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THE VISA APPROVAL BACKLOG AND ITS IMPACT ON AMERICAN SMALL BUSINESS

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BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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THE VISA APPROVAL BACKLOG AND ITS IMPACT ON AMERICAN SMALL BUSINESS

WEDNESDAY, JUNE 4, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The Committee met, pursuant to call, at 2:00 p.m., in Room 2360, Rayburn House Office Building, Hon. Donald A. Manzullo [chair of the Committee] presiding.

Present: Representatives Manzullo, Chabot, Schrock, Akin, Capito, Beauprez, Chocola, Velazquez, Millender-McDonald, Udall, Napolitano, Ballance, Acevedo-Vila, Case, Majette, Marshall, and Sanchez.

Chairman MANZULLO. If we can get everybody seated so we can get started.

Good afternoon. I would like to call this meeting to order. It is our pleasure to welcome everybody to today's Small Business Committee hearing focused on our government's efforts to implement new procedures allowing foreign visitors to travel to this country for business and pleasure.

First, I would like to take care of some of the housekeeping items. As is our custom, I will make a few remarks as an opening statement and then yield to the Ranking Member for her opening statement, and we will proceed directly to the testimony from our witnesses. After all the witnesses have testified, we will take questions from the members in the order in which they arrived.

Bringing buyers and sellers together, whether in the boardroom or the factory floor, is the cornerstone of a free market. Meeting face to face to agree on price and terms is more than mere custom, it is a necessary part of winning the bid or sealing the deal. Since September 11 of 2001, this simple act has become much more difficult. The visa approval backlog which peaked last summer has been the subject of widespread criticism from many corridors. It is appropriate for this Committee to inquire of the relevant agencies about their progress towards remedying this situation. Today's hearing will focus particularly on the State Department's efforts to add to the new security requirements and the impact ongoing procedural delays are having on our business climate.

For me and the people that I represent in northern Illinois, the visa issue is critical. As members of this Committee are well aware, I spend a great deal of my time helping our small businesses export their products, growing markets overseas in the manufacturing sector. The visa backlog first came to my attention while trying to help a major employer back home sell more of their ma-

chines in China. It took a long period of time for Ingersoll Corporation, a constituent employer from Illinois, that waited for a long period of time to get buyers to get a visa to come to Rockford to inspect their products and sign on the dotted line. Eventually the buyers looked elsewhere, and the company lost the sale and it is now in bankruptcy. The failure of Ingersoll is not to be blamed entirely on this lost sale. It is not difficult to imagine that other businesses all over the country who are also on the edge of solvency may lose business simply because they are unable to get their buyers to come to their facility or to the trade show where they feature their products.

Today we will hear testimony from the Department of State and Federal Bureau of Investigation to learn more about the process of issuing visas for foreign visitors and their progress to date to clear the existing backlog. I trust that both of these government witnesses will explain to the Committee the preparations they are making for the new interagency review regime, sited at the Department of Homeland Security, which will begin at the end of this fiscal year.

And we have had several pre-Committee hearings with many of the people that are here at the panel today, and I can tell you that the testimony they will give is compelling. There is a very serious problem with regard to the amount of visa applications that the FBI had to check. Their business increased by over threefold. They are making, in my opinion, extraordinary progress in trying to reduce the backlog and address the manufacturing and visitor concerns of our country.

In addition to our government witnesses, we will hear from a variety of representatives from the business community, for these folks, bringing buyers and sellers together is their only job.

Mr. Gary Shapiro from the Consumer Electronics Association is part of making these transactions possible. Chip Storie from Cincinnati Machine and Bill McHale from Kanawha Scales know about the disappointment of having willing buyers walk away in favor of competitors who can actually bring the customers into their factory. Ms. Palma Yanni and Bill Reinsch are experts on immigration and visa issues. With many years of experience on the front lines in the business of immigration, it is my hope that they would help the Committee and the House better understand how the apparatus of the State Department and FBI and other agencies actually work, and hopefully tell us how we can improve this system in the years ahead.

Again, I welcome each of you to the Committee today and look forward to your testimony.

[Mr. Manzullo's statement may be found in the appendix.]

Chairman MANZULLO. I am now pleased to recognize the Ranking Member, Mrs. Velazquez.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

The cornerstone of the global economy is international trade. Many small businesses are contributors to international trade. In fact, more than 97 percent of all U.S. Exporters are small businesses. The small business sector also participates in the international travel and tourism industry, making up a large percentage of both travel agencies and tour operators. Yet the terrorist attacks

of September 11 caused setbacks for many small businesses, especially those with ties to the international market.

In response to September 11, the Department of State implemented new policies to govern the visa issuing process. Our Nation's security is not something that should be taken lightly. However, in an effort to provide security to our citizens and our country, we must recognize that America's exporters are the entrances for people's goods and services which help drive our economy.

Unfortunately, many small businesses, including those in the manufacturing sector, are bearing the brunt of these new visa procedures. A significant number of their clients face extended visa delays and, in some instances, outright rejection. These denials and delays are pushing clients to seek products from U.S. Competitors.

Small businesses also fear that effects of these policies are threatening the economic recovery and future competitiveness of our country. Small firms are finding that longstanding business relationships with foreign clients are being damaged and legitimate travelers are unable to obtain visas. Opportunity for new business ties are being blocked and personal transfers within some companies are being delayed.

These delays, denials, and practices are harmful to the future viability of America's small enterprise and to both our national economy and to the larger international economy. There are two specific procedures at the heart of these difficulties. The first is the new visa policy entitled "Visas Condor" which was implemented after September 11 to fight terrorism. But because it fails to clarify just how long it takes to complete a check, applicants undergoing Visas Condor review face an indefinite approval time, which creates a backlog.

In addition, further delays are taking place due to a lack of knowledge about how to apply policies involved in the "Visas Mantis" system. While this process is not new, it is apparent that consular services need to be educated on the technologies involved to reduce delays. While current trade and tax policies already place many small businesses at a disadvantage in a very competitive global market, these new immigration policies, although necessary, are creating an additional hardship for them.

It needs to be stressed that the entire market is being affected by the new visa policies. High-tech companies are struggling. The HIB visa cap for fiscal year 2001 through 2003 hit an all-time high with 195,000 approved new workers. Sadly, the cap has now dropped to only 65,000 for 2004. Small business owners are feeling the impact as they wait for their workers to arrive who are caught in the backlog. Immigrants are being delayed in their travels to work in the United States. It is not just one sector of our market that is at a disadvantage, but it is our entire global market that is bearing this burden.

Our most effective security strategy should be to improve the prescreening immigration process, allowing us to keep out those who intend to harm our Nation, while admitting those individuals who come to build America and make positive contributions to our economy. Too many of our Nation's most prosperous industries, including travel, tourism and manufacturing have been put at unfair disadvantage. While the need for increased security is certainly

warranted, a healthy balance needs to exist between safety and the expanding competitive trade market facing America's small businesses.

Thank you Mr. Chairman.

[Ms. Velazquez's statement may be found in the appendix.]

Chairman MANZULLO. Thank you.

What we are going to do at the hearing is that the five witnesses from the private sector will have 5 minutes, and we will enforce that. We will go with the private sector witnesses, and the government witnesses I will give 10 minutes. And the reason for that order is that I want the government witnesses to be able to hear the testimony, and then they can take their prepared testimony with the testimony that has come before them, and I believe it will help them in terms of the overall purpose of this hearing, which is to come up with a solution and work with the government agencies in order to get rid of the backlog and continue the progress that has been made on this to date.

Mr. Chabot, you have a constituent. Did you want to introduce him?

Mr. CHABOT. I would like to take this opportunity to introduce and welcome Chip Storie who is here testifying on behalf of the American—the Association for Manufacturing Technology. Chip is the Vice President of Cincinnati Machine, a company that makes manufacturing tools in my hometown of Cincinnati. Cincinnati Machine was founded all the way back in 1884, and it is a world leader in high-speed machining, cellular manufacturing, and advanced composites machinery.

Several months ago, Chip and his company had contacted our office concerning the difficulty that Cincinnati Machine was having getting visas processed; and we were able to provide some assistance, although it is my understanding that they are still waiting for one of the visas.

Companies like Cincinnati Machine that depend on exports are struggling because of the slow visa application process. We have to find a way to continue to ensure that our visa process is as thorough and rigorous as possible, but not so cumbersome that it adversely impacts the competitiveness of our businesses that rely so heavily on foreign sales.

And unfortunately, I have about three committee meetings going on at the same time, and I have to head the partial birth abortion ban on the floor.

Chairman MANZULLO. You are also on Judiciary that has the legislative jurisdiction on this issue.

Mr. CHABOT. We are pleased to have him and the other witnesses as well, and we welcome you here today. Thank you, Mr. Chairman.

Chairman MANZULLO. First witness is Bill Reinsch, President of the National Foreign Trade Council. Bill, you testified before. You know what the yellow light means; you got 1 minute. The red light means you have no time left. So, I look forward to your testimony.

STATEMENT OF WILLIAM A. REINSCH, PRESIDENT, NATIONAL FOREIGN TRADE COUNCIL, INC.

Mr. REINSCH. Thank you, Mr. Chairman. It is an honor to be here before you. My comments are going to be in the nature of an overview and I am going to focus not on immigrants or students, although there are problems there as well, but on business travel. And some of my colleagues are going to have some specific stories to tell you about what is going on. I think the theme of those stories is largely that in a globalized economy with companies that operate in lots of places, companies need to be able to move people around for a variety of reasons. They need to be able to bring customers here from all over the world.

And Mr. Chabot's example, machine tools, are not something you put in a briefcase and fly off to China to market. You bring the Chinese here to look at them. You need to bring your customers here and be able to move your own employees around to different locations, often on short notice, in order to meet critical needs; and companies need to be able to provide training and other customer needs even when their customers are not American.

In the wake of the September 11th tragedy, there have been new and unexpected complications in the visa review process which we had hoped and thought was a transition problem, but which has turned out not to be a transition problem. As late as on my way up to this hearing, I ran into one of my members who found out I was doing this, who said, "Thank you. We are still having a serious problem today and it has not gotten any better." .

My sense of what is happening, and you will hear in graphic detail from others that delays—the system has become opaque. It is hard to find out where anything is at any given point, and there are long periods of uncertainty, oftentimes ending in denials. But from a business point of view, what you really crave is certainty. You need to know that at the end of 10 days, 30 days, 50 days, whatever it is, there is going to be an answer, so you can plan and you don't have to go through the embarrassment of keeping your customer, waiting for a long period of time because the government is having difficulty making up its mind.

Why are we running into these problems? I think it is a combination of things, partly human nature. Nobody in the visa review process wants to be the person who stamps "approved" on the next terrorist's application. The result has been more applications are being sent to Washington instead of handled at post. In Washington they are put into an interagency review process which involves a number of agencies—State, Commerce, the FBI, various other agencies—some of whom have a commercial mandate as part of their mission and some of which don't. I think that has been part of the issue. I think the single biggest thing that has happened is removal of the clock.

I have been a bureaucrat. I was in the Commerce Department and I know something about bureaucracy. The best way to get a decision is to have a deadline because you know the decision will be made the day before the deadline. Whether it is 10 days or 30 days, it will be made the day before.

One of the things that appears to have happened last summer, in the wake of a very large backlog of applications being referred

here, is the State Department went off the clock and removed the deadline and removed the rule that said that if these things are not objected to within a certain period of time by an agency, they will be approved. And the minute you did that and required positive approval by everybody, you presented an invitation to the bureaucracy simply to take its time. And that is what has happened.

A second element I think has been the inevitable bureaucratic inertia caused by the creation of the Department of Homeland Security. Ultimately the policymaking part of this function is to reside in that Department pursuant to a memorandum of understanding to be negotiated between the new Department of Homeland Security and the Department of State. That MOU is under negotiation and has been under negotiation. The longer it stays under negotiation, the less is going to happen in terms of developing an efficient process. And one of the things I would recommend is that we—that you urge the departments to conclude the negotiations to sort this out so that the various departments that do have a role in this can begin to plan and move forward.

To conclude, what do we do? Go back on the clock. You know, reinstitute the action forcing process in the bureaucracy that guarantees a decision. Businesses can deal with denials. What they can't deal with is uncertainty and opacity.

Second, finish the MOU. Get the process settled, have it clearly specified who does what so the bureaucracy can then adjust its troops and reorient its resources accordingly.

Third, shorten the technology list. You will find that a lot of these business issues involve businessmen who are coming here to have some interaction with critical technology. The Department uses a fairly long and very vague list that results in reviews for machine tools, even in cases where the government has already decided it is all right for them to buy the tool, but for some reason it is not all right for them to bring the individual here to take possession of the tool and be trained on how to use it.

Chairman MANZULLO. The red light is there and your testimony has to be shortened.

Mr. REINSCH. We need to change the way we think about mobility. In the good old days, the company transferred its workers from its plant in Savannah to its plant in Rockford. We move them from the lab in Taipei to the lab in San Francisco. From a corporate point of view there is not a lot of difference now, but we need to be able to do that and we need to adjust our processes in order to permit that to happen.

Mr. Chairman, I have a written statement.

Chairman MANZULLO. All the written statements will be made part of the record.

[Mr. Reinsch's statement may be found in the appendix.]

Chairman MANZULLO. Before we go to the next witness, Congresswoman Capito has a constituent that she would like to introduce.

Mrs. CAPITO. Yes, I do. I would like to introduce to the Committee and those in the room Mr. Bill McHale from my Second District in West Virginia. Bill is the Vice President with Kanawha Scales and Systems, and a large exporter and the pride of West Virginia. They are the largest provider of weighing and control so-

lutions in the United States. And we have shared stories in my office of the difficulties of small business, and I just welcome him and I look forward to his comments.

Thank you.

Chairman MANZULLO. Our next witness is Ms. Palma Yanni, President-elect of the America Immigration Lawyers Association. Look forward to your testimony.

STATEMENT OF PALMA R. YANNI, PRESIDENT-ELECT, AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Ms. YANNI. Mr. Chairman and distinguished members of the Subcommittee, I am Palma Yanni, President-elect of the American Immigration Lawyers Association. I am honored to be here representing our Association of more than 8,000 attorneys who represent businesses by the thousands, who are bringing in needed employees either on a temporary or permanent basis when there are not available U.S. Workers.

We also represent families, bringing in their close members for legal processes to become permanent residents of the U.S.; and also asylum seekers, often pro bono, athletes, entertainers, and foreign students.

Our Association represents American businesses and individuals across the board. The backlogs right now in the immigration system from beginning to end are at a time more profound than they have ever been before. Visas that once took a day take a month. Visas that used to take a month can take a year, if someone is lucky.

How did we get to this point? Obviously the concern for security is a huge part of that and the question is whether what is being done is simply processes for the effect of having processes without any regard to effectiveness or impact on the one hand, and also whether there is adequate funding for the adjudications and the decisions that are necessary or any attempt at removing backlogs will simply be doomed from the start.

No one is going to argue that security checks and precautions are not necessarily advisable, but the key is to have all the agencies involved, communicating, looking at these checks and precautions as a priority, and making sure that there is not duplication and error in the system. And that has not been the experience to date. Businesses, as you have heard and will continue to hear, face lengthy delays at each stage of visa processing at the Bureau of Citizenship and Immigration Services, to the final applications at U.S. Consulates. And many times the delays are duplicative. The delays at the Bureau of Citizenship and Immigration Services to do security checks at that point are then repeated months later when the application is assumed by the same agencies doing the same checks once again that have just been completed. And there does not seem to be a reason for that. And more organization, cooperation, between these agencies would certainly go a long way to reducing that problem.

The technology alert list, as has previously been mentioned, that is a serious cause for delay. Some of the activities on that list we can understand. For example, if someone is coming for reprocessing irradiated nuclear fuel to produce plutonium, you might want to

have an extra look at that application. On the other hand, geography and landscape architecture are on the list. I do understand that the Department of State may have removed those last two, and applaud them for that exercise and common sense.

The delays that we hear from are very often the FBI checks. State Department will not, as was noted, issue any visas until the FBI has conducted its check. This can be a lengthy process. I just had an example of this in my firm, where a physician who is working in an underserved area in West Virginia, had three prior visas, had been checked at both a—by the Department of State for a certain waiver he needed and also had been checked by BCIS when he changed his status to H. Went home for a brief visit and was held up 61 days, because there is someone else in the system somewhere with his same rather common name but a different birth date. Fingerprints had to be done. They had to go to the FBI. And this community in West Virginia was without a physician for 61 days. When he goes back again, presumably the same thing will happen because there is no mechanism to put in the system the fact that someone has already been cleared.

And we anticipate with—as was noted before in your initial statement, Mr. Chairman, that with 90 percent visa interviews, the process can only get worse overseas. In sum, that is the overseas process.

The immigration process here through the Bureau of Citizenship and Immigration Services is also suffering from extensive backlogs because of additional clearances and also because of what we call the "culture of no." right now, officers, it appears, are looking for any way to say no, because they are in fear of putting that approval stamp on the next terrorist that might want to enter.

Thank you.

Chairman MANZULLO. Thank you for your testimony.

[Mr. Yanni's statement may be found in the appendix.]

Chairman MANZULLO. Our next witness is William McHale, Vice President of Sales of Kanawha Scales and Systems. Look forward to your testimony. Could you pull the microphone closer to you?

STATEMENT OF WILLIAM J. McHALE, VICE PRESIDENT OF SALES, KANAWHA SCALES AND SYSTEMS, INC.

Mr. MCHALE. Mr. Chairman and members of the Committee, thank you for inviting me to testify at this hearing. I am Bill McHale, Vice President of Kanawha Scales and Systems, headquartered in Poca, West Virginia. We are a small- to medium-sized business. We employ approximately 200 employees at 12 offices with locations in West Virginia, Pennsylvania, Ohio, Kentucky, Alabama and Michigan.

Our core business is distribution and sales of specialized weighing and control systems. A big part of our business is designing and building customized systems controls for clients throughout the U.S. And internationally. Our flagship product is a high-speed train loadout system which we supply worldwide. Our company has been involved in the export market since 1986, with much of our efforts focused in China.

I am appearing before the Committee to express my concern over the growing difficulties of our foreign employees, existing clients,

prospective customers face when trying to attain travel visas to the U.S. For the purpose of business discussions. U.S. Companies face many difficulties in trying to do business overseas and being competitive on a global scale. Adding the issue of an increasingly difficult process of potential prospects of getting visas to the U.S. Will only further undermine our efforts to succeed in international markets. We already face competing on an unlevel playing field against many of our international competitors. The problems we face are well known and include the current strength of the U.S. Dollar, WTO inconsistent subsidies, and other practices of foreign governments and rampant——.

Chairman MANZULLO. Do you want to get directly into this issue?

Mr. MCHALE. Yes. We face the problem of inviting people over here for design review, plant inspections, customer training, and training of our own individuals that are stationed overseas. This makes it very difficult to support our customers who need visas, for these people are denied. It also makes it difficult to maintain the terms of the contract if the terms of the contract specify that certain members have to come over from our foreign customers for design review. When actions or procedural delays are raised in granting these visas, it makes it very difficult for us to fulfill the terms of the contract.

On two different occasions we have tried to get a foreign-employed engineer over to the U.S. For training on products that we manufacture in China. On both those cases his visa application was rejected. His total interview time both times lasted less than 30 seconds. Prior to the second attempt to be granted a visa, we contacted the U.S. Commercial Office in Beijing and obtained advice from them on what we should do and the paperwork we should prepare. We followed those procedures and we still were not successful. We had a 30-second interview and our employee was rejected for a visa.

The last two contracts we signed in China in April this year, our customers inserted wording into our contract that we would personally get involved in trying to obtain visas. In reality there is nothing we can do to help with this. We are particularly concerned about visa processing delays, because we have two delegations coming over in July on the last two contracts we signed in April. If these visas are not granted, we are going to be forced to send large groups of engineers and staff members over to China for the conduct of the design review meetings. This will place additional burdens on our staff as well as interfere with our ability to meet our deliveries by taking that many people out of the loop.

To give you an idea of the importance of our export market to us, over the years, our export business has accounted for 12 to 21 percent of our total volume. This year, due to the flatness of the economy in West Virginia, our export business is going to amount to over 25 percent. It supports 8 to 12 jobs in our company. If it hadn't been for the overseas business we placed this year, specifically in China, we would have been faced with the prospect of laying off people the first time in our 50-year history.

In closing, I feel that procedures need to be put in place that don't penalize U.S. Companies' ability to get visas granted to foreign employees for training purposes and future prospects. The

deck is already stacked against U.S. Companies trying to do business overseas. We don't need to compound that by making it even more difficult for our foreign customers to do business with us.

I don't mean to diminish the importance of screening potential visitors to the U.S. In light of the terrorist activities throughout the world. However, a 30-second interview is not going to accomplish that either. The current process is broken and very badly needs to be fixed.

Thank you for the opportunity to share our company's and our employees' concerns with you today. It is heartening to see the Small Business Committee of the House of Representatives taking an interest in this serious and so far undiminished problem.

Chairman MANZULLO. Thank you very much for your testimony.

[Mr. McHale's statement may be found in the appendix.]

Chairman MANZULLO. Our next witness is Chip Storie, V.P., Aerospace Sales, at Cincinnati Machine. You may want to pull the mike closer to you.

STATEMENT OF CHIP STORIE, VICE PRESIDENT, AEROSPACE SALES, CINCINNATI MACHINE, INC., ASSOCIATION FOR MANUFACTURING TECHNOLOGY

Mr. STORIE. Mr. Chairman, members of the Committee, good afternoon and thank you for inviting me to testify in this hearing on how the visa program is affecting the business community.

Today I will be speaking on behalf of AMT, the Association for Manufacturing Technology. My company, Cincinnati Machine, a division of UNOVA, is a manufacturer of machine tools. As you know, Mr. Chairman, the machine tool industry in the United States today is in crisis. Consumption of machine tools in the United States has decreased by approximately 60 percent over the past 5 years. There is a direct correlation between the amount of manufacturing done in the United States and the machine tool consumption here in our home market. As a result, a once strong machine tool industry has seen many of its best, most innovative companies go out of business in the last 4 years.

As an aside Mr. Chairman, I would like to thank you for your strong leadership on issues such as FISC, which has provided great and valuable support for our industry during these difficult times. While less and less manufacturing takes place here in the U.S., there are more and more in places such as China. As machine tool companies worldwide must necessarily follow manufacturing work, China has become the leading consumer of machine tools in the world.

U.S. Companies must adapt in order to sell to China if we wish to survive. Many U.S. Companies are doing that, but we find that the roadblocks to success can often be traced back to our own governmental policies and practices. One of these roadblocks is how visa applications are currently being handled for our Chinese business societies. Specifically, refining the visa applications, which were taking a matter of days to process prior to 9/11, are now taking 6 months or longer.

Please don't mistake my desire to get the visa process fixed for legitimate business partners with a lack of concern for national security. No one wants a repeat of the express visa process that sup-

plied many of the 9/11 terrorists with their entry passes into the United States. The desire of the business community is that the process is reformed so that legitimate business people are provided timely visas in order to allow for trade with U.S. Companies.

The situation as it exists today certainly does not help promote trade. In fact, it is currently driving potential customers to our European and Japanese competitors. Let me provide specific examples of how the visa process is hurting U.S. Companies. In 2002 my company sold $5 million worth of equipment to Chengdu Aircraft in China. After a vigorous export license review, we received the exports license to be able to ship the machines to Chengdu. In the normal course of satisfying a contract of this nature, a delegation of Chengdu engineers and managers must come to Cincinnati to inspect the equipment prior to it being shipped. Unfortunately, it took 6 months for the visas to be approved. During this time I had $5 million of inventory I was unable to ship and collect payment on. From the customer's perspective, he fell behind in commitments to his customer by approximately 5 months while the machines collected dust in Cincinnati.

I am currently pursuing a new contract with Chengdu Aircraft for additional equipment so they can produce the Boeing 757 tail section. Even though they prefer Cincinnati-built equipment, they are considering both European and Japanese suppliers' equipment because they do not feel that they can count on either a quick export license approval or timely visa approvals if they provide Cincinnati a purchase order.

I currently have another piece of equipment on my floor that is valued at $1½ million that is ready to ship to Xian Aircraft. Again, the export license has been approved to ship this. It has been 4 months since the applicable visas were applied for, but as of today we have no idea as to the status of the applications. It is difficult to determine who, if anyone, is working on it.

As with Chengdu Aircraft, both Cincinnati and Xian Aircraft are suffering. In negotiations with Xian we asked them to assign personnel who had been to the United States before, so that there was an established track record of them coming to the United States and going back home according to the visa process. This approach has not helped. As with Chengdu Aircraft, I am also pursuing additional business from Xian Aircraft. This potential contract could exceed $6 million, a substantial sum for a company of my size. The Xian purchasing team is certainly using the visa problem as a part of the decisionmaking process. Thus far, I have been able to ship the aforementioned piece of equipment to them so they are very uncomfortable in providing me an even larger contract. My German competitor has assured them that they will have no problems coming to Germany.

I could list a dozen more examples just from Cincinnati Machine, but this problem is affecting thousands of companies just like Cincinnati. We and many other U.S. Companies are fighting for survival. We need this problem fixed, and it must happen quickly. We must find a way to process legitimate visa applications for Chinese customers in a timely manner.

In March of this year, we were encouraged by Secretary Powell's appearance before the House Appropriations Subcommittee on For-

eign Operations. And in his appearance, the Secretary acknowledged the ongoing problem and promised to get this fixed. Unfortunately, we in the business community still await this relief. In fact, the Wall Street Journal reported on May 16th that the State Department plans to conduct face-to-face interviews with almost everyone seeking a visa to enter the United States. While this sounds like a prudent step for certain geographical areas of concern, it will take a lengthy process for many legitimate applicants from China and make it completely unworkable.

In summary, I want to reiterate that this issue is having a very serious consequence on the United States machine tool industry as well as other industries that must bring overseas customers to the U.S. To effectively do business. Jobs are at stake and companies are at stake. Time is of the essence.

[Mr. Storie's statement may be found in the appendix.]

Chairman MANZULLO. Our next witness is Gary Shapiro, President and CEO of Consumer Electronics Association, on behalf of the National Association for Exhibition Management. Look forward to your testimony.

STATEMENT OF GARY SHAPIRO, PRESIDENT AND CEO, CONSUMER ELECTRONICS ASSOCIATION, NATIONAL ASSOCIATION FOR EXHIBITION MANAGEMENT

Mr. SHAPIRO. Thank you, Mr. Chairman and members of the Committee. The Consumer Electronics Association is the 1100 member trade association which also owns and produces the International CES. International CES is the largest trade show of any type in the United States.

I am also appearing before you on behalf of the International Association for Exhibition Management which is a professional association for some 3,000 professionals involved in the management and support of the exhibition industry. On behalf of both CEA and IAEM, I applaud your focus on this important issue.

Now, a trade show or an exhibition is an event where buyers and sellers and also media investors and other professionals meet to see new products, exchange ideas, and build relationships. They often highlight the largest companies, but it is the smallest and the newest companies that gain the most benefit per dollar from these events. Like many shows, our philosophy is to run our show, the CES, so that any entrepreneur with an idea created in a garage can reach buyers and mediums from all over the world for a very small investment of a few thousand dollars. They can't go overseas to do that.

In my written statement, I have an example of where our current chairman had to pack her lunch and meals for several days to participate in our show. Now she is a very successful exporter. The fact is that buyers, media, health care professionals, scientists and the financial community from around the world, flock to the U.S. To see the newest and best and the latest and the greatest. Indeed, according to the Center for Exhibition Industry Research, over 11,000 exhibitions are produced annually in the U.S. And these events are estimated to produce $9 billion in direct revenue to the organizers and some $60 billion indirectly to the cities housing them.

However, the U.S. Is not the world leader in exhibitions. Germany, with its central location, large exhibition halls, government commitment to exhibitions, and freedom of travel and the phenomenal European train system hosts many of the world's largest events.

We do have an opportunity. Most major U.S. Cities have new spectacular convention centers. They have tremendous hotel capacity. They maintain the highest skilled labor necessary to build exhibits and run exhibitions. Moreover, the U.S. Is a desirable destination and the recent devaluation of the dollar enhances our ability to attract international visitors. But we give a mixed message to many international visitors. Our own visa policies discourage visitors from those countries where visas are required.

For example, our Chinese attendees increasingly tell us that the visa process appears arbitrary and lengthy. First they must appear in person and apply. They must provide financial statements and bank documentation. They must arrange for an interview and await the result. This process can take several months. As most attendees at exhibitions make a decision to attend about 3 months out, you can see why even—why we lose international attendees who simply cannot complete the process in time, even if they are ultimately granted a visa.

We agree that national security is our highest priority. That is important to all of us. We are Americans and we don't want to see evil-doers gain access to our country. But we also believe that national security depends on our economic growth and our ability to do business with those from outside the U.S.

In an already difficult environment, U.S. Exhibition organizers and their participants are being harmed by the loss of participation in their events by both exhibitors and visitors from abroad. There are several examples that are just the tip of the iceberg that are in my written statement. In each of these cases, the exhibition producers and the events participants were hurt. And in each case we are sending a message to the world that the welcome mat from the U.S. Has been pulled. Sadly, potential attendees and exhibitors from emerging economies to provide U.S. Business owners with the greatest opportunity for business growth and development are those who are most unlikely to be granted visas today, even if they had been repeat business visitors to the U.S. Who had not violated U.S. Immigration law or policy.

The cancellations resulting from our policy leave us in the very difficult position of having to resell space and denying our participants to see international buyers. Perhaps the worst aspect of the current situation is the growing perception that the U.S. Is a uniquely difficult and inhospitable place to conduct international business. This perception, if left to grow unchecked, could harm us for many years.

It is for these reasons that we advocate the creation of a fast-track visa approval system that safely discriminates between those who have demonstrated their trustworthiness and those who have not. Persons who have been provided with business travel visas in the past, have participated in business events, and have not violated U.S. Immigration laws or policies, should be issued expedited visas if their names do not appear on any of the Nation's security

watch lists. This fast-track approval system would at least allow our Nation to conduct this international business through our trade events and corporate visits for those who demonstrate they possess legitimate business interest for travel to the U.S. .

Those who do not qualify for fast-track issuance can legitimately be subjected to a thorough investigation before a visa is issued to them for travel. For those visa applicants subject to a more thorough review, we urge the Committee and Members of Congress to allocate the necessary funding to ensure timely processing.

We also urge the Committee to explore the option of allowing companies and exhibition organizers to ensure through bonding, the return of those attendees where the risk is not a national security but of undesired immigration to the United States, which is often the case with China.

In closing Mr. Chairman and members of the Committee, we urge you to consider the creation of more deft and defined policies that will result in a much more efficient system of visa issuance that will not have the unintended result of blocking America's access to international buyers and commerce and also hurting several of our vital industries. We would be pleased to work you and your staff to perfect such a system.

Chairman MANZULLO. Thank you very much.

[Mr. Shapiro's statement may be found in the appendix.]

Chairman MANZULLO. We are going to go to Janice Jacobs, because in the flow of the testimony, the State Department's job comes first. Janice, I want to tell you that Catherine Barry from your staff has been a tremendous assistance. We met with her three or four times and really laid out exactly what you are doing. We look forward to your testimony.

STATEMENT OF JANICE L. JACOBS, DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES, DEPARTMENT OF STATE

Ms. JACOBS. Thank you very much, Mr. Chairman and members of the Committee. I welcome the opportunity to testify today regarding the effect of visa approval backlogs on small business.

Visa work has always been about striking the proper balance between protecting U.S. Borders and facilitating legitimate travel. Our operating environment changed forever on September 11, 2001 and there is no turning back the clock. Security is and will continue to be the top priority in the processing of visas for international visitors.

The State Department is committed to strengthening the visa process as a tool for protecting U.S. National security interests. We have made a number of changes since 9/11 and will continue to do so in response to the security needs of our Nation and recommendations by law enforcement and national security agencies and, of course, the Department of Homeland Security. At the same time, the State Department is keenly aware of the need to balance national security interests with other strategic interests such as promoting U.S. Business interests, tourism exchanges, and the overall health of our economy.

Enhancing U.S. Security means pushing borders out to our visa processing posts abroad. Here, I am happy to report that we made enormous progress in identifying individuals who may present a

threat to our Nation through enhanced interagency data sharing. Since 9/11 we added over 7.3 million new records, primarily FBI, NCIC, which is criminal history data to our Consular Lookout Automated Support System, or CLASS. The tip-off database on suspected or actual terrorists has incorporated into CLASS over 73,000 entries, an increase from 48,000 records on 9/11/2001.

We try to work smart. We have big users of automated tools. Thanks to the work of Congress, our machine readable visa fees have allowed us to invest in technology. We continue to refine this technology and to increase connectivity between the Department, overseas posts and other agencies.

Technology can't do it all. We are working with other interested agencies on a rational, more targeted clearance process that is both transparent and predictable. We are in pretty good shape to find the bad guys who have been already identified by other agencies and who are included in our visa lookout system.

Dealing with what we don't know is, of course, more of a problem. For that we have the security advisory opinion process to permit other agencies to take a look at a case before we issue. The Department of State for many years has used a specialized clearance procedure to attempt to identify visa applicants suspected of being terrorists or who otherwise represent a security threat. After September 11, as I stated, those procedures were greatly enhanced.

Many of the problems that perhaps have led to this hearing resulted from the new initiation of the Condor program. Condor is a new in-depth screening process with a counterterrorism objective that targets a small subset, about 1 percent or so of visa applicants. The Department vets these applications with law enforcement and the Intelligence Community before a visa may be issued. Although similar in procedure to past programs, Condor has taken additional time to complete.

Why did the process work more rapidly in the past? For two reasons.

First, the volume of visas that require advisory opinion clearances has exploded since 9/11, overwhelming the technical and personnel infrastructure that the Federal agencies, including the Department had in place to handle this work.

Secondly, although initially Condors were a clocked procedure whereby a clearance request not answered within a certain period of time was in effect a clearance granted automatically that allowed issuance of a visa, we had to discontinue this procedure because, given the greater volume of cases, our partner agencies were unable to assure us that they could complete their checks in the amount of time allotted to them under the clock. In the post-9/11 environment we do not believe that the issues at stake allow us the luxury of erring on the side of expeditious processing.We now insist upon hearing from law enforcement before we issue these visas.

Expanding the clearance universe as we did and dropping our clock would, in more tranquil times, have been a process put into place over months, if not years, while we built the infrastructure to accommodate the work entailed. We did not have the luxury of time after 9/11, so we moved as quickly as we were able to strengthen the visa process and thereby the security of our borders.

The result was improved security, but at a cost of greatly increased processing times.

We have, as I will explain, provided more resources to cope with this problem, and we are making substantial progress; but I do not foresee a return to the rapid processing we enjoyed when we thought the threat to our country was less than it turned out to be. Nevertheless, the vast majority of our cases are completed within 3 weeks.

In addition to Condor, the Visas Mantis program for the review of the visa applications of aliens seeking entry for the purpose of study, research, employment or business-related travel in sensitive scientific and technical fields has also been enhanced. Our first obligation in this review process is to ensure that no individual receives a visa who intends to come to the United States to unlawfully obtain and export sensitive technology or information, especially if it relates to the development or spread of weapons of mass destruction and their associated technologies. At the same time, we fully recognize that the vast majority of visa applicants who seek to come to the U.S. For study, research, business-related travel, or temporary employment in scientific and technical fields are legitimate.

We are keenly aware of our double-edged responsibilities in the areas of national security and facilitation of legitimate scientific exchange. This is not an easy balance to strike, especially since the 9/11 terrorist attacks, but we are working every day along with the other agencies involved in the visa review process to find that proper balance. Our caseload in this review process has grown substantially. Denials under the Mantis program increased from three findings of ineligibility under INA 212(a)(3) in 2001 to 30 such findings in 2002. At any given time, we have anywhere from 1,500 to 2,000 Mantis cases pending in the interagency review process.

The Bureau of Consular Affairs Visa Office performs essentially a coordinating role in the clearance process. Cases are submitted by our visa-issuing posts abroad for review simultaneously to us, States, Nonproliferation Bureau, and the intelligence and law enforcement community. Each reviewing entity advises us if it has concerns about a particular case. We review the evidence supporting these concerns in light of the relevant ineligibility provisions of the Immigration and Nationality Act and advise the post processing the case as to whether or not a legal basis exists for denying the visa. We ensure consensus among appropriate agencies before releasing a response to a consular officer.

In other words, we never advise a consular officer to go ahead and issue a visa in a specific case, no matter the sense of urgency, while there is an objection from another agency that has not been resolved.

The increase in Visas Mantis referrals as well as similar increases in other categories of security-related visa referrals has seriously stressed the interagency clearance process. As a result, cases on the average are taking longer to complete than in the pre-9/11 environment.

In our capacity as the coordinating agency, the Department has made significant progress in addressing these delays. We have negotiated agreements with other agencies, implemented a number of

procedures to streamline the clearance process, and reprogrammed staff in order to decrease the turnaround time for Mantis clearances. We can now return clearances on cases raising no problems in 30 days or less.

The Department is also making major changes in our use of automation in light of the creation of an interagency network known as OSIS, or Open Source Information System. We will spend close to $1 million over a 1-year period to eliminate telegrams from our overseas posts as the vehicle for disseminating cases to our Federal partners in the security advisory opinion process. We will use real-time data share and eliminate virtually all manual manipulation of routine data.

We expect to field test the new system in the fall and deploy it worldwide in January 2004. Our objective is to push cases to intelligence and law enforcement analysts as quickly as possible and eliminate any time period that a case awaits processing by administrative staff. This development in itself could shorten processing times by approximately 5 business days and better track the status of specific cases.

The Department has engaged in significant outreach to other agencies to eliminate long delays and to assuage the fears of the scientific and academic communities. The Department has had regular and frequent contact with the Homeland Security Council since its inception in September 2001. We have also met with various private sector groups, including with representatives from U.S. Business firms, the travel and tourism industry, and the scientific and academic communities. We participate regularly and frequently in interagency meetings convened by the White House Office of Science and Technology Policy. We also participate in activities with members of the scientific and academic communities to share information on our clearance requirements and to learn their needs.

I assure you, Mr. Chairman, that the Bureau of Consular Affairs will continue these and any other feasible efforts to enhance and expedite interagency review of these cases consistent with our overriding obligations to protect our borders and prevent weapons of mass destruction and their associated technology from falling into the wrong hands.

I am submitting for the record a written statement that discusses in greater detail our role in this visa review process.

Again, thank you for giving me this opportunity to discuss the Bureau of Consular Affairs' role in this vitally important process. I will be happy to answer any questions that you have.

But also I want to address the new policy that some of you have been talking about, which is requiring additional interviews by some of our posts. This policy was changed in response to a number of recommendations made by Members of Congress, by the GAO, by our own inspector general after 9/11. There was a feeling that we should be doing more face-to-face interviews in general.

Before 9/11 the posts abroad had a lot more discretion in deciding who it was that they would interview. A lot of this was based on workload concerns, and each post had its own way of handling the volume of visa requests that they received. Some people used drop boxes, some used travel agencies. They found a number of

ways to try to bring in the applications without having to interview people who were not considered to be a high risk.

There are some posts out there that have always had to interview a very high percentage of their applicants, close to 90 percent. These are posts where fraud is a problem, where document security is a problem, and for a number of other reasons. We have always been doing a lot of interviews in certain countries. And so for those countries this new policy really makes very little difference.

Also, in general after 9/11, because of the increased concerns about border security, all of our posts worldwide began interviewing more people. A lot of the travel agency programs such as Visa Express, for example, that existed in Saudi Arabia were eliminated after 9/11. And so already people are interviewing more people.

Our embassy in London began interviewing most of their applicants almost 2 months ago now, and that in fact has worked very well. They have about a 3-week waiting period for an appointment, which is about average for around the world. In some places it is more, in some places it is less.

We feel that this new policy is going to give people an opportunity to talk to the applicants that we will eventually have to be taking fingerprints on. We do have a requirement under the Enhanced Border Security Act to begin including a biometric identifier with the visa that we issue by October 26, 2004, and we are going to have to see people in order to take fingerprints. And so this is really just one more step down that road. This will give posts the opportunity to get used to bringing people in to manage the work flow, the appointment system, so that when we take that next step it will go much more smoothly.

Chairman MANZULLO. Thank you very much.

[Ms. Jacobs' statement may be found in the appendix.]

Chairman MANZULLO. Our last witness is Mr. Robert Garrity, Assistant Director, Acting, for Records Management Division of the FBI. Look forward to your testimony.

Do you have somebody that is going to help with you the charts here, Mr. Garrity?

Mr. GARRITY. I do, sir.

Chairman MANZULLO. Okay. Go ahead.

STATEMENT OF ROBERT J. GARRITY, DEPUTY ASSISTANT DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. GARRITY. Thank you, Mr. Chairman and members of the Committee.

My goals today are to inform you of the FBI's visa name check process, provide you with an accurate assessment of how well this process is functioning, and describe to you the measures the FBI is taking to continually improve the process.

First, I want to emphasize to you that the FBI is sensitive to the impact delays in visa processing may have on business, education, tourism, this country's foreign relations and worldwide perceptions of the United States.

With these considerations in mind, the FBI is working diligently with the State Department towards the common goal of improving both the expediency and the efficiency of the visa clearance process.

At the same time, the consequences of the FBI mission on Homeland Security requires that our name check process be primarily focused on an accurate and thorough result. This means that there are instances when the FBI review of a visa request must require as much time as needed to obtain an unequivocally correct result.

The National Name Check Program has a mission of disseminating information from the FBI's central records system in response to requests submitted by Federal agencies, congressional committees, the Federal judiciary, friendly foreign police and intelligence agencies, and State and local criminal justice agencies. For all except law enforcement requests, the program is to be operated on a fee-for-service basis, with the beneficiary of the name check paying for it, not the American taxpayers.

The central records system contains the FBI administrative personnel and investigative files. The program has its genesis in Executive order 10450, issued during the Eisenhower administration. That Executive order addresses personnel security issues and mandates national agency checks as part of the pre-employment vetting and background investigation process.

The FBI, of course, is the primary national agency check conducted on all U.S. Government employees. From this modest beginning, the program has grown exponentially, with more and more customers seeking background information from FBI files on individuals before bestowing a privilege, whether that privilege is government employment or an appointment, a security clearance, attendance at a White House function, a green card or naturalization, admission to the bar, or a visa for the privilege of visiting our homeland. More than 70 customers regularly request an FBI name check. Two specific visa request categories, Visas Condors and Visas Mantis, are relevant to the hearing today. In addition to serving our regular governmental customers, the FBI conducts numerous name searches in direct support of our own counterintelligence, counterterrorism, and Homeland Security efforts.

I want to talk a bit about the exponential growth we have experienced. Prior to September 11th, the FBI processed approximately 2.5 million name checks a year. In fiscal year 2002, that number increased to 3.2 million. For this year the number to date already exceeds 5.6 million, and we project that we will go to 9.8 million requests this year. That represents an increase of over 300 percent; as you can see on the chart here, our explosive growth from 2.5 to what we expect to be 9.8 million this year. Of that number, 200,000 of them are visa name checks, including 75,000 Visa Condor requests and 25,000 Visa Mantis requests.

I can tell you, Mr. Chairman, that with the advent of the new visa screening requirements in late 2001, specifically the Visa Condor program, the FBI was overwhelmed by the increase in the names to be checked. We did experience a backlog and visas requested in the spring and summer of 2002 were delayed beyond the time period that travelers had anticipated. We have significantly reduced the backlog and have worked together with the State Department to ensure that any old visa requests have been accounted for and processed. The days of what some people would characterize as a unreasonable delay have now passed us by.

Our resolution rate, we have approximately 85 percent of our name checks were electronically returned to the State Department within 48 hours as a "no record," meaning the FBI had no information on that individual. There is nothing contained in our files. By agreement with the State Department, a "no record" equals no objection.

The substantive investigative divisions, which are the Counterterrorism Division, the counterintelligence Division, the Criminal Investigation Division, and the Cyber Division, must review any names that we get where there is a record of the individual, unless it is an obvious no adverse information.

Because a name and date of birth are not sufficient to positively correlate the followed individual, sometimes additional review is required. A secondary manual name search usually identifies an additional 10 percent of the request as also having no record; meaning that 95 percent of the time we were able to respond to the State Department that we have no record of the individual, and this is usually accomplished within 1 week of receiving the request.

Now, the remaining 5 percent are identified as possibly being a subject of an FBI record. That FBI record must now be retrieved and reviewed. If the records were electronically uploaded into our electronic recordkeeping system, it can be viewed very quickly by the analyst. If not, the relevant information must be retrieved from the existing paper record. Review of this information will then determine whether the information is identified with the subject's request. If not, the request is again returned as "no record." .

The information in the file is reviewed for possible derogatory information. Less than 1 percent of the requests are identified with an individual with possible derogatory information. These requests are forwarded to the appropriate FBI Investigative Division for further analysis. If the Investigative Division determines there is no objection to the visa request, the request is then returned to us and we send it back to the State Department, advising no objection.

If there is an FBI objection to a visa request, the Investigative Division that has the expertise is required to then prepare a written security advisory opinion that we then forward to the State Department, stating that we have an objection to someone entering the country. We have, over time, identified people who have used the visa process to enter the country who came here for nefarious purposes or intended to come here for nefarious purposes.

As the name check processes for 70 other agencies, the name check system accurately monitors the status of visa requests and the name check process. The systems metrics are a dynamic tool allowing the FBI to identify when to add additional personnel resources to the process. It also gives us a tool to determine when the name check process is causing delays for visa requests. Our goal is to have all requests completed within 120 days.

This next slide will also show you the current status of the visa name checks. This status was taken just last week. Within the last 30 days, the FBI has received 5,146 requests. We have resolved all but 143 of those, for a 97 percent resolution rate. For Visa Mantis requests, we have received 1,200 requests within the last 30 days, and we have resolved over 1,000 of them, again for an 85 percent resolution rate within the last 30 days.

Most name check requests that are over 90 days old are the result of the time required to retrieve and review the field office file. Some delay has also occurred at the analyst's desk, but this is to be expected. These analysts are assigned to the Investigative Division and are primarily assigned the analysis of intelligence reports from around the world in order to support ongoing investigations or to support the flow of intelligence to policymakers.

As is well known the FBI does not have as many intelligence analysts as we need, and they are significantly overassigned in the primary responsibilities. These are the best professionals, however, to review information in our records and to then make an informed decision on whether a requester of a visa represents a threat to our homeland or is interested in illegally acquiring our targeted technology. Nevertheless, the FBI resolves 99 percent of all types of visa requests within 120 days. The FBI believes these numbers are the best manner to appropriately determine whether there are substantial delays both in time and in numbers.

As I have said, during the spring of 2002, the FBI was unable to adequately account for visa request processing times. This is no longer the case. This was accomplished through the clarification of the FBI name check database, through software modifications that allowed development of detailed metrics and the development of an internal FBI tracking system for our security advisory opinions. With these metrics the FBI can allocate resources as necessary to meet requirements.

As I have already said, the FBI will closely stay on the visa name check procedures. These past 6 months have seen considerable improvement in the coordination of visa name check processing. The FBI recently increased the name check personnel from 75 employees to 125 employees, an increase of 65 percent, all taken from within existing resources. We have brought in additional personnel from the field on a TDY basis to help us clean up the backlog. We have significantly reduced backlog and are continuing to work to do everything we can to improve the process and get State our objections, if any, as quickly as possible.

We recognize we have an explosion in numbers and the requests exceed the estimates that we had originally anticipated. We are in the process of developing interim improvements to minimize the manual submissions by all agencies to increase efficiency for all of our customers.

One of our Achilles heels, if you will, sir, is we have a decentralized recordkeeping system. FBI has paper records in 265 locations around this country. When we get a hit, we have now got to go retrieve that file and bring it here or have an agent or employee in that other field office summarize it for us and give it to us. That is one of the problems that we have, locating the file and getting it here, and we are currently working within the administration to plan and develop a new centralized recordkeeping system to bring all closed files into the mid-Atlantic area.

Thank you, sir.

[Mr. Garrity's statement may be found in the appendix.]

Chairman MANZULLO. Let me ask a very basic question, and Ms. Jacobs, maybe you could start with the answer and then Mr. Garrity could pick it up.

An individual goes to an office in Beijing seeking to get a visa to come to Mr. McHale's company, and typically that person would have an engineering background and the visa application would state that he is coming here to buy a piece of machinery.

Could you walk us through that process, and then what happens to the application et cetera?

Ms. JACOBS. Okay. The applicant would apply at the nearest consulate in China. And every case that the visa officer looks at is decided on the individual merits of the case. And so the applicant would have to come bring in passport, photo, the required application form, and then any supporting documents to support the case that the applicant had. For someone who was coming here to conduct that type of business, the consular officer would be looking at whether the person was qualified for that visa. And so first of all, our officer would have to make sure that they, you know, confirmed the identity of the applicant, and then the officer would be looking for evidence of ties to China in this particular case that would cause the applicant to return to China after a temporary visit to the United States.

If the applicant appeared to be someone who was in fact just coming here for temporary business, the travel was legitimate, then the officer would look at the type of business, the type of technology involved; and if it involved any of the technologies of concern that are on our technology alert list, then the officer would have to make a decision about whether that was the type of case that needed to be referred back to Washington agencies for further check.

I have heard others today talk about the Technology Alert List, the fact that it is too broad, and couldn't more training be done of consular officers. And that is an issue for us. Most consular officers are not experts in these various fields and so we do have to make the list fairly broad. But our FSI, the part of the State Department that trains our officers is—in fact, we do have a course during which officers, before they go out to the field, are trained on how to use this list, becoming familiar with the technologies on it, talking a little bit about, you know, what the concerns are. So they do have that training before they go out. And also, at our larger posts, where we have a science attache or someone who has that type of background, then the officers are always able to refer cases to those people to get some expert advice as to whether there are concerns that need to be referred back to Washington.

So it is sort of a lengthy process. Every case is different. Every case is decided on its individual merits, but those would be sort of the steps taken for that particular type of case.

Chairman MANZULLO. Mr. Garrity, do you want to pick it up from there?

Mr. GARRITY. Yes, sir. The consular of the embassy in China will send a cable to the State Department and a simultaneous cable to the FBI. We receive the cable. We then parse the name and the date of birth off of that cable and electronically load it into our system. It is run against our universal indices to see if we have any indexed name and date of birth identical to that one.

As I mentioned in my testimony, within 48 hours we can usually, 85 percent of the time, go back to State and say we have no record

of this individual. If we get what is known as a hit—our system is a very robust system and it tries the names a lot of different ways and it tries dates of birth lots of different ways. If we get a hit, meaning that we think we have something, we now have to have human intervention; and they will take a look at the indices hit to see if they are able to resolve it by just looking at the indices reference. Sometimes they can do that and we don't have to pull the file. If we do have to pull the file, we pull the file again to see whether or not this individual is identical with the person seeking the visa. Oftentimes it is not, and we are again able to go back to the State Department and say we have no record; this took longer than normal because we thought we had somebody, but we didn't.

If it is identical, we do have a record, now we have to have somebody pull the record and take a look at it to see what it contains. If it is nothing more than a file jacket full of visa requests, we send it on. This person is a well-known traveler. We have no objection, and they can come into the country.

We mostly have identical hits on people who have come to us because they were the subject of an investigation, either the subject of a counterintelligence investigation or a counterterrorism investigation, and then we have to send it to the substantive division, the experts. They look at it and they make a decision as to whether or not the presence of this individual in our country represents a threat to us. And that is the process.

Chairman MANZULLO. Okay, thank you. Mrs. Velazquez.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Ms. Jacobs, you mentioned before the General Accounting Office report of October 2002, and in that report they stated that there is a clear lack of guidance among the posts in the level of scrutiny for visas applications and in factors used to deny such application. What have you done to fix it?

Ms. JACOBS. One of the things that we have done in the last few months is to begin sending out to all of the posts, standard operating procedure messages which tell the posts on various issues how they should be doing things. It is quite true, back when the GAO did its study, what they found was that all of the posts were doing things a little bit differently. And we took notice of that, and I think now, through the standard operating procedures, have addressed a number of the concerns that were raised by the GAO.

Ms. VELAZQUEZ. And this question is for both Ms. Jacobs and Mr. Garrity.

In that same report, the General Accounting Office also mentioned that a bigger problem is that there still exists a dispute among the departments, specifically the Department of Justice and the Department of state, regarding how much evidence is needed to reject an applicant on the basis of suspected terrorist ties. In other words, the Department of State and Justice have different views on how to apply the INS terrorism provision section 212(a)(3)(b) to visa applications. So can you explain if that dispute still exists?

Ms. JACOBS. I am not sure that it was ever really a dispute. I know it has been characterized that way. There was some discussion at one point about the level of evidence needed, and we did

explain that we did have to receive information in order to make a determination under 212(a)(3)(b).

There is another section of the law, section 306, that talks about nationals from state sponsors. And that discussion is also taking place about section 306. It is not a real dispute. It is simply trying to find the proper mechanism and procedures for us to get the evidence that we need in order to make a denial.

Mr. GARRITY. I would agree with that. One of the things that we are obligated to do is inform the State Department, to a degree that is satisfactory to the Secretary of State, why we object to the issuance of a visa. And oftentimes the information in our file, there is some smoke there, and we have some reason to be concerned about allowing a person to enter the country, but we may not have precisely the information they would like to have to satisfy their requirements under the law.

Part of it I think also is an education process for our agents. And we have the people who are doing that. We have given them some training in the Immigration Nationality Act so they know what criteria, what factors they have to be looking for in preparing the security advisory opinion.

Ms. VELAZQUEZ. If any of the other witnesses have any comment to that question—so what you are telling me today is that there is no dispute between the Department of Justice and the Department of State regarding the interpretation of the law.

Mr. GARRITY. You must be kidding.

Ms. VELAZQUEZ. Is that a factor as to the lengthy time it takes to approve or deny those visas?

Mr. GARRITY. I believe that when we raise an objection, the State Department honors that objection. If we have not provided them with sufficient information, they will come back to us and we get into a give-and-take dialogue, and we may have to bolster our argument. I do not believe that they will allow someone to enter the country until we are satisfied. I don't think it is a situation where if we raise an objection they will unilaterally say, "Well, not close enough; we are going to have to let the person enter." I think that there is respect on both sides to at least allow us to continue to make our argument, and I believe that is the state of the situation right now.

Ms. VELAZQUEZ. What would you say to these people who say that the FBI is the main hold on the visa process today?

Mr. GARRITY. The main hold? We are certainly the most time-consuming portion of the process. If by "main hold" you are equating that with the time-consuming process, that is an accurate statement. We have a significant burden to go through our files to identify anybody who might represent a threat to the country.

Ms. VELAZQUEZ. Thank you. I know that we all care about the security of our Nation. But we need to strike a balance in terms of reaching that goal and also understanding and having the sensitivity of what it takes to make sure that we achieve that goal but, by the same token, we do not impact the small businesses that are here represented by these people today. So, if you are doing everything that it takes in the General Accounting Office, they criticize the fact that there is not uniformity in terms of the training that is provided to the people that are working on the consulars, on

those posts. And we need to make sure that we address that issue. Do you have the manpower? Is the budget is there?

You have more responsibilities, because when people come to testify on the budget requests or budget submission, it seems like everybody is saying, yes, the budget that was submitted, coming from the White House, is adequate. Yes.

Ms. JACOBS. I think it has taken a while for us to get additional resources, the resources needed to handle the clearances. In particular for our part, the office within the Visa Office that does all the coordinating of the clearances, has added additional personnel. We have actually formed teams around the various types of clearances. We have a team that works on Visas Condor. We have a team that works on Visas Mantis.

So, yes, it did take us a while, I think, to ramp up resources. We do have a plan at the State Department for adding around 185 consular officers between now and fiscal year '05 to get those people out.

Ms. VELAZQUEZ. Can you explain——.

Chairman MANZULLO. I have got to get Mr. Schrock, and those bells are going to go off in about 15 minutes, and I want to get as many questions in as possible. So let me go to Mr. Schrock. If we have more time, we can come back.

Ms. VELAZQUEZ. Sure. I just wanted to ask her, you know, she is saying that the resources—it has taken awhile. Can you explain that?

Chairman MANZULLO. Let's move on here. I want to get everybody in before the bells go off.

Mr. SCHROCK. I am going to follow up on that, Ms. Velazquez.

Chairman MANZULLO. Oh. Okay, fine. Thank you.

Mr. SCHROCK. Let me first of all thank you for being here. Let me say that I don't think the visa issue just started in 9/11. I have been working two cases since the day I was sworn in in 2001, and we still don't have them resolved. I got so frustrated earlier this week that I finally picked up the phone and called the folks at the State Department, and suddenly they called back and suddenly they called my person down in Virginia Beach and screamed at him for getting me involved. But I am going to start getting involved, because if the Member's voice on the other phone is going to get some of this stuff resolved, then daggone it, I'm going to do it. Because when I look at people like Mr. Shapiro, Mr. Storie, Mr. McHale, Ms. Yanni, Mr. Reinsch, and see the problems they are going through, they are the ones that are creating the legitimate jobs in this country and trying to keep their businesses going, and it is bureaucracy run amok that has caused these people to fall on hard times, and we have got to change.

I am not trying to be ugly to you two. But I mean it is just the systems you work in that are not being responsive at all. And Ms. Yanni said it right: the redundancies. I mean, my gosh, that is probably half of the problem right now. If they would knock out the redundancies, that would get these things approved quicker.

Because my time is running out, I know there are many other groups in this room that have tried to be a part of the reform process. And I know for a fact that the American Hotel and Lodging Association and the Travel Business Roundtable that are very im-

portant to the Virginia Beach area where I live have tried to be involved. They have written Secretary Powell.

Mr. SCHROCK. No one has answered them. They have ignored it. It is like we don't—we will tell you what the input is going to be, and you are going to have to abide by it.

Because you need to be listening to these kinds of people. They are the ones that are living this nightmare every single day, and they are the ones that have to try to keep food on people's table and keep jobs in this country. And if we are losing it to other countries, then I think the government which doesn't create jobs creates havoc, creates trouble, gets in people's way, certainly needs to step out of the way and let these people do the right thing.

I would like you to comment on this, and I want to follow up on what Ms. Velazquez says, too. You know, Ms. Jacobs, if you can give this Committee an estimate of the personnel, facility equipment, and the training resources your posts will require to officially implement a new 100 percent interview requirement, do they have what they need?

And I think Mrs. Velazquez is right. People come to us and say they have what they need. They have what they need. And then we hear the horror stories of these fine, great people and think obviously they don't. There is something wrong somewhere. That is a lot to throw at you, I know.

Ms. JACOBS. Okay. We actually—it is not going to be 100 percent interview rate. At some posts it is already around 90, but it won't be 100 percent for any post because there are general exceptions for every post.

As far as adequate resources, I mean, I could get back to you with sort of a report on the plans that we have over the next few years. The truth is with a lot of these post-9/11 measures, is that we have had to put things into place before we could get adequate resources in place.

Mr. SCHROCK. I don't doubt that, yeah.

Ms. JACOBS. And just on the waiver of personal appearances, the new policy, because it takes anywhere from two to five people to get new positions and staff out to the field, we just couldn't wait that long to do it. That doesn't mean we are just going to let things collapse. We are going to have TDY assistance sent to posts. We are going to give the posts that are most affected the help that they need to get through this difficult time.

Mr. SCHROCK. And I understand if there is another attack we are going to be screaming at you guys. And I understand that. But there has got to be some rational process that doesn't allow—you know, that allows Mr. Storie and Mr. McHale—I was born and raised in Middletown, Ohio, so I know your company, and I went to school in West Virginia and I know your company. And it is Kanawha. We have just got to help these people.

Small business is what it is about and we are killing by some of these processes. But I would be the first one to scream if another terror attack occurred, and we have to try to stop that.

Given what you have said, Ms. Jacobs, about all these significant new procedures, why does your recent budget request not increase resources sufficient to efficiently implement the visa interview requirement you knew you were about to impose? Because I think it

would have fallen on receptive ears up here if you had come up here, because everybody's trying to do the best they can to keep our borders safe while at the same time keep commerce rolling, and it seems like we are slowing down commerce almost to a fault.

Ms. JACOBS. I am not sure that we knew about all these new policies at the time that we made our last budget submission. Certainly the one that will come up next will include a lot to cover this.

Mr. SCHROCK. Good. And I know we create a lot of stuff for you all, too, and sometimes I think we go overboard on this; but if we know what the needs are, I think this Congress would be certainly willing to help with that, because I pity these people who are in business for themselves here. We have got to stop that.

Ms. JACOBS. I think if there is anything that we, the agency working on this process, could do that would make this much more acceptable to people, it would be to introduce some predictability back into the system. And I am very committed to that. I am trying whatever—even if it takes a month to get a visa, if you know in advance it is going to take you 1 month to get it, it is a lot easier to live with than being kept in limbo.

Mr. SCHROCK. Strung out there, yeah. Because this one young man from the Philippines, it is going on now—actually my predecessor dealt with it and I have been dealing with it now 2–1/2 years.

Chairman MANZULLO. Why don't you call Mrs. Jacobs after the hearing?

Mr. SCHROCK. I intend to. When you hear my name, it is me. Thank you.

Chairman MANZULLO. I appreciate that. I think we should remind ourselves that Mr. Garrity and Ms. Jacobs are under this workload because of legislation passed by the United States Congress and signed by the President. And so, it is both.

Mrs. NAPOLITANO. Oh, really.

Chairman MANZULLO. And they are working through legislated—the mandates on. It is nothing that they brought about themselves.

Mr. Case.

Mr. CASE. Thank you, Mr. Chair. I actually share the sentiments of my colleague over here, the frustration, especially for my constituents. It has only been a few months for me, rather than a couple of years in his case, but a tremendous amount of my workload on the case work side is just sorting through the visa process for people that are interested in coming in.

For me in Hawaii, it is really three categories, all of which have been addressed in the testimony. But number one, of course, is tourist visas. I mean, if we don't get tourists in basically, we shrivel on the vine and die. And that was alluded to. So I hope that is particularly a part of your thinking.

I guess the second part would be nonimmigrant visas from countries such as the Philippines that have very close relationships with Hawaii, and people who just want to come in for a little while and then go back.

And the third, of course, would be the business-related visas and our connection with Asia.

So I very much agree with the gentleman and the testifiers who spoke to the issue of business-related temporary immigration from Asia, particularly China. We have a plane that is available to fly between Shanghai and Honolulu and not too much activity on that plane now, and it is not SARS; it is visas.

Let me ask you this because if I am hearing the testimony correctly, on the—there are two sides to this. The first side is the consular side and the second side is the security side.

If I can kind of be simplistic about this, the consular side, I think, is concerned mostly with are these people legitimate temporary immigrants and are they going to go home? I don't know if that is a fair statement. And the second side is—and if I understand the testimony correctly, that determination is made by State. And if it is made favorably, that we are going to admit, if the security side checks out, then you send it over to the FBI; is that right? Is it sequential?

Ms. JACOBS. Yes. Well, there are several reasons why a case would be referred back to Washington. Applicants do have to get over that initial hurdle of whether they are going to return after a temporary visit here. Sometimes there is a lookout entry in our visa lookout system that requires the case to come back to Washington for review. Sometimes the applicant is subject just to a general review either of Visas Condor, Visas Mantis, or some other check.

But, yes, we have to make a decision that the person is otherwise qualified for the visa before we send something back here. In other words, if we are going to deny a visa because, you know, someone is an intending immigrant, then we would not send that case back here.

Mr. CASE. Okay. But let me focus on the nonsecurity side of it, because I think that if I am not mistaken, sir, really that is a resource question. That is, a question of are sufficient resources being made available to do these security checks fast and comprehensively? And it is a management question. It is, you know, pulling those computers—you know those 200-and-some-odd sources you talked about being all over the United States—together into one database and being able to punch through pretty fast. I mean, is that about what it amounts to?

Mr. GARRITY. Yes, sir. We have increased our resources by 65 percent from within our own personnel, and I have just ordered another increase which means that we will have a 100 percent increase in resources. We have doubled our resources in the last 2 years to do this.

Mr. CASE. Okay. So let me leave that to the side and come back to State, then. Now, from State's perspective it is also a resource problem, because these legislative mandates have given you higher requirements of double-checking people, and you are struggling with keeping up with that workload, right?

Ms. JACOBS. Yes.

Mr. CASE. Okay. Now, what about the legislative mandates themselves? Do we need to go back and double-check them? I mean, have we gone overboard from a consular perspective, not from a security perspective? But have we gone overboard in terms of trying to keep people out of this country, and in the process put

so many hurdles up that essentially we are just grinding legitimate nonimmigrant visas to a halt? Because that is my sense, you know, and I don't know all the details; you know them, the presumption, the presumption that is written into the law. I mean, could we go back and revisit the presumption and say, hey, maybe we are going to take a chance a little bit more on whether people are going to go back to, you know, to their country of citizenship, and is that a legitimate question for us to ask?

Ms. JACOBS. That would certainly be something that Congress could look at section 214(b) of the INA. It has come up in other discussions about students and others who come here who do have to show that they are going to go back home after their temporary stay in the States.

As far as the other legislative mandates, I think the crucial factor is going to be for all of us, all of us who have those mandates, to coordinate, to talk to each other, to share data; when we are setting up new technologies and new systems, to make sure that they work well together, they talk to each other. I think that is the answer to all of this. I think it——.

Mr. CASE. But who—excuse me. Who does State have to coordinate with? That is all internal. That is a determination, an internal State determination as to whether primarily—the primary inquiry is are they going to go home after they are finished with their business? That is all within State right.

Ms. JACOBS. Right. That is right. That is the decision of the consular officer abroad.

I was addressing the other question you had about whether you thought that maybe we had gone overboard with the different checks and whether we were discouraging people from coming here. And I think I would say in answer to that, that I think we need to look at all of these mandates together to see how they affect the individual travelers and make sure that all of the agencies involved are working well together to make that a very seamless process.

Mr. CASE. Well, I am not sure we have gone overboard on the security side. I don't want to leave you with that impression because I—you know, the world is what it is today, and from that perspective it is just getting the security clearance finished as fast as possible.

I guess what I was saying in terms of going overboard was more on the consular side, that the extra hurdles that we seem to have put up that are a legitimate policy call by Congress and the administration, again the degree of—you know, what it takes for somebody to show that they are going to go home or not.

Chairman MANZULLO. We have gone overboard on the time at this point.

Mr. CASE. Okay. I am sorry.

Chairman MANZULLO. Okay, Mr. Chocola. I would advise the rest of the witnesses, if there is any thing that you want to add to the questions that have been posed to Mrs. Jacobs and Mr. Garrity, just raise your hand so that we can—I should have announced that about 20 minutes ago. I am sorry on that. Mr. Chocola, please.

Mr. CHOCOLA. Thank you, Mr. Chairman. Keeping with the theme, I think my questioning will be directed to Ms. Jacobs and Mr. Garrity.

Before coming to Congress, I lived the life of the folks on your left there. I was with a business that about 40 percent of our business was outside of the United States. We had operations in five or six other countries, and have lived the frustrations and some of the nightmares that we heard today. And a day doesn't go by that I don't talk with a constituent that is in the manufacturing business that is competing with China on a very difficult basis. And so when we get people from China that want to come here to buy things, certainly that is a very positive thing, and hopefully we can facilitate the process.

But is there anything that the business community, that has every incentive to do this quick, help you that you have every incentive to do it right? Is there anything the business community can do in an appropriate area—that is, a nonsecurity issue, maybe a nontechnical issue, some of the clerical work? Can the business community do any of that for you to expedite the process?

Ms. JACOBS. I am not sure about the clerical work, but certainly if you can get the word out that people should apply for visas as early as possible, just to make sure that if you know there is going to be a check required that we can get it done in time. And also to provide the applicants with the documentation, the information that they need to show what it is that they are going to be doing in the U.S.; letters of invitation, you know, information about the trip to the U.S. That will help the consular officer know exactly what it is the applicant is going to do.

Mr. REINSCH. May I make a suggestion? I have a suggestion that I think business is prepared to do something that they might find helpful, and that is attest to the bona fides of the applicants and assume some degree of responsibility for them, particularly for the technology programs. These are people that are coming here to look at a product, or they are Mr. McHale's overseas employees who are coming here. It seems to me the U.S. Business can say, yes, they work for us; they are our employees; they are reliable people; we will assume responsibility for them while they are here; we will make sure they don't have access to technology they are not supposed to have.

Now, if the business is prepared to do that—and I am speaking for some of our members, which are for the most part larger businesses, they are prepared to do that. I guess the question for the government is, are they prepared to accept that and crank that into their process?

Mr. CHOCOLA. Mr. Shapiro, I think, mentioned the concept of a fast-track visa program. Does that have any merit in your view?

Ms. JACOBS. We actually almost have a fast-track visa process. Something that is important to remember is that the people that are subject to any kind of name check, the percentage is very, very small compared to the actual number of visas that we process. Last year we issued about 6.2 nonimmigrant and immigrant visas. About 2—less than 2.5 percent of those people were subject to some kind of name check, which meant that the case had to come back to Washington for review.

So for the vast majority of applicants, once they get their appointment provided, they have everything in order and they go and are found qualified, they will get their visa in a day or two. And

that is around 97 percent of the people who apply for visas. Yes, some people will be found ineligible for various reasons under the Immigration Act. But it is a very small percentage when you look at the overall numbers of people who are actually subject to these different checks.

Mr. CHOCOLA. Mr. Shapiro, did you have——.

Mr. SHAPIRO. Well, there are three risks I think we are talking about. One is the risk of imported terrorism. Another is learning about stuff that is secret, and they may not be that friendly a country. And the third is not returning to their homeland.

With China, I don't—my uninformed opinion is that they are not the greatest terrorism threat. The concern seems to be that they are learning about stuff they shouldn't, or they will not return. And what I am saying, since China is the big opportunity, the big market, the big competitor, let's look at China differently. Focus on China and say, let's separate those two threats, and if the threat is that they are not going to return, business can take some risk.

The other side is if they are, you know, let's also have a look at what the real technological risk is, because we are losing great opportunities here and American businesses are suffering, there is no question about it.

Mr. CHOCOLA. Thank you, Mr. Chairman.

Mr. STORIE. To further that point, the technological risk is minimized in many cases that we have already approved export licenses to ship the products to China, but we just can't get the consumer here to buy off on the contracts that they have already signed. So if we have already got an export license approval in place, that is clear groundwork that has already been laid that says, yes, those people should be coming here to buy off these products so that we can ship the product that we signed the contract for. We should not have those instances held up at all.

Ms. MILLENDER-MCDONALD. Mr. Chairman, a point of inquiry. I have been told that the bell will not go off in 10 minutes as we had thought. It is going to be an hour.

Chairman MANZULLO. It is going to be an hour. Yeah.

Ms. MILLENDER-MCDONALD. Could we not have the non-bureaucrats to do their responses as they have begun to do, and that will be on your time and not mine?

Chairman MANZULLO. That is correct. You are correct. Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. I totally agree. And I agree also with my prior colleagues' comments, all of them on both sides of the aisle, simply because I get the report from my business people that they are having a very, very hard time trying to bring buyers into California—because I represent part of California—to be able to do business. And it is unfortunate that this has happened since 9/11.

But I would suggest that biometrics won't be available until 2004. Why is it taking so long? And will it then cover all of the agencies involved so that all are in sync?

My other question went in one ear and out the other. Will it tie into the consular offices so that they can be able to have one-stop shop, so to speak; to be able to say to the agency, we are gathering information for visa purposes or for the terrorism, whatever, so

that they will not have to go from one agency to waiting on the other and on the other?

Secondly—and I realize and I agree with my chair—the funding issue. If there weren't enough, regardless of whether you thought they were going to have additional impositions on the work requirements or on the expansion of the amount of work you have to do by sharing with other agencies or whatever, I just don't see why there was not an increase requested in the budget. Where as we have—what is it—a $300 billion tax cut, we are not putting in enough money to protect our businesses so that we can continue working on increasing the economy in the United States. And this is where it is hurting, is we are not allowing our businesses to take advantage of the fact that a lot—and I have been in many countries who say, We want to buy U.S. business but we can't get there.

So somehow we need to be sure that you have the funding to be able to get the equipment, so that you have the software and you are able to convert those 265 paper locations into computerized entries, so you are able to do it immediately. If you are going to do biometrics, why not until 2004? Why not now? What is it that is preventing us from getting there? And do they acknowledge it is partly it has been there, because it is being used in some areas?

Mr. GARRITY. The biotechnology, the biometrics we are talking about is fingerprints primarily.

Mrs. NAPOLITANO. Correct.

Mr. GARRITY. And fingerprints are no longer the rolled fingerprint on a piece of paper. They are now done electronically. They are digitized and sent to the FBI, and it is an issue of getting that equipment in every consulate embassy around the world that is going to need that equipment. I think it is an issue of funding and getting equipment there.

Mrs. NAPOLITANO. And why were we not able to get that request into the budget or at least partially into the budget to increase it and become more prepared?

Mr. GARRITY. That I can't answer for you. I don't know.

Mrs. NAPOLITANO. Could I get an answer in writing, please?

Mr. GARRITY. Sure.

Is it a State Department issue, I mean?

Mrs. NAPOLITANO. I don't know; you tell me.

Mr. GARRITY. The FBI is not going to put the equipment there. I mean, the State Department is the one who needs to have the equipment, and it is a result of the Enhanced Border Security Act that is requiring this.

Mrs. NAPOLITANO. I know. Again, we go agency jurisdiction. We need to be sure that all agencies are in sync to be able to get to the same point where we all feel good.

Now, we talk about the southern border. I was born and raised in a border town, so I know; I was almost picked up a couple of times, because I happened to have my birth certificate with me, because I do not look Anglo or American, okay? And I am telling you, I get very upset with these things about border issues.

Yet, I hear—and this came from an individual who sat next to me. I did immigration for 3 years' study in California. Canadians were coming up to me: I have been here 7 years illegally, nobody

has ever asked me for any paperwork, or any identification other than driver's license.

So we have a double standard for some countries than for others. And I think we need to keep in mind the point of the visas is to allow people within the provisions that we in Congress have allowed to come to the United States for many reasons. Right now we are in an economy crunch. We are suffering. And we are further putting the screws to our businesses. And I tell you very honestly, that is what it is from my vantage point. And I have had some of my businesses that I have had to call your office to say, okay, guys, where are we? Is it good or bad? Just give me an answer. I am not asking you to do it one way or the other. Just give us an answer. Get this person off the dime. And if you hear my frustrations, it is because I am frustrated.

Mr. GARRITY. Have we been responsive each time you called? Because I mean, that happens.

Mrs. NAPOLITANO. The day the bank was going to forgo his loan was the day we got the answer from your office. Thank you very much. It did work.

Mr. GARRITY. Okay. The issue of resources is one that, you know, I talk about in my testimony. We do have 265 locations. It is going to be an enormous amount of resources to get all of those files into one place and digitize them. We are working through the administration to put that into the budget process. We are requesting that. That is something that we have come to recognize we need.

The biometrics is something that is, as you know, in the Enhanced Border Security Act is, something that the State Department has to implement, and we will be the recipient of those fingerprints. And it is designed to ensure that the person who applies for a visa anywhere in the world is the person who shows up with that passport and gets off the airplane. And it is also designed to ensure that we have proof positive of who that individual is, because counterfeit passports, fictitious ID, are very, very common. We at least now have a set of fingerprints that we can be more positive that the person requesting that visa is someone known to us.

Chairman MANZULLO. Mrs. Yanni had a response.

Ms. YANNI. Yeah, on several things. First, as you note, the Enhanced Border Security Act does have the requirement for biometrics. There are things other than a fingerprint which are biometrics, including those photos that the State Department has been collecting forever since they have issued visas. And if somebody submits a phony photo with their fingerprint, you don't have any more identification of that person who was not in the system before. And so one of the delays, of course, was in determining what is going to be the biometric. I am not sure that fingerprints were the way to go. I mean we don't have Osama bin Laden's fingerprints.

Europe is not nearly as keen on fingerprints as the U.S. SO you know, we are collecting fingerprints, or we will at some point at tremendous expense. Whether that is the appropriate biometric, I don't know. But apparently that has been decided.

Another thing in the Border Security Act and in the Patriot Act was a requirement that the Department of State gain access to lots

of databases, including the NCIC. National Criminal Information Center database I think is what NCIC stands for. Because one of the main problems with those visas that were issued to the terrorists was the Department of State, because it is not a law enforcement agency, could not get any information from the CIA or the FBI or the other agencies. There are several provisions in both of those laws which insist that the Department of State get that information. But all they are getting right now is a name. And so they still have to go back to the FBI with all these delays to get what is behind that. If the FBI would give the Department of State more access to those databases, some of these issues could be resolved immediately at the consulate, without going back to the FBI. And I would like to hear Mr. Garrity's response on that.

Mr. GARRITY. We are working right now with giving access to many of our databases in the NCIC system to the Department of State. Our VIGTOF, the Violent Gang and Terrorist Offender database has been given to the State Department so they can look in that database for those individuals who we have identified as terrorists.

Chairman MANZULLO. Mr. Beauprez.

Mr. BEAUPREZ. Thank you, Mr. Chairman. I am not sure how much I can add to the discussion with some questions, but I would like to pursue a couple of lines of thought, one relative to biometrics. I happen to be a big fan of biometrics. I think they hold a lot of potential. But my guess is that relative to screening out bad guys, I am not sure that we get a whole lot of that. As we just pointed out, I don't think we have got Osama bin Laden's fingerprints, for example.

But I do like the idea of once somebody is cleared for a visa, at least we know who shows up and gets off the plane or off the boat or whatever. But my suspicion is that it is yet another layer of screening of information that has to be handled.

Would it—and by this question, I don't even want to—I don't want to imply that this sort of thinking would necessarily be wrong. But in the United States, we citizens, even if we find ourselves in a court of law, there is a presumption of innocence, and the burden is on the prosecutor to prove guilt.

Mr. BEAUPREZ. Would it be unfair to characterize one applying for a visa to have exactly the opposite burden?

Ms. JACOBS. The burden is on the applicant to show his or her bona fides.

Mr. BEAUPREZ. Prove their worthiness. Again, I am not sure that is completely incorrect, but it is kind of the reverse of the other situation that I cite.

Given that, I want to transition to Mr. Reinsch, am I pronouncing the name correctly? You present an interesting scenario. I, too, was in business for myself before I came here. At one point, I was exporting livestock at places around the globe and coveted foreign breeders of livestock to come to our place so we could do business and that was a growing market. Still is a market. More recently, a banker, a community banker. A lot of my customers are trying to do business abroad, a growing market again. You present the possibility that American business enterprise affirmed somehow the bona fides of foreign visitors. I think somewhere in here

there was even a suggestion that maybe they be bonded. I am curious. That seems straightforward enough. But what if something didn't turn out to be something that was presented? The temptation for me, if I had somebody from China wanting to come to my farm and buy some cows, sounds good. I pledge. When it turns out not to be so good, what recourse does the United States government have on that poor-little-shmuck small businessman like I was? What do we do, and do we really want to go there?

Mr. REINSCH. I think it depends on where you want to draw the line, but I can give you a real world example because the government does this right now in one particular case.

In the last administration, I was in the Commerce Department running the Export Control Program and they have a program known as the Deemed Export Program, which is not—which is closely related to this, that essentially involves individuals who want to come here to work in a technology area. It wouldn't be a cattle man, but supposing you are Hewlett-Packard. You want to bring someone here to help, or Intel, you to bring an engineer here from China to design chips. Sometimes, actually, you are not bringing them here. They are already here. They have gotten their Ph.D. And it is a matter of converting their visa from student to worker. Because they are a foreign national and because they are going to be working here, they are deemed to be an export because the Department of Commerce makes an assumption that they will go back to China, and they will take with them the technology they have acquired which is an export, therefore, they need a license.

In order to get that license, it is not the individual that applies for it, but the company who applies for it because the company wants to hire them. So you would be applying for your genetic engineer. The company, in doing so, makes certain warranties about what that individual is going to be working on while he is here. The company assumes the legal responsibility for making sure that that individual operates within those parameters, and the company is legally liable and can be prosecuted if he does not. That system has been in place for a long time.

Mr. BEAUPREZ. If I might because I see the light is blinking at me, I accept that premise with Hewlett-Packard because it happens to be close to my district with a large plant, but there has been so much reference to small business, that is who we are championing on this Committee. I am a big fan of them. I consider myself to be one of them. I like the idea. I just wonder about the practicality of affirming somehow and really providing the small business person's resources to back that up. I think we have got to go back to making sure we know who comes in this country and why somehow. It is an interesting concept and I would be willing to pursue it. I struggle, really, with the practicality for the true small business person.

Chairman MANZULLO. Congresswoman Millender-McDonald.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman, and thank you for this hearing.

As a senior member on Transportation and also as a member of the House administration, I do understand that biometric technology is costly. And so in order to put that in and to have that type of security, we would have to look for funding outside of your

normal funding basis. So my question is to the two of you, how much funding would you perhaps get from Homeland Security in that you are helping to secure those who are coming over, and if not, can we integrate some of their technology whereby you can clear some of those hits or some of those who fall within the percentage of not being accepted until further, I suppose, clearances? Have we thought about some integration of technology by the Homeland Security, FBI, of course, I am talking with you, but the other agencies that are so steeped into ensuring that we have a type of technology that he can ensure some security coming into this country?

Ms. JACOBS. That is a very good question. On the clearance side, we have long felt, and I think the FBI agrees with us, an answer to a lot of these problems is increased connectivity, technology that works together. That is one of our biggest obstacles right now that we face. We are working in good faith to get these jobs done and sometimes our systems work against each other.

I talked about OSIS in my testimony. We are going to begin using that to send information to the FBI on visas that we have issued or denied. We are already using that to share information with other agencies. I think that is the way to go. I think on these clearances, when we get to the point where they can be done electronically, a lot of the administrative processing that is causing delays will go away.

On biometrics, you are absolutely right, it is a very, very expensive proposition. Congress was kind enough to let us keep the fees that we collect when we process visas. Readable visa fee, we call it, which is now $100 per application. That may have to go up as a result of all of these new requirements.

It is also—we are working very closely with the Department of Homeland Security as they try to set up this new entry-exit system, which they are calling US-VISIT. They are talking about a biometric at the port of entry. We would love for them to use the fingerprints we will collect at the ports of entry—we collected overseas, and they can verify at the port very quickly that it is the same person. This is how we want to work together, and we are engaged in conversations. We were talking to INS, when entry exit was part of INS, and now, we talking to the Department of Homeland Security. We think it is absolutely crucial, as I said before, for all of these systems to work together so it is a fairly seamless process for the traveler.

Ms. MILLENDER-MCDONALD. Mr. Garrity.

Mr. GARRITY. I would agree. One of the well known foibles we have in the FBI is information technology systems are not what they should be. We are working on that, and the Congress has been very kind in giving us money, time and again, to try to get our systems up to the 21st century. We have within our current system. We are dealing with the old system and that is part of our problem. And we have just asked for, and had a study conducted of, what it would take to get our system improved. All these systems have to be able to talk to one another. And it is our vision, and as Ms. Jacobs just said, our vision is that the State Department will take the biometrics overseas, and that the Department of Homeland Security agencies will then verify that the person who requested that

visa in Beijing, or wherever, is the person who shows up. We may not know his name yet, but we at least have his fingerprints. So we know whoever applied for it is the person who was interviewed by the consular office, and that is the person who showed up.

Ms. MILLENDER-MCDONALD. How many hits have you gotten and do you have an increase in hits before or after 9/11? Has there been an increase in hits if you will?

Mr. GARRITY. I have to get back to you. The rates have stayed pretty much steady. We have not seen any higher percentage of hits. We have a much higher percentage of names, but the percentage remains pretty constant.

Ms. MILLENDER-MCDONALD. Ms. Jacobs, you mentioned that shortly after 9/11 you guys closed down the Saudi Arabia office and whatever. Why would that be, unless one would think that that is kind of discriminatory?

Ms. JACOBS. What we closed down was the way they accepted applications which they called visa express, all of the applications coming in through travel agencies and they weren't interviewing a lot of——.

Ms. MILLENDER-MCDONALD. That was not a practice that was revealed before 9/11?

Ms. JACOBS. No. That was something that actually before 9/11—as I said, the post was doing things different ways in order to cope with the workload that they had.

Ms. MILLENDER-MCDONALD. That is what you thought after 9/11, you should close that?

Ms. JACOBS. Yes.

Ms. MILLENDER-MCDONALD. The delays on issuing these visas, especially in China and Russia because they really weren't linked to 9/11, are we then suggesting that SARS might be holding up some of this or what is your comments on that?

Ms. JACOBS. No. I don't think SARS has anything to do with it. I think for—in general, we are doing more of the checks on people who might be a concern—a technology transfer concern. A lot of those applicants do come from China and Russia.

Ms. MILLENDER-MCDONALD. Why such a delay?

Ms. JACOBS. I think because just because of the sheer volume of cases coming in. We have anywhere from 1,500 to 2,000 cases.

Ms. MILLENDER-MCDONALD. You are reaching a 97 percent threshold. So what then would be the problems by which that small percentage is still being a delayed factor? Is it because of what you are saying?

Ms. JACOBS. It is because of the volume. The new Condor program added to the removal of the clock and then the increase in Mantis.

Ms. MILLENDER-MCDONALD. I would like to ask the rest of the panelists what we can do to help you. Would the Section 214 of the INA Section of the legislation be something that we can do to help alleviate some of your frustrations?

And the gentleman at the end, you were talking about the responsibility of those who were coming over with the license that the business person provides for those coming over. Are those licenses—do they expire once the person returns back to their country, and those would be my questions and any comments that the

others will make because the other questions have been asked by those members here.

Mr. REINSCH. In the example I cited, I think they are time-limited but renewable because they depend on the individual's employment in that case. What I think my colleagues here have been talking about is business travel. People are here for a relatively short period of time, maybe a few weeks, a month, to be trained on a piece of equipment, to inspect it, to make sure it is adequate, to look at it to decide if they want to buy it. There have been a lot of published reports of stories like that.

I think you are going in a very useful direction. It is helpful to make distinctions between the different kinds of programs. The Condor program is really looking for terrorists and for people who might engage in some sort of terrorist act. And one of the reasons that there was a backlog is because they wanted to examine a lot more people for that purpose with very good reason after 9/11. The Mantis program, which is what the business witnesses here have talked about, are people, primarily businessmen, who are coming here for the purposes we described, for business-related purposes. The suspicion if they are going to commit an act of terrorism is not really on the screen. It is more a question of whether they are going to go back and acquire something that we don't want them to.

Ms. MILLENDER-MCDONALD. Is it legislation that we put in place that we can perhaps alleviate some of this?

Mr. REINSCH. I don't think it is legislation. The two remedies that I suggest is one, get them to go back on the clock. To the extent that the backlog has come down—I mean the backlog going up was the rationale for going off the clock. To the extent they poured more resources into the problem and the backlog has come down, then why not go back on the clock and you don't have a problem? Number two not a subject of much discussion today, but I think a significant part of the problem is there has been this ongoing discussion of an MOU between Homeland Security and State over who does what. And the FBI is not irrelevant to that. They are a part of that. The agencies need to sort this out. They are not going to solve the problem in big ways until they have first decided whose responsibility it is to have the different pieces of the puzzle. They don't have to finish that until November. But the reality is there are no dramatic steps that are going to be taken until they finish that.

So if you can encourage them to get it done, which is a matter of executive will, that would be a really useful step.

Chairman MANZULLO. Anybody else have an answer to her question? Comment?

Ms. MILLENDER-MCDONALD. Mr. Shapiro, you have a frowned face. Is there something we can alleviate that frowned face?

Mr. SHAPIRO. A cup of coffee. I think you have much more intimate knowledge of the law. I just share Congressman Schrock's comments. And it is just a frustration of what appears to be bureaucracy. We are trying to do business here. And we are not isolating the problems, and we are causing a greater economic harm and the potential economic harm of taking our products. And I think China deserves a separate focus. They are a special case.

They are the biggest market. And I think we should devote some resources. I went to Beijing to focus on this issue. I went to Shanghai. I went to the embassy there. And I heard a lot of frustrated customers. I have been around the world trying to promote the U.S. As a destination, and the answer I am getting is that the U.S. Is a great place to go, if you let us go there.

Ms. MILLENDER-MCDONALD. And that is very true, Mr. Shapiro. But now as we look at SARS, that has created another problem.

Mr. SHAPIRO. SARS is a special layer. I think there is a real threat from SARS, but we rely on our government to do the right thing, and I think they are. But it is a very isolated threat depending on the country.

Chairman MANZULLO. Thank you.

Ms. MILLENDER-MCDONALD. Mr. Chairman, thank you so much, but I would like to suggest, if I may, that the two who are here, Ms. Jacobs and Mr. Garrity, will take under advisement some of the comments that they have made, get back to us to tell us what you are doing to alleviate or help them out of some of these frustrations. Some of these can be remedied on short order.

Chairman MANZULLO. I have a suggestion on that, and then I know you have some more questions.

Ms. MILLENDER-MCDONALD. I have a statement for the record.

Chairman MANZULLO. What percentage of the backlog, Mr. Garrity, represents people trying to come from China?

Mr. GARRITY. I have to back to you on that.

Chairman MANZULLO. Is it 50 percent?

Mr. GARRITY. Approximately 50 percent of our Mantis Visas are Chinese.

Chairman MANZULLO. Let me make this suggestion. I am the Chairman of the American-Chinese Interparliamentary Exchange, and we work extremely close with the Speaker. We were there in January. Matthew Szymanski, who is the Chief of Staff of our Small Business Committee, Matthew has been to China in the past 14 months. He goes back about every six or seven weeks. We have an intense interest in trying to get exports into China. What I would suggest, and I know that Ms. Jacobs and Mr. Garrity you are wide open to anything that would help you out, is the Speaker and I because we have—it is the Speaker's delegation that goes to China. It is the Speaker's exchange. And we work with his office on these exchanges, and that is how close we are with his office. And he has given resources to be able to do that—would be as I see it, the challenge here is getting people from China to come to this country for business purposes. This is the real—this is what is taking the longest period of time. And I would be willing to work with the two of you—Bob Kapp is here from the U.S. China Business Council—with just maybe three or four people—maybe there is a way to develop—I don't want to call it a special desk or process or something, but I really want to sit down with the two of you and see if we can find some way to expedite those business people from China who want to come here.

I mean, one suggestion would be perhaps the business community itself can come up with a database and profile and pictures of those engineers, those people from China that come to the United States on a frequent basis with built-in verifications and ways they

could even take this and share it. I mean, for example, it could be something—not as simple but maybe even a notebook that they could provide to the consuls in China with the names of the 300 most—300 Chinese people who visit the United States on a regular basis. I am not talking about a pre-clearance program, but for example, just some way to really expedite this process, and I would be willing—would the two of you be willing to work with us on something like that?

And the Business Council out there, Bob Kapp, we may need some money for this to provide the resources, whatever is necessary, because this is the opportunity for the private sector to get into this thing and show a leadership position and help out these two Federal government officials, that in my estimate they are doing a tremendous job, in order to draw that balance between security and helping the exports of this country. And anything that we can do—anything that the private sector can do to really expedite this process—and I would be—would the two of you be willing to sit down with me to work on that? Mr. Szymanski would be the point person on that because he knows everybody in China. He has a tremendous background of the people in China.

And before I turn this over for some more questions, I want to thank all the witnesses. This has been a tremendous hearing. We conduct these hearings for the purpose of trying to resolve issues. Everything is resolution oriented. And I am satisfied, without hesitation, that the FBI and the State Department are moving in an exemplary way, that you recognize the issue, you know exactly what is going on. You have your pulse on it. The private sector is here. You can be assured that when I meet with the folks here—I am hearing this same angst from the people I represent, and your interests will be conveyed to them for the purpose of trying to resolve this.

Ms. Majette, you just came and you are leaving. This is about the visa issue. You have been to three meetings now. You are recognized for 5 minutes.

Ms. MAJETTE. I gathered everything up. I am sorry. I am sorry ladies and gentlemen. I did hear all of the testimony and then was called away, and I certainly appreciate your being here. And please excuse me if this question has already been asked, but I represent Georgia's Fourth Congressional District, which is just east of the City of Atlanta. We have a growing international population and Emory University is located in the district along with a few other institutions of higher learning. One of the great concerns that we have is that we want to be able to continue the exchange programs that Emory and other universities have. And what progress—and I know that Ms. Jacobs spoke to part of that, but what else is being done to streamline the process and reduce the backlog to facilitate travel for students and scholars?

Ms. JACOBS. For any of the students or scholars subject to one of these different clearances, we have, in fact, worked with the FBI on trying to give priority to those types of people when we do our checks. We know that students, in particular, need to get here by a certain time in order to make their classes. And so we have worked very hard in trying to identify those cases when they come in and to sort of put them at the top of the list. We give high pri-

ority to the Mantis cases, which would be the exchange visitors who are subject to these clearances. I am hearing today that we probably need to put business travelers also on that priority list. But anyway, we do understand the need to, you know, continue with this policy of having—we say often that our policy is "secure borders, open doors," and we are very sincere about that. And that is part of the policy is try to get the legitimate travelers into the U.S. As quickly as we can.

Ms. MAJETTE. Thank you. And is DHS Program still operational? Or is it becoming fully operational, and what kinds of challenges have to be overcome in order to make it work most efficiently?

Ms. JACOBS. It is a DHS Program, as you know, we are partners because they send information to us, which we then forward to our consular sections overseas, so that they can verify the documents and verify the identity of people coming in for student visas and exchange. I think it is up and running. There have been some technical glitches when DHS was trying to push information to us. We have several thousand records now in the system, and I think for the most part it is working pretty well.

Ms. YANNI. If I can respond to that. There are actually still—perhaps between DHS and the Department of State there has been some resolution of the electronic problems, but between the universities and other users and the Department of Homeland Security, there are still massive problems and you are going to be hearing from Emory and other universities because there are a lot of problems at that point. Sometimes the data doesn't even get into the system when they enter it. There are changes that can't be made because the system blocks access that is needed. And this actually is a small business issue too because some of the exchange visitors are coming over as trainees in small and medium-sized businesses too. So it is not just a student issue, but there are definitely still problems with the system.

Ms. MAJETTE. Is there anything you would suggest, from your point of view, that could be done to improve the system?

Ms. YANNI. Get in some good foreign technologists to fix it.

Chairman MANZULLO. Mr. Schrock, you had one last short question.

Mr. SCHROCK. I do. Mr. Chairman, I really agree with what you are saying about having people sit down and talk to one another. And that follows on with my—I mentioned the American Hotel and Lodging Association, which by the way, I would like to have unanimous consent included in the record.

All knowledge and all good ideas don't come from we bureaucrats. We need to include people that are sitting to the left here because they are the ones who are living with this. They have to live with what we are coming up with, and we heard great ideas. And I can tell they are dancing in their chairs ready to help us with this. And we need to reach out to the business community and make them a part of this. They've probably got great ideas. They are not inside the Beltway, which is to their advantage. And we need to include these people in any discussions we have because they could probably sell this for us, quite frankly.

Chairman MANZULLO. I have great confidence that we are going to come up with a resolution on this, and it is going to help out everybody here.

Listen, thank you so much. Marvelous testimony. This has been an exceedingly important hearing as part of our series of hearings dealing with the manufacturing base in this country. Just another brick in the picture, and again thank you for coming here.

[Whereupon, at 4:15 p.m., the Committee was adjourned.]

United States House of Representatives
Committee on Small Business

"The Visa Approval Backlog and its Impact on American Small Business"

June 4, 2003
2:00 pm
Opening Statement
Chairman Donald A. Manżullo

Good Afternoon. I would like to call this meeting to order. It is my pleasure to welcome everyone to today's Small Business Committee hearing focused on our government's efforts to implement new procedures allowing foreign visitors to travel to this country for business.

First, I would like to take care of some housekeeping items. As is our custom, I will make a few remarks as an opening statement and then yield to the ranking Member for her opening statement. Then we will proceed directly to the testimony from our witnesses. After all the witnesses have testified, we will take questions from the Members in the order in which they arrived.

OPENING STATEMENT

Bringing buyers and sellers together, whether in the boardroom or the factory floor, is the cornerstone of a free market. Meeting face-to-face to agree on price and terms is more than mere custom it is a necessary part of winning the bid or sealing the deal. Since September 11, 2001, this simple act has become much more difficult. The visa approval backlog which peaked last summer has been the subject of widespread criticism from many quarters, and it is appropriate for this committee to inquire from the relevant agencies about their progress towards remedying this situation. Today's hearing will focus particularly on the State Department's efforts to adapt to the new security requirements and the impact ongoing procedural delays are having on our business climate.

For me and the people that I represent in Northern Illinois, this visa issue is critical. As Members of this committee are well aware, I spend a great deal of my time helping our small businesses export their products and grow new markets overseas. This visa backlog problem first came to my attention while trying to help a major employer back home sell more of their machines in China. For more than seven months, Ingersoll Corporation, a constituent employer from Illinois, waited in vain for their prospective buyers to get a visa to come to Rockford in order to inspect their products and sign on the dotted line. Eventually, the buyers looked elsewhere and that company lost the sale and is now in bankruptcy. While the failure of Ingersoll is not to be blamed entirely on this lost sale, it is not difficult to imagine that other businesses all over this country, who are also on the edge of solvency, may lose business simply because they are unable to get their buyers to come to their facility or to the trade show where they feature their products.

Today we will hear testimony from the Department of State and the Federal Bureau of Investigation to learn more about the process of issuing visas for foreign visitors, and their progress to date to clear the existing backlog. I hope that both of these government witnesses will explain to the committee the preparations they are making for the new interagency review regime, sited at the Department of Homeland Security, which will begin at the end of this fiscal year. I have serious concerns about the new interview requirements and the availability of resources (dollars and skilled workers) for these new measures. I hope that both of you will address this issue during your testimony.

In addition to these government witnesses, we will also hear from a variety of representatives from the business community. For these folks, bringing buyers and sellers together is their only job. It's what makes all their other activities possible. As I can personally attest, having the most talented engineers and craftsmen in the world alone does not guarantee a successful operation. You must also aggressively market your expertise and its fruit in an increasingly competitive world market.

Mr. Gary Shapiro, from the Consumer Electronics Association, is a part of making these transactions possible. Every year his Association hosts the annual International Consumer Electronics Show. This event, though larger and perhaps more sexy than other similar industry trade shows held all around the world is the handshake interface where relationships become sales. I think you will add an important dimension to this issue.

So too, Mr. Chip Storie from Cincinnati Machine and Bill McHale from Kanawha Scales know about the disappointment of having willing buyers walk away in favor of competitors who can actually bring customers into their factory. Both companies have lost business because of the Visa backlog.

Finally, Ms. Palma Yanni and Bill Reinsch are experts on immigration and visa issues. With many years of experience on the front lines in the business of immigration, it is my hope that they will help the Committee and the House better understand how the apparatus of the State Department, the FBI, and other agencies actually work and hopefully tell us how we can improve this system in the years ahead.

Again, I welcome each of you to the committee today and very much look forward to your testimony. I am now pleased to recognize the Ranking Member, Mrs. Velázquez for any opening remarks that she would like to make. In doing so, I also want to note that all Members are entitled to make statements for the hearing record and without objection I would ask that all Members be given two weeks to deliver such statements to the committee. Also, I would ask unanimous consent that several statements from other outside groups who are concerned about this issue also be included.

Thank you. Mrs. Velázquez is recognized for her statement.

House Committee on Small Business

"Will We Have An Economic Recovery Without A Strong U.S. Manufacturing Base?"

June 4, 2003

Opening Statement of Committee Ranking Member Nydia Velazquez

Thank you, Mr. Chairman.

At the cornerstone of the global economy is international trade.

Many small businesses are contributors to international trade. In fact, more than 97 percent of all U.S. exporters are small businesses. The small business sector also participates in the international travel and tourism industry, making up a large percentage of both travel agencies and tour operators.

Yet the terrorist attacks of September 11 caused setbacks for many small businesses, especially those with ties to the international market. In response to September 11, the Department of State implemented new policies to govern the visa issuing process.

Our nation's security is not something that should be taken lightly. However, in an effort to provide security to our citizens and our country, we must recognize that America's borders are the entrances for people, goods and services which help drive our economy.

Unfortunately, many small businesses, including those in the manufacturing sector – are bearing the brunt of these new procedures. A significant number of their clients face extended visa delays – and in some instances – outright rejection. These denials and delays are pushing clients to seek products from U.S. competitors.

Small businesses also fear that the effects of these policies are threatening the economic recovery and future competitiveness of our country.

Small firms are finding that longstanding business relationships with foreign clients are being damaged and legitimate travelers are unable to obtain visas. Opportunities for new business ties are being blocked and personal transfers within some companies are being delayed. These delays, denials and unclear practices are harmful to the future viability of American small enterprise, and to both our national economy and the larger international economy.

There are two specific procedures at the heart of these difficulties. The

first is a new visa policy entitled Visa Condor which was implemented after September 11 to fight terrorism. But because it fails to clarify just how long it should take to complete a check, applicants undergoing Visa Condor review face an indefinite approval time, which creates a backlog.

In addition, further delays are taking place due to a lack of knowledge about how to apply policies involved in the Visa Mantis system. While this process is not new, it is apparent that consular services need to be educated on the technologies involved to reduce delays.

While current trade and tax policies already place many small businesses at a disadvantage in a very competitive global market, these new immigration policies, although necessary, are creating an additional hardship for them.

It needs to be stressed that the entire market is being affected by the new visa policies. High-tech companies are struggling – the HIB visa cap for fiscal years 2001 through 2003 hit an all time high with 195,000 approved new workers. Sadly, the cap has now dropped to only 65,000 for 2004.

Small business farmers are feeling the impact as they wait for their workers to arrive who are caught in the backlog. Immigrants are being delayed in their travels to work in the United States. It is not just one sector of our market that is at a disadvantage – but it is our entire global market that is bearing this burden.

Our most effective security strategy should be to improve the pre-screening immigration process – allowing us to keep out those who intend to harm our nation, while admitting those individuals who come to build America and make positive contributions to our economy.

Too many of our nation's most prosperous industries – including travel, tourism, and manufacturing – have been put at an unfair disadvantage. While the need for increased security is certainly warranted – a healthy balance needs to exist between safety and the expanding, competitive trade market facing America's small businesses.

Thank you.

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Opening Statement of Congresswoman Juanita Millender-McDonald

Small Business Committee Hearing

"The Visa Approval Backlog and Its Impact on American Small Business"

2360 Rayburn House Office Building June 4, 2003 – 2:00 p.m.

Mr. Chairman and Ranking Member, I would like to thank you for holding this hearing on the state of the our nation's visa, tourist and business travel and

how it has been impacted by post 9/11 security measures.

I would like to thank all of the people appearing before the Committee today, including the Honorable Janis L Jacobs, the Deputy Assistant Secretary of Visa Services in the Department of State, and Robert J. Garrity, the Deputy Assistant Director of the Federal Bureau of Investigation.

Our nation has become a much different place after September 11, 2001. We have sought to protect our nation's borders and institute stringent security measures to prevent such a devastating attack on our infrastructure and way of life.

These protective measures, while vitally important, must be done in a

careful and measured way so that we are as confident as we possible can be that we are still a nation willing to receive the visitors to our country and the contributions they provide.

Small businesses, especially travel agents and those in certain service industries, are dependent on tourism and business travel.

The District that I represent, the 37th District of California, is dependent on the prompt approval of visa applications. According to the Bureau of Citizenship and Immigration Services over 3.5 million non-immigrants were admitted through Los Angeles in 2001.

Many small businesses rely on the ability of potential customers from

foreign nations to be issued visas in order to inspect goods and products before they are exported to overseas markets. Obviously, if these individuals are denied visas or if the visa approval process is delayed, there is a direct negative impact on the bottom line.

I look forward to the testimony, and learning more about how we can protect the security of our nation while avoiding any harmful effects to American small businesses.

Thank you, Mr. Chairman.

DONNA M. CHRISTENSEN
DELEGATE, VIRGIN ISLANDS

COMMITTEE ON RESOURCES
RANKING MEMBER, SUBCOMMITTEE ON NATIONAL PARKS, RECREATION AND PUBLIC LANDS

COMMITTEE ON SMALL BUSINESS
MEMBER, SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT RELATIONS
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CONGRESSWOMAN DONNA M. CHRISTENSEN'S STATEMENT
BEFORE THE HOUSE SMALL BUSINESS FULL COMMITTEE HEARING ON
"THE VISA APPROVAL BACKLOG AND ITS IMPACT ON
AMERICAN SMALL BUSINESSES"
June 4, 2003

Never did I imagine when I joined the Small Business Committee that we would cover so many diverse issues, most of which are critical to the well-being of my district. Today's hearing on the visa approval backlog and its impact on American Small Businesses is one such issue. I want to once again thank Chairman Manzullo and Ranking Member Velazquez for holding another very important hearing.

We recently celebrated the 20th anniversary of National Tourism Week, amid decreasing state and territorial budgets and a summer travel season that is getting off to a slow start. With so many small businesses a part of this important industry, it is quite appropriate that we address how tourism, and especially business travelers, contribute to the economy of this country.

As one of the Steering Committee members of the House Travel and Tourism Caucus and as representative of an area in which tourism is the largest segment of our economy (although not our largest employer), I am aware of the importance of tourism to our national economy. The tourism industry is the third largest retail sales industry and it is one of our country's largest employers with 7.4 million direct travel – generated jobs. Foreign travel to the U.S. accounts for billions of dollars for our tourism industry.

After the attacks of September 11th, our personal safety and the safety of our nation became and remains our number one priority. In our zeal to make America safe, however, we have not been able to strike a balance between tightening our nation's security procedures, including the issuance of visas, and the burdens placed on our economy and our nation's small businesses. It is not an easy task, and it was never the intent to hurt small business through the new safeguards that have been put in place, but we have.

In the district that I represent, the Virgin Islands, airline travel and hotel occupancy suffered a great deal as in the immediate aftermath of September 11th, but began to rebound more quickly than we expected. But increased security measures have altered the visitors experience significantly and permanently. I think most of us have learned to live with these measures. But there are also other areas that remain unresolved.

For example, prior to September 11th, charter cruise vessels traveling between the U.S. and the British Virgin Islands which had all U.S. citizens on board, were able to fax in their INS clearance forms upon their return from St. Thomas or St. John. This process, known as the Alternative Clearance Procedure, was discontinued and INS now requires ace-to-face inspections of all passengers. To say the least, the clearance process now takes two hours, which cuts in to value time for the charter boat operates. For the small business owner, time is money.

The cost, time and complexity of shipping has greatly increased, and adversely affected importers and exporters alike. In a meeting I held with customs, the postal service, shippers and small businesses at home, I found out that there was lack of communication that should have taken place as changes were instituted.

Changes in INS procedures have also had a significant impact on travel between Eastern Caribbean islands and the U.S. Virgin Islands. Because of its geographical location, and strong family ties, the Virgin Islands serves as the first and sometimes the only point of entrée to the U.S. for many of the Eastern Caribbean islands. Individuals travel to the U.S. Virgin Islands for varied reasons, including shopping, visiting family members, attending weddings, funerals, and for sports and entertainment activities and other purposes. The new INS procedures have placed greater restrictions on inter island travel

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because it now takes a longer period of time to process visa requests and there are more denials. Even our University has suffered in that some prospective foreign students -- paying students -- have been denied visas.

On a national level, travelers play a large role in the American economy. Foreign travel accounts for billions of dollars for our tourism industry. In order for our tourism industry to continue to prosper, and small businesses that rely on foreign travel or goods to survive in this post 9/11 environment, we need to help the federal government strike a better balance between our security needs and the needs of small business.

DONNA M. CHRISTENSEN
DELEGATE, VIRGIN ISLANDS

COMMITTEE ON RESOURCES
RANKING MEMBER, SUBCOMMITTEE ON NATIONAL PARKS, RECREATION AND PUBLIC LANDS

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August 7, 2002

The Honorable James W. Ziglar
Commissioner
Immigration and Naturalization Service
425 I Street NW
Washington, DC 20536

Dear Commissioner Ziglar:

I am writing once again, to request your assistance in resolving the issue of the Alternative Vessel Clearance Procedure Program, which was in place for U.S. Vessels re-entering the U.S. Virgin Islands from the British Virgin Islands.

Prior to September 11, 2001, charter cruise vessels traveling between the U.S. and British Virgin Islands which had all U.S. citizens on board, were able to fax in their INS clearance forms upon their return to St. Thomas or St. John. Understandably, because of security concerns arising out of September 11th, the Alternative Clearance Procedure was discontinued and INS is now requiring face-to-face inspections of all passengers. This new requirement is severely impacting the charter yacht industry in the U.S. Virgin Islands because they and their passengers now have to stand in very long lines at Customs and Immigration to clear their vessels and passengers. Many of these day sail vessels sail between the U.S.V.I. and B.V.I. several times a day. Having to take an additional 2 hours out of the day to wait in the line at Customs and Immigration cuts into the time they have to spend showing their passengers all the beauty the islands have to offer.

I have discussed this issue with members of your headquarters staff who assured me that they are reviewing the matter. I was also asked look into whether the U.S Customs Service and the U.S. Coast Guard were in favor of continuing the Alternative Procedure. I am pleased to report that I have discussed the matter with Customs and the Coast Guard in the Virgin Islands and was assured that they did not oppose the continuance of the Alternative Processing Procedure for charter boat vessels.

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The Hon. James W. Ziglar
August 7, 2002
Page 2

In light of the forgoing, I am respectfully requesting your support for reinstating the Alternate Vessel Clearance Procedure Program for U.S. Vessels in the Virgin Islands. This is a critical issue for the already fragile charter boat industry in my district. If we cannot find a way to either expedite the Clarence process or go back to the Alternative Vessel Clarence Program many of these charter vessels will be out of business very soon.

Thank you in advance for your favorable consideration of this request. Please feel free to get in touch with Brian Modeste of my staff or me if we can answer any questions you may have.

Sincerely,

Donna M. Christensen
Member of Congress

Virgin Islands Day Charter Association
6501 Red Hook Plaza
Suite 201
St. Thomas, U.S.V.I. 00802
Phone/fax (340) 775-2584

4/18/02

To: Donna Christiansen
V. I. Delegate to Congress

From: Glen Davis
V.I.D.C.A. Representative

Re: Alternate Clearance Procedure for U.S. Vessel's Reentry
From the British Virgin Islands

Ms. Christiansen,

I would like to begin by thanking you for your willingness to help work on a resolution to this issue. I have had no luck communicating with the officials locally or regionally. I gather this is an initiative from the Homeland Security Director that has been on the table for several months and is now being implemented. That being the case we are happy we have someone there in Washington who can objectively plead our case.

In summary, we have been allowed, under the alternate clearance procedure, to clear our vessels and passengers by faxing our information; names, passport numbers, date of birth, and vessel information, at the end of the day to the immigration office at the airport IF all passengers are US citizens. If non-US citizens are aboard we must physically clear them in. This program, adopted in 1991, was initiated due to problems vessels incurred trying to get into Customs and Immigration. The harbor is over crowded and staffing limited. This program has been very successful and solved a multitude of problems we face trying to show our visitors a good time.

There are a few main points regarding the impact we would like to make.

- We understand the need for increased security of our borders. None of us would want to risk any individual's security or our national security. We do question the effect of this initiative as it relates to a day charter vessel. We are not a ferry service. We take guests from St. Thomas or St. John who have gone thru US Immigration to get to these islands and who will go thru the process again when they leave the islands. We take the same people over and back. We do not pick up new passengers and drop them off in the U.S.V.I..

- We have been trained, by U.S. Immigration incidentally, how to check our guests passports and birth certificates. We only take guests with proper I.D..
- One of the main reasons the Alternate Clearance Procedures were put into effect was to ease some of the congestion in St. John. Over the years traffic has increased dramatically. In the last few weeks I have been in there with as many as 8 boats trying to clear at the same time. It is a cluster. You have a combination of ferry boats who are on a schedule and have very little regard for private or day charter vessels, bareboat day boats who have very little boating experience and absolutely no experience with the paperwork or routine necessary to clear in, and the day charter vessels who are trying, like the ferries, to stay on some sort of time schedule. This is only going to get worse in that not everyone has been personally notified nor is everyone complying. Think about all of the private boats and sportfishing boats who have not become involved yet. There will be a collision if something doesn't change.
- There is a serious physical limitation to the dock space there. Only two boats can get on the dock at the same time.
- Even if there was more space they can only clear in one boat at a time.
- This point may not be as significant to the powers that be, however we feel it is a pertinent point. The guests, U.S. citizens, are very incredulous about the whole thing. For all the reasons previously stated it is an aggravation they don't feel is just. I have made it a point to down play the issue as much as I can, saying it is just a necessary part of the system etc., but when I have to jockey around for 30 minutes or longer and then take another 20- 30 minutes to go thru the process they sometimes get pretty aggravated. This does not even consider the route change we have to make to go to St. John.

I think the key point is the simple question; what does this initiative accomplish in this particular application? This will do nothing to improve our national security or control illegal immigration. There are legal precedents for exceptions to certain federal laws and how they apply to the Virgin Islands; Jones Act, various U.S. Coast Guard regulations, FCC exemptions, and we fervently hope that you are able to present this to the Homeland Security Director and he will understand the need for an exception here. Maybe a trip to St. Thomas and a daysail to Jost would help prove our case?

We would also like to reiterate our understanding and our support for the necessary changes we as U.S. citizens have to make to improve our nations security. This one we feel needs another look.

Thank you again for your time and efforts. We have our group, the travel industry, hotel association, chamber of commerce, and the U.S.C.G. willing to support. Please let me know your thoughts and what we can do to help get our message out.

Sincerely,

Glen Davis

Enclosed; copy of letter to Mr. Ortiz and Mr. Smith

Bali Bound, Inc.
6501 Red Hook Plaza Suite 201
St. Thomas, VI 00802-1306
Phone/fax (340) 775-2584

April 9, 2002

To: Ivan Ortiz / US Immigration
Donny Smith / Area Port Director
From: Glen Davis / Bali Bound, Inc.
Re: Alternate Clearance Procedures / Vessels exempt from formal entry

Gentlemen,

I am writing you with the hope that this letter and others you will receive can prompt US Immigration to reassess the repeal of the Alternate Clearance Procedure.
I think everyone shares the desire to contribute to any necessary and effective actions needed to help ensure the property and lives of all Americans and we all understand initiatives that call for sacrifices by the citizens that have to take place.
I do not however, see or understand the effectiveness of the decision to mandate that all vessels coming back from day excursions to the British Virgin Islands clear into US customs and immigration even though all passengers are documented US citizens. I feel the following points need to be reiterated and are cause for an evaluation of this particular application of the law.

1) We are not ferry boats. We take the same people from the USVI to the BVI and back. We do not pick up anyone in the BVI and give him or her a "ride" to the USVI.
2) The people that we have been taking for the years this program has been in effect are US citizens who have cleared customs & immigration coming into the US Virgin Islands and will also be clearing customs & immigrations when they leave the US Virgin Islands.
3) There is simply not enough room or staffing in Cruz Bay to handle the number of boats clearing back in on a daily basis. Safety and damage to vessels are clearly serious concerns.

I want to reiterate my understanding of the necessity for changes in our National Security and Immigration procedures. But I do strongly feel that the application of this initiative does nothing to improve the security of our nation or improve the controls of illegal immigration. Your consideration and correspondence will be greatly appreciated.

Sincerely,

VIRGIN ISLANDS CHARTERYACHT LEAGUE

May 20, 2002

Mr. James W. Ziglar
Director, U.S. Immigration & Naturalization Service
425 I. St. North West
Washington, D.C. 20536

Dear Mr. Ziglar

I am writing on behalf of the members of the Virgin Islands Charteryacht League to express our concerns about the recent decision to terminate the Alternative Vessel Clearance Program.

Most of our members travel between the U.S. and British Virgin Islands on a daily and weekly basis. The termination of this program is not only poses an inconvenience from a time perspective, but it is also placing a major a financial hardship on our members. As a hospitality and tourism focused industry, it does nothing to enhance the charteryacht experience or encourage visitors to return.

The yachts we represent range from day sail vessels to weeklong charter yachts to fishing boats. The day sail fleet will pick up passengers from either the cruise ships or from one of the many villas, hotels and resorts here on St. Thomas or St. John. Having to take an additional 2 hours out to the day to wait in line at Customs and Immigration in St. John cuts into the time they spend showing their passengers all the beauty we have to offer. Many of the day sail vessels offer two half-day trips where passengers board around 9:00 am and return by noon. A second trip is planned for 1:00 pm and returns around 4:00 pm. With the termination of the Alternative Vessel Clearance Program, they can no longer offer these half-day trips and guarantee that the passengers will be back to the cruise ship on time or that the 1:00 pm trip can go on as advertised. Many will be out of business next year if we cannot find a way to either expedite the clearance process or go back to the Alternative Vessel Clearance Program.

Our term charteryachts, those that take passengers out for a weeklong charter, now have to cut their vacation short by an entire day to clear Customs and Immigration. This does nothing to enhance the vacation experience. The charter-yacht industry has been struggling for years to regain its status as the charter capital of the world. The U.S. Virgin Islands has been negatively impