

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

June 13, 2003

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: Catching the Terrorists Among Us* scheduled for Wednesday, June 18, 2003 at 10:00 a.m. in room 2154 Rayburn House Office Building.

PURPOSE OF THE HEARING

To examine the process of revoking visas and locating those who may have entered the country prior to the revocation of their visa.

HEARING ISSUES

- 1. How is information on visa revocations shared between State, DHS, and FBI?**
- 2. How effective are efforts to locate aliens who entered the U.S. prior to their visas being revoked?**

BACKGROUND

In the course of completing an earlier report,¹ the General Accounting Office (GAO) uncovered 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. **(Attachment 2)** These 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 3)**

VISA GRANTING PROCESS

Under the Immigration and Naturalization Act (INA) **(Web Resource 1)**, the State Department is charged with administering visa process functions. The creation of DHS has altered the authority, but not the roll of the Department of State in the visa process.

A visa is permission to request entry into the United States; it is not permission to enter the country. The INS, now part of the DHS, grants permission to a visa holder to enter the U.S. at ports of entry. **(Web Resource 2)** Specifically, the Bureau of Customs and Border Protection (CBP) within the Border and Transportation Security Directorate (BTS) of DHS now screens travelers at ports of entry. **(Web Resource 3)** The Bureau of Immigration and Customs Enforcement (ICE), also of BTS, investigates visa crimes and detains and removes illegal aliens, among other task. **(Web Resource 4)**

The State Department has over 200 visa-issuing posts staffed by consular officers around the world. Consular officers are directly responsible for issuing or refusing visas. Their decision to grant or deny a visa is not subject to judicial review. Consular sections range in size from small posts with 1 consular officer to large posts with more than 30 officers. They also employ local staff, known as Foreign Service National staff (FSNs), to assist with

¹ “Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool” (GAO-03-132NI). **(Attachment 1)**

basic data input, translation, fraud prevention, and visa printing. Local staff are not permitted to issue visas.

The process of determining who will receive a visa has several steps.

1. The application is received by mail, by courier, or in person.
2. The applicant's information is entered in to the Consular Consolidated Database.
3. The application, passport, and other documents are reviewed.
4. An optional interview is conducted.
5. A name check is done using the State Department Consular Lookout and Support System (CLASS), a name check system that incorporates information from many agencies.
6. A security review is done for select applicants
7. The visa is issued.

The consular workload associated with this process depends on a number of factors, including the number of visa applications a post receives, the amount of time the consular officers and local FSNs spend reviewing the applications and supporting documents, the number and length of applicant interviews, and the number of times applicants must come back to the post to provide additional documents or other information.

Depending on the applicant pool at post, each stage of the visa process varies in length. For example, at posts in countries with a high incidence of document fraud, the document review stage may take more time if consular staff rigorously screen an applicant's documents.

Visas for temporary visits for business and pleasure – the most popular type of visa – accounted for about 79 percent of all 7.6 million visas issued in fiscal year 2001. Special worker visas – the second most popular type of visa – made up about 4.6 percent, followed by student visas at 4.2 percent and exchange visas at 4 percent.

By law, the burden of proof is on the applicant to demonstrate to the consular officer that he or she is eligible for a visa. In fiscal year 2000, consular officers refused about 1.96 million visas (79.8 percent of all refused visas) under INA section 214(b). This provision states each foreign citizen “shall be presumed to be an immigrant until he establishes to the satisfaction

of the consular officer...that he is entitled to a nonimmigrant status.” For the most common categories of visas, this means applicants must demonstrate they (1) have a residence abroad they do not intend to abandon, as evidenced by such factors as applicants’ strong economic, social, or other ties to a foreign country; (2) intend to leave the United States after a limited time; and (3) intend to engage in legitimate activities related to that nonimmigrant category.

In fiscal year 2000, consular officers also refused 471,523 visas (19.2 percent of all refused visas) based on INA section 221(g). This provision is generally used when an applicant lacks required documents or the processing of the application is incomplete, as in the case of additional security checks. Consular officers based the remaining 1 percent of all visa refusals on one of the many other INA provisions for denying a visa. One of these sections, INA section 212(a)(3)(B), contains exclusion provisions based on terrorism-related grounds. In fiscal year 2000, the State Department refused 99 visas under this provision. (**Attachment 1, p. 7-10**)

Prior to the September 11 attacks, the State Department visa operations focused primarily on screening applicants to determine whether they intended to work or reside illegally in the United States. In making decisions on who should receive a visa, consular officers relied on CLASS as the primary basis for identifying potential terrorists. Consular officers were encouraged to facilitate legitimate travel. The State Department gave overseas consular sections substantial discretion in determining the level of scrutiny applied to visa applications and encouraged streamlined procedures to provide customer service and deal with a large workload. As a result, according to State Department officials, consular sections worldwide adopted practices that reduced the amount of time for reviewing visa applications. For example, some posts decided not to interview applicants who were considered good risks – persons who were thought likely to return to their country at the end of their allotted time in the United States.

Since September 11, the U.S. government has introduced some changes to strengthen the visa process. For example, the State Department has, with the help of other agencies, almost doubled the number of names and the amount of information in CLASS. Further, the department began seeking new or additional interagency clearances on selected applicants, such as those known as Visas Condor, to screen out terrorists, although these checks were

not always completed by other U.S. agencies in a thorough or timely manner. (**Attachment 1, p. 2-3**)

VISAS CONDOR

Beginning in January 2002, the Visas Condor classification was applied to male applicants of certain national groups between the ages of 16 and 45 that also met additional classified criteria. These applicants were to be screened by the FBI and Central Intelligence Agency (CIA), in part because both agencies had not yet shared their watch list information fully with State. If the consular officer did not receive a negative response within 30 days, the officer was allowed to issue the visa.

The FBI did not systematically conduct the Visas Condor check from January through April 2002. In late April 2002, the FBI Foreign Terrorist Tracking Task Force (FTTTF) assumed primary responsibility for the Visas Condor name checks. The FTTTF faced a backlog of at least 8,000 checks.

Of the estimated 38,000 Condor cables processed by August 1, 2002, the task force had identified about 280 visa applicants who should not receive a visa under the INA terrorism provision. The task force either believed these applicants were suspected terrorists, or, in the majority of the cases, needed additional information to determine the applicant's true identity. The State Department received the refusal recommendation for about 200 of these applicants after the 30-day hold had expired. By that time, the posts had already issued the visas to the applicants. According to a senior State Department official, the department revoked the visas in these cases as a prudent measure and notified the Immigration and Naturalization Service (INS) of this action.

In July 2002, the FBI and the State Department changed their Visas Condor name check procedures. The FBI streamlined its internal procedures for providing Visas Condor responses to the State Department and moved the primary responsibility for Condor name checks from the FTTTF to the FBI name check unit. The State Department eliminated the 30-day waiting period for applicants subject to Visas Condor checks. Posts must now wait for an affirmative response from the State Department before issuing a visa to any applicant who meets the Visas Condor criteria.

In mid-September 2002, State Department, the CIA, and the Justice Department again changed the Visas Condor name check procedures. Specifically, the FBI became the primary agency for doing the name checks and clearing Visas Condor cables, and the CIA started doing name checks for selected Condor applicants rather than all of them. According to CIA and Justice Department officials, under the new procedures, the FBI name check unit conducts the initial Condor name check, running the applicant's information against their databases at headquarters and, in some cases, at the FTTTF. If these checks result in a possible match, then the FBI sends the information on that visa applicant to the State Department, who then forwards it to the CIA for a name check against the agency databases. **(Attachment 1, p. 20-24)**

By late November 2002, the number of Visas Condor revoked had been reduced to 105. **(Attachment 2)** State officials explained to Subcommittee staff the reduction was due primarily to duplicative records, which caused the same applicant to be counted more than once, and other administrative errors. In addition to these Visas Condor revocations there have been a number of additional visas revoked on alleged terrorism grounds since September 11, 2001 on which GAO was asked to report.

ICE and the FBI both share responsibility in locating those who violate their visas and pose a security threat to the United States. **(Web Resources 4 and 5)**

VISA REVOCATION PROCESS

The Secretary of State may revoke a visa at any time. These revocations may occur even if derogatory information surrounding an alien is insufficient to support ineligibility finding regarding the alien's visa. This can occur if State desires an alien reapply for a visa since their eligibility is in question and needs to be formally established and assessed.

State will revoke a visa under four circumstances:

- If the alien has been found ineligible for a visa under one of the inadmissibility provisions of 212 (A) **(Attachment 1, p. 47-48)**;
- If the consular officer finds that the alien is not eligible for the particular visa classification;

- If the visa has been physically removed from the passport; or
- Upon issuance of an immigrant visa to the alien.

(Web Resource 6)

This information is often developed by State, but may be also developed by other agencies such as the DHS and the FBI and shared with State. Consular officers do not have the authority to revoke a visa based on a suspected ineligibility or other insufficient derogatory information. If the consular officer does have sufficient information to find the alien ineligible, the officer must first check to see if the alien has a valid visa. If not, the alien is entered into CLASS to prevent them from getting a visa in the future, and if so, the officer must begin revocation procedures.

Revocation procedures include:

1. Notifying the alien the visa will be revoked, if such notification is feasible. This notification must occur before the visa is actually revoked.
2. Once the decision to revoke the visa has been made, the consular officer completes the revocation certificate and enters the information so it is recognized by the INS lookout system as a refusal code for future visa applications by the alien.
3. Physically canceling the revoked visa by writing or stamping “canceled” across it. If this cancellation is performed, in most cases there is no need to inform the State Department headquarters in Washington of the revocation. If the visa cannot be physically canceled, the consular officer must inform the local transportation carriers, State Department headquarters, and the alien’s intended point of entry.

Once an alien has already departed for the U.S., a consular officer may not revoke that alien’s visa, but must contact the State Department’s Washington headquarters with the information of the alien’s ineligibility, and then request headquarters revoke the alien’s visa. If, however, the consular officer is aware the alien is stopping en route to the U.S., the officer may request the stopover post notify the alien and physically revoke the visa.

Consular officers are expected, according to State procedures, to consult with the State Department headquarters prior to any visa revocations that

may have political, public, or law enforcement implications. Failure by State to follow procedures may be grounds for the effected alien to sue State.

GAO REPORT

GAO is expected to release a new report, “Border Security: New Policies and Procedures Needed to Fill Gaps in the Visa Revocation Process” (GAO-03-798) at the hearing and testify that the State Department, Immigration and Naturalization Service (INS), now part of the Department of Homeland Security (DHS), and the Federal Bureau of Investigation (FBI) lacked effective policies and procedures for handling visa revocations and have made little effort to locate aliens who entered the U.S. prior to their visa revocation.

DISCUSSION OF HEARING ISSUES

1. How is information on visa revocations shared between State, DHS, and FBI?

Information sharing has often been the Achilles’ heel of the government’s counterterrorism efforts. In the case of the visa application process, interviews are a poor way to find terrorists trying to enter the country. The best way is for the information to be developed using other sources and methods and to have that information shared with the necessary agencies, such as State. Simply put, the State Department and CBP cannot stop bad guys from getting into the country if they don’t know who the bad guys are. Information sharing has improved dramatically since September 11, 2001, with CIA, FBI, and other agencies more than doubling the size of the State CLASS database. (**Attachment 4**)

However, even as information sharing has improved, sharing databases, such as watch lists, and creating connectivity between systems, such as CLASS and IBIS, remain challenges.

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), National Automated Immigration Lookout System (NAILS), and the National Crime Information Center (NCIC).

IBIS is used by INS and the Customs Service (both now part of DHS) personnel at ports of entry to verify and obtain information on aliens presenting themselves for entry into the U.S. IBIS interfaces with several other enforcement systems, including CLASS, NAILS, and NCIC.

NAILS is the INS (now part of DHS) watch list of aliens who are inadmissible for entry into the U.S. It interfaces with IBIS and CLASS. **(Attachment 5)**

Other enforcement systems include the Enforcement Case Tracking System (ENFORCE), Automated Biometric Fingerprint Identification System (IDENT), Non-immigrant Information System (NIIS), Central Index System (CIS), Deportable Alien Control System (DACs), Treasury Enforcement and Communications System (TECS), Integrated Automated Fingerprint Identification System (IAFIS), and TIPOFF. All of these systems are now housed in DHS, FBI, or State.

Despite the fact that some of these systems interface with one another, the connectivity has often been poor. Consequently, the secretary of Homeland Security is required to follow through on the Enhanced Border Security and Visa Entry Reform Act of 2002 requirement to develop and implement an interoperable database system that interacts with other federal law enforcement and intelligence agencies. **(Attachment 5 and Web Resource 2)**

In addition, the lack of communication between agencies concerning Visas Condor and the sometimes poor interoperability of systems appear to be only two examples of a breakdown. Compounding the problem is the lack of formal written procedures at both INS and FBI for handling visa revocations. In addition, nowhere in State's written procedures does it discuss how State shares revocation information with other agencies. And if State fails to share this information, CBP does not know to refuse entry to the alien in question. **(Web Resource 6)**

The panelists are expected to discuss some efforts to rectify interagency communications challenges.

2. How effective are efforts to locate aliens who entered the U.S. prior to their visas being revoked?

GAO is expected to testify that several aliens with revoked visas entered the U.S. prior to their visas being revoked on alleged terrorism grounds. Moreover, GAO is expected to testify that both ICE and the FBI have done little to find or monitor those aliens.

According to the INA, a visa revocation by itself is insufficient grounds to remove an alien. (**Web Resource 1, Sec. 237**) Instead, there must be other grounds to remove the alien, including 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.

Nevertheless, as the U.S. is tracking other aliens in the country, whether they are from select countries or students, it seems logical to expect ICE and the FBI to at least monitor those aliens who entered the country prior to their visas being revoked on terrorism grounds. (**Attachment 6**)

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 on terrorism grounds and by whom?
- How did and do the State, FBI, INS, now DHS, share visa revocation information within their agencies and with other interested agencies?
- What difficulties have arisen in efforts to share visa revocation information?
- How many visas have been revoked on terrorism grounds since September 11, 2001, and how many of those suspected terrorists have entered the U.S. and remained?
- What prevents real time transparency in identifying the number of revoked visas and the number of suspected terrorists with revoked visas who have entered the U.S.?

- What have State, INS/DHS, FBI, and other agencies done to investigate, locate, and if appropriate, remove those who remain in the U.S. on revoked visas?
- What steps has State, INS/DHS, and FBI taken to rectify missteps and meet challenges involved in the visa revocation process?

Mr. Jess Ford, International Affairs and Trade Division, U.S. General Accounting Office, is expected to discuss the new Subcommittee-requested GAO report, “New Policies and Procedures Needed to Fill Gaps in the Visa Revocation Process” (GAO-03-798). In particular, Mr. Ford is expected to testify that State, INS, and FBI lacked effective policies and procedures for handling visa revocations and have made little effort to locate aliens who entered the U.S. prior to their visa revocation.

Ms. Catherine Barry, Managing Director, 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. Jayson Ahern, Assistant Commissioner, Office of Field Operations Bureau of Customs and Border Protection, U.S. Department of Homeland Security, is expected to discuss the role of the Immigration and Naturalization Service and now 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. Chuck D’Amore, Deputy Assistant Administrator for Management, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, is expected to discuss the role of the Immigration and Naturalization Service and now the Bureau of Immigration and Customs Enforcement in tracking aliens who entered the U.S. prior to their visa revocation.

Mr. Steven C. McCraw, Inspector-Deputy Assistant Director of Intelligence and Director of the Foreign Terrorist Tracking Task Force, Federal Bureau of Investigation, is expected to discuss the role of the Federal Bureau of Investigation in tracking aliens who entered the U.S. prior to their visa revocations. (**Attachment 7**)

WITNESSES

Mr. Jess T. Ford

Director
International Affairs and Trade Division
U.S. General Accounting Office

Ms. Catherine Barry

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

Mr. Jayson P. Ahern

Assistant Commissioner, Office of Field Operations
Bureau of Customs and Border Protection
U.S. Department of Homeland Security

Mr. Charles H. Demore

Interim Assistant Director for Investigations
Bureau of Immigration and Customs Enforcement
U.S. Department of Homeland Security

Mr. Steven C. McCraw

Inspector-Deputy Assistant Director of Intelligence and
Director, Foreign Terrorist Tracking Task Force
Federal Bureau of Investigation

ATTACHMENTS

1. *Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool*, GAO-03-132NI, October 2002.
2. Cam Simpson, “105 Terror Suspects Got U.S. Visas,” *Chicago Tribune*, Tuesday, November 26, 2002, Section 1 and Cam Simpson, “U.S. on Paper Trail of Visa Errors,” *Chicago Tribune*, Wednesday, November 27, 2002, Section 1.
3. 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.
4. “Status of Department of State Actions on the GAO Report, ‘Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool,’” December 27, 2002.
5. Lisa M. Seghetti, “Selected INS and Related Agencies’ Enforcement Systems and Databases,” Congressional Research Service, June 27, 2002.
6. “U.S. to Track Visitors Deemed a Security Risk,” *Washington Post*, June 6, 2002, p. A1, and “Views Differ on System for Tracking Foreign Students,” *Washington Post*, April 3, 2003, p. A8.
7. Biographies of Executive Branch Witnesses: Catherine Barry, Jayson P. Ahern, Charles H. DeMore, Steven C. McCraw.

WEB RESOURCES

1. The Immigration and Nationality Act (P.L. 82-414; 8 U.S.C. Sec. 1101 et seq.) <http://uscode.house.gov/usc.htm>.
2. H.R. 5005, Homeland Security Act of 2002, Sec. 428 Visa Issuance. <http://thomas.loc.gov/cgi-bin/query/F?c107:6:./temp/~c107PnzcfQ:e171004:>
3. Bureau of Customs and Border Protection, Department of Homeland Security. <http://www.cbp.gov/>

4. Bureau of Immigration and Customs Enforcement, Department of Homeland Security.
<http://www.bice.immigration.gov/graphics/index.htm>
5. Federal Bureau of Investigation Counterterrorism web page.
<http://www.fbi.gov/terrorinfo/counterterrorism/waronterrorhome.htm>
6. Department of State Cable: Revocation of Nonimmigrant Visas,
<http://www.imminfo.com/Resources/DOS/DOSMemos/RevVisas.html>.