

Testimony

of

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Before the

**House Judiciary Committee
Subcommittee on Immigration and Claims**

Regarding

The Visa Waiver Program

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Thank you very much, Mr. Chairman, Members of the Subcommittee.

I welcome the opportunity to testify on the Visa Waiver Program (VWP). Since its inception in 1988, the VWP has grown tremendously and has proven extremely popular with nationals of visa waiver countries and with the travel and tourism industry. The program has expanded from two countries in 1988 to 29 countries in 2001. In fiscal year 2001, the INS recorded approximately 17 million arrivals under the program.

The program has also succeeded in providing significant economic benefit to the United States through facilitation of the travel of tourists and businesspersons. In recent years, the travel and tourism industry has repeatedly been the nation's leading services export. In 2000, for example, it is estimated that foreign visitors generated \$102.7 billion in direct expenditures and contributed \$14 billion to the industry's trade surplus that year. In addition to stimulating tourism and commerce, the program has allowed the Department of State to concentrate its resources on greater risk areas in the visa process.

Irrespective of the program's overall success in delivering the intended results of increased travel and tourism and more effective use of consular resources, there are also serious areas of concern which the INS has noted in previous testimony to this Committee and which take on added importance after the events of September 11.

History and Description of the Program

In 1986, the Immigration Reform and Control Act authorized the Visa Waiver Pilot Program as Section 217 of the Immigration and Nationality Act (INA). The program's purpose was twofold: (1) to facilitate low-risk travel to the United States and (2) to allow the Secretary of State to conserve and reallocate consular resources. In October of 2000, the Visa Waiver Permanent Program Act made the pilot program permanent and included program modifications to enhance the law enforcement and security interests of the United States.

Under the program, visitors for pleasure or business from countries designated by the Attorney General, in consultation with the Secretary of State, who meet the express statutory criteria may be admitted to the United States without a visa for a period of up to 90 days. Because travelers under the program do not need a visa, no checks are done prior to their applications for admission at ports-of-entry (POE). However, VWP applicants for admission must waive in writing any right to review of an immigration officer's determination that they are inadmissible or removable from the United States. They may only contest removal on the basis of an application for asylum. They are also required, if arriving by air or sea, to travel on a transportation line that is signatory to an agreement with the INS permitting the line to transport passengers under the program.

The four criteria for inclusion of countries in the program are:

1. that the country offer reciprocal privileges to United States citizens;
2. that the country have had a nonimmigrant visa refusal rate of less than 3 percent for the previous year;
3. that the country certify that it issues, or by October 1, 2003, will issue, a machine- readable passport; and
4. that the Attorney General, in consultation with the Secretary of State, makes a determination that inclusion of the country in the program does not compromise the law enforcement interests including either immigration law enforcement or security interests of the United States.

From the commencement of the program all relevant agencies have taken the review of potential participants most seriously. Security concerns have always been of paramount importance in this process, and have been emphasized in the recent development of an interagency protocol for review of candidate countries and evaluation of countries already in the program. Since October 2000, the VWP has required the Government to conduct periodic evaluations of the effect of each program country's designation based on the law enforcement interests, immigration law enforcement interests, and security interests of the United States. The program also provides that the Attorney General, in consultation with the Secretary of State, shall immediately terminate a country's designation if an emergency occurs in the program country that threatens U.S. interests, including the interest in enforcement of the immigration laws. Such emergencies include, but are not limited to, the overthrow of a democratically-elected government, war, a severe breakdown in law and order affecting a significant portion of the country's territory, and a severe economic collapse in the program country. Both the INS and the Department of State welcomed these changes and their clear contribution to the effective and orderly administration of the VWP.

Although the program has made it easier to travel to the United States, it has produced new challenges for the INS. While the program has significantly reduced consular and INS benefit workload and facilitated travel to the United States, it has increased the burden placed on Inspectors at the POEs. As travelers to the United States under the program do not obtain a nonimmigrant visa in advance, they apply for admission at the POE with only a passport and a signed form. Thus, they are not subject to the consular screening that would accompany visa issuance. Consequently, fraudulent document vendors and alien smugglers have targeted the passports of visa waiver countries. As the Department of State has increased the fraud resistance of the U.S. nonimmigrant visa, so too has the attractiveness of using a visa waiver country passport increased for third-country nationals seeking illegal entry into the United States.

The attraction of smugglers, document vendors, and illegal immigrants to visa waiver country passports is encouraged by several factors, including: limited security features present in some passports, the existence, in some countries, of multiple passport-issuing authorities, and weak controls to protect issuance procedures and blank passport storage in some visa waiver countries. In the latter case, access to blank visa waiver country passports eliminates the need to eradicate existing biographic information, thereby simplifying the document vendor's job and reducing the risk of detection. Progress is being made in this area and in the area of carrier provision of advance passenger information to inspectors at the POEs – a long-awaited mandate which was incorporated in the VWP Act, however, vulnerabilities still exist which present serious security and law enforcement concerns.

At this point, I would like to focus on two specific issues regarding the program: (1) the INS' preliminary views on the *Follow-Up Report on the Visa Waiver Program* issued by the U.S. Department of Justice Office of the Inspector General in December 2001; and (2) the vulnerability of program abuse by terrorists.

