homeland Security?

Information sharing has often been cited as the Achilles' heel of government counterterrorism efforts. And in the case of visa revocations, the lack of effective agency and government-wide policies and procedures on how to share information has led to agencies having poor coordination and interagency squabbling. (**Web Resource 1**)

In the June 18 hearing, GAO noted:

- appropriate units within INS[[1]] and the FBI did not always receive notifications of all the revocations;

[1] The Immigration and Naturalization Service (INS) was incorporated into the Department of Homeland Security and split into three bureaus, including Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE).

- names were not consistently posted to the agencies' watch lists of suspected terrorists;

- 30 individuals whose visas were revoked on terrorism grounds had entered the United States and may still remain; and

- INS and FBI were not routinely taking actions to investigate, locate, or resolve the cases of individuals who remained in the United States after their visas were revoked. (**Web Resource 2, p. 16**)

For example, GAO had found that State did not consistently follow the then-informal policy of entering a lookout into the Consular Lookout and Support System (CLASS)[2] at the time of a revocation. (**Web Resource 2, p. 22**) The hearing also revealed that despite there being 30 cases of aliens with revoked visas at large in the US, ICE had only been notified of and investigated 10 cases. (**Web Resource 2, p. 128-131**)

Following the June 18 hearing, State and DHS took several steps to improve policies and procedures on sharing information and investigating aliens in the US with revoked visas. (**Web Resource 2, p. 92-146**) The role of the Federal Bureau of Investigation (FBI) in the visa revocation process has also changed. The FBI is no longer involved in the visa revocation process directly, but will still assist the ICE in pursuit of illegal aliens, particular those that pose a security threat.

On September 16, 2003, the President ordered the creation of the new Terrorist Screening Center (TSC), an interagency group housed in the FBI. The TSC was created to ensure that agencies across the government have all the information about suspected terrorists and terrorist activity when they need it. (**Web Resource 4**)

Despite these changes, however, GAO is expected to testify that over a year after the June 18 hearing, State and DHS still have difficulties sharing and verifying information pertaining to visa revocations both among and within departments.

---

[2] State uses the Consular Lookout and Support System known as CLASS. CLASS has several functions, but is primarily used to screen overseas visa applicants for criminal and terrorist backgrounds, serving as a watch list. The system interfaces with the Interagency Border Inspections System (IBIS) used by DHS, the National Crime Information Center (NCIC) used by the Federal Bureau of Investigation, and other systems.

2. What is the status of efforts to strengthen the visa revocation process?

One of the concerns raised at the June 18, 2003 hearing was the inability of law enforcement agencies such as ICE to remove an alien currently in the United States with a revoked visa.

Currently, if alleged derogatory information – such as concern about potential ties to terrorists[3] – about an alien is developed after the alien has received a visa, the Department of State will revoke that visa. If the alien's visa has been revoked prior to entry into the US, the alien applicant for non-immigrant admission should be notified of the revocation before departure or denied entry into the US by CBP at the US border.

However, if the alien's visa is revoked after the alien has already entered the US, the alien may be permitted to remain in the US because the alien asked permission with a legal visa to enter the US and was allowed entry. Essentially, it is argued that the alien has entered the US legally and done nothing wrong – regardless of any concerns that may exist about the alien's intentions.

According to the Immigration and Nationality Act (INA), a visa revocation alone is insufficient grounds to remove an alien. (**Web Resource 5, Sec. 237**) Instead, there must be other grounds to remove the alien, which may include overstaying the visa and evidence of criminal or terrorist behavior. Having a visa revoked on terrorism grounds does not constitute evidence of terrorist behavior. In fact, the revocation may have occurred because of a similarity to a known terrorist's name or other false indicators. Essentially, revoking the visa is not sufficient legal grounds alone for removal because the visa only granted permission to request entry and is not the grounds on which entry was allowed. Furthermore, there is concern that attempts to remove the alien on the basis of a revoked visa could bring about a legal challenge in the US court system that could open the visa process to judicial review.[4] (**Web Resource 1, p. 33-36**)

[3] Visas may be revoked for many reasons including terrorism concerns.
[4] Currently, the visa process is not open to judicial review.

The Department of State argued in the June 18 hearing that many visas are revoked for "prudential" reasons. That is, derogatory information has been generated about the person implicating them as a potential terrorist, but has not been verified. Therefore, as a discretionary matter, the State Department revokes the alien's visa. (**Web Resource 2, p. 35**) Nevertheless, the concern – prudential or not – is that the alien is a terrorist threat.

At the June 18 hearing, former Congressman William Janklow had the following exchange with Mr. DeMore of ICE and Ms. Barry of the State Department about aliens with revoked visas remaining in the US:

> Mr. JANKLOW. OK. It says, "Individuals whose visas were revoked on terrorism grounds entered the United States and still remain." Now as I understand it, from your testimony, Mr. DeMore, you indicate in your written testimony that the standards are different for revoking of visas, and – I will say – expelling someone from the country; is that correct?
>
> Mr. DEMORE. That is correct.
>
> Mr. JANKLOW. Is this a statutory problem or a regulatory problem?
>
> Mr. DEMORE. I am not an attorney, sir, but I have discussed it with our attorneys. We believe it could be corrected without statutory changes.
>
> Mr. JANKLOW. It is inconceivable to me that we would revoke a visa of someone because we are concerned about the security of this country. In our [sic] words, we keep them out, but once they are here, we are going to let them stay here. We are not dealing with that regulation.
>
> Whose agency is this regulation in? Ms. Barry.
>
> Ms. BARRY. Sir, the language of the Certificate of Revocation and the issue that it becomes effective when the person departs the United Stats, came out of an interagency consultation in 1999 between INS, the State Department, and the Office of Immigration Litigation of the Department of Justice.
>
> Mr. JANKLOW. Has that been reviewed now?
>
> Mr. BARRY. The DHS has asked that it be reviewed. We have started our internal deliberations to do that. We have not yet met with the Department of Justice's Office of Immigration Litigation.
>
> Mr. JANKLOW. How long with [sic] that process take?
>
> Ms. BARRY. It should not take long. We are prepared to meet with the other partners on this issue. The Department of Justice because of litigation issues, has serious equities on this issue. (**Web Resource 2, p. 59-60**)

The certificate of revocation currently states:

> This revocation shall become effective immediately on the date on which this certificate is signed unless the alien is present in the United States at that time, in which case it will become effective immediately upon the alien's departure from the United States. (**Attachment 4**)

In light of the June hearing, there has been discussion about the feasibility of changing the revocation language to state that an alien must maintain a valid visa to remain in the US. However, as the visa is not an entry document, but only permission to ask for entry, there has been considerable discussion about whether changing the revocation language and perhaps some regulatory language was sufficient to avoid legal challenges by the alien.

Over a year after that hearing, the Departments of State and Homeland Security have not reached an agreement on reworking regulations and the language of the visa revocation to allow for removal of aliens with revoked visas from the US. During subsequent staff briefings, both departments indicated they are working on a language and regulatory fix of the problem.

WITNESS TESTIMONY

Witnesses were asked to detail the step-by-step process by which a visa is revoked and how that information is shared with other agencies. The Subcommittee also requested witnesses address the following questions:

- What type of derogatory information was developed on individuals whose visas were revoked since September 11, 2001 on terrorism grounds and by whom?

- How do the Departments of Homeland Security and State, the Federal Bureau of Investigation, and appropriate interagency groups, such as the Terrorist Screening Center and Foreign Terrorist Tracking Task Force, now share information regarding revoked visas?

- What difficulties have arisen in efforts to share visa revocation information?

- How many visas have been revoked on possible terrorism grounds since September 11, 2001, and how many of those suspected terrorist have entered the U.S. and remained?

- How has the number of revoked visas changed since September 11, 2001 and why?

- What prevents real-time transparency in identifying the number of revoked visas and the number of suspected terrorists with revoked visas in the U.S.?

- What have the Department of Homeland Security, the Federal Bureau of Investigation, and other agencies done to investigate, locate, and if appropriate, remove those who remain in the U.S. on revoked visas?

- What steps have the Departments of Homeland Security and State taken to rectify missteps and meet challenges involved in the visa revocation process? When were these reforms made?

- What is the status of Department Homeland Security and Department of State efforts to change the language of the visa revocation instrument, regulations, or statutes to allow for the removal of aliens who are in the US with a revoked visa?

Mr. Jess Ford, International Affairs and Trade Division, U.S. General Accounting Office, is expected to discuss the new Subcommittee-requested GAO report, "Border Security: Additional Actions Needed to Eliminate Weaknesses in the Visa Revocation Process" (GAO-04-795). In particular, Mr. Ford is expected to testify that weaknesses remain in the implementation of the revocation process, especially in the timely transmission of information among federal agencies. GAO is also expected to testify that State and DHS have made little progress on legal issues regarding the removal of individuals with revoked visas from the US.

Ms. Janice Jacobs, Deputy Assistant Secretary for Visa Services, Office of Visa Services, Bureau of Consular Affairs, U.S. Department of State, is expected to discuss the State Department procedures for handling visa revocations and notifying other agencies of the revocation.

Mr. Robert M. Jacksta, Executive Director, Border Security and Facilitation, Bureau of Customs and Border Protection, U.S. Department of Homeland Security, is expected to discuss the role of the Bureau of Customs and

Border Protection in receiving revocation information from the Department of State and sharing that information with the rest of the Department of Homeland Security.

Mr. Robert A. Schock, Deputy Assistant Director, National Security Investigations, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, is expected to discuss the role of the Bureau of Immigration and Customs Enforcement in tracking aliens who entered the U.S. prior to their visa revocation.

Mr. Donna Bucella, Director, Terrorist Screening Center, Federal Bureau of Investigation, is expected to discuss the role of the Terrorist Screening Center, an interagency organization, in sharing information among agencies.

WITNESSES

Mr. Jess T. Ford
Director
International Affairs and Trade Division
U.S. General Accounting Office

Ms. Janice Jacobs
Managing Director, Office of Visa Services
Bureau of Consular Affairs
U.S. Department of State

Mr. Robert M. Jacksta
Executive Director, Border Security and Facilitation
Bureau of Customs and Border Protection
U.S. Department of Homeland Security

Mr. Robert A. Schoch
Deputy Assistant Director, National Security Investigations
Bureau of Immigration and Customs Enforcement
U.S. Department of Homeland Security

Ms. Donna A. Bucella
Director, Terrorist Screening Center
Federal Bureau of Investigation
U.S. Department of Justice

ATTACHMENTS

1. November 26, 2002 letter from The Hon. Christopher Shays, Member of Congress, to The Hon. David M. Walker, Comptroller General of the United States, General Accounting Office.

2. January 15, 2004 letter from The Hon. Christopher Shays, Member of Congress, to The Hon. David M. Walker, Comptroller General of the United States, General Accounting Office.

3. U.S. General Accounting Office, "Border Security: Additional Actions Needed to Eliminate Weaknesses in the Visa Revocation Process" draft report, GAO-04-795.

4. Certificate of Revocation, U.S. Department of State, June 2004.

WEB RESOURCES

1. U.S. General Accounting Office, "Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process," GAO-03-798 (Washington, D.C.: June 18, 2003), http://www.gao.gov/new.items/d03798.pdf

2. "Visa Revocations: Catching the Terrorists Among Us," Hearing before the Subcommittee on National Security, Emerging Threats, and International Relations of the committee on Government Reform, House of Representatives, One Hundred Eighth Congress, First Session, June 18, 2003, Serial No. 108-84. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:91049.pdf

3. "Visa Revocations: Catching the Terrorists Among Us" Briefing Memorandum prepared by Subcommittee staff, June 13, 2003. http://reform.house.gov/UploadedFiles/Visa%20Memo.pdf

4. Testimony of Donna A. Bucella, Director, Terrorist Screening Center, FBY, Before the House Judiciary Committee, Subcommittee on Crime, Terrorism, and homeland Security, and the House Select Committee on Homeland Security, Subcommittee on Intelligence and Counterterrorism,

March 25, 2004.
http://www.fbi.gov/congress/congress04/bucella032504.htm

5. The Immigration and Nationality Act (P.L. 82-414; 8 U.S.C. Sec. 1101 et seq.) http://uscode.house.gov/usc.htm.