Office of Inspector General's December 2001 *Follow-Up Report on the Visa Waiver Program*

In March 1999, the Office of the Inspector General (OIG) issued an inspection report, *The Potential for Fraud and INS's Efforts to Reduce the Risks of the Visa Waiver Pilot Program*. The OIG report "determined that the [then] Visa Waiver Pilot Program facilitated the illegal entry of 'terrorists and criminals' into the United States." The first recommendation of the OIG report, which was reiterated in the follow up, stated that INS should modify the inspection process to ensure that the passport number of each VWP applicant is checked against the lookout system. The second recommendation of the OIG report stated that INS should designate a unit to systematically collect information on stolen blank VWP passports and ensure timely and accurate entry of stolen passport numbers into the lookout system. The third recommendation of the OIG report stated that the INS should develop clear guidelines for the entry of passport numbers when creating lookout records. The INS, in response to the OIG Report of March 1999, did issue clear guidelines to ensure that field officers check every passport number in the Interagency Border Inspection System (IBIS) and inform the lookout system when field offices receive

notice of missing or stolen passports. The follow up report identified these efforts, but suggested that INS should redouble its efforts to ensure that field officers fully understand and comply with the guidance. The INS shares the Inspector General's emphasis on proper VWP security. Accordingly, we have re-issued the policy directive to ensure field office compliance. Further, we will now work to ensure oversight of these procedures through our Office of Internal Audit's INSpect reviews.

Program Vulnerability

As I noted in my opening remarks, the program allows foreign nationals from designated countries to apply for admission to the United States without any checks prior to their arrival. Under the normal nonimmigrant visa application process, consular officers at U.S. embassies abroad require specific information from travelers before issuing a nonimmigrant visa. While the overwhelming majority of VWP applicants are law-abiding individuals, some terrorists and criminals have taken advantage of the program to gain access to the United States. Unlike the traditional double-check nonimmigrant system, the program allows only one opportunity to identify inadmissible aliens. While both the visa issuance and the immigration inspection processes combine a lookout check with individual questioning of each alien, officers at POEs most often apprehend inadmissible aliens as a result of the interview process rather than as a result of a "hit" in the IBIS lookout system. Simply put, the IBIS query is used to assist the immigration officer's interview; it is not a substitute for the interview.

Unfortunately, some countries that participate in the VWP have, over the years, had significant thefts of blank passport stock, which are not always reported to the INS. Unreported blank passport thefts make the program more susceptible to terrorists and criminals. When a person attempts to enter the United States with a fraudulent passport, most often no lookout exists on the passport itself. For instance, Ramzi Yousef and Ahmad Ajaj used fraudulent visa waiver country passports to travel to the United States in furtherance of their conspiracy to bomb the World Trade Center in 1993. Yousef and Ajaj boarded the flight to the United States together, Yousef with a British passport and Ajaj with a Swedish passport. At the time of the inspection no lookout existed on those altered passports, but INS officers were still able to intercept the two men as a result of the inspection interview. In two separate instances last year, two individuals identified as posing threats to the United States used lawfully issued VWP passports in apparent attempts to attack U.S. interests. Despite these security concerns, eliminating the program will not eliminate the ability of terrorists to enter the United States.

Proactive INS Initiatives

The INS, through its worldwide placement of agents, inspectors, investigators, and intelligence officers, and its overseas district offices, seeks to anticipate and continually review procedures that foreign governments use that may impact the security of the United States. This is being done with the cooperation of foreign governments. Let me give you a specific example of this proactive work, particularly as to how it relates to the VWP. Under the recently passed program amendments, the Attorney General is required to conduct periodic reviews of each country's continued eligibility in the program, based on the law enforcement and security interests of the United States. Under this provision, prior to September 11, INS had already begun making arrangements for visiting six program countries in 2001. In addition, the INS and the Department of State are working to ensure that participating countries have, or institute, vigorous passport controls and report passport theft promptly to the government.

By the end of 2001, highly trained INS specialists in airport and land border physical security, fraudulent documents, intelligence, and inspections procedures had visited these six countries. Our specialists, assisted by Department of State Visa Office personnel and consular officials from our embassy in each country, reviewed numerous factors and conditions in the six countries that may impact on the law enforcement (including immigration law enforcement) or security interests of the United States. They met in country with representatives of U.S. and foreign law enforcement agencies, and took part in numerous on-site inspections of air, land, and sea POEs. While we have yet to finalize the first six country evaluations, six additional countries will undergo the same review process later this year.

While the ongoing country evaluations are very important, we also recognized that emergent circumstances in Argentina merited consideration of the use of the emergency termination provisions contained in the INA. Thus, on December 21, 2001, we began the process that resulted in a determination that Argentina's participation in the VWP was inconsistent with the U.S. interest in enforcement of the immigration laws of the United States. Accordingly, on February 21, we published in the Federal Register an emergency rule that terminated Argentina's VWP designation. We will continue to ensure that every participating country consistently meets their requirements to stay in the program.

Since the inception of the program, we have been continually evaluating to determine if additional safeguards are needed to protect the American public. Specifically, among other things, we have led the effort to revise the protocol on evaluating VWP country designations. We have incorporated several law enforcement and security measures into the draft protocol. Although much work remains, we were pleased that the OIG follow-up report recognized that "the INS has taken the initiative to bring law enforcement concerns to the forefront of the VWP."

Conclusion

Those countries that continue to meet the VWP requirements will continue in the program. However, those that do not meet the program's security requirements will be considered for termination. The INS is committed to continuing our active efforts to ensure U.S. security under the VWP.

Striking a proper balance between competing U.S. interests is an important goal for the VWP. Although the VWP remains attractive to prospective illegal entrants for the same basic reasons it is for the legitimate traveler (that is, it makes it easier to come to our country), we cannot fail to recognize that the program has promoted U.S. trade and tourism and enhanced foreign relations with designated countries.

This concludes my testimony and I will be happy to respond to any questions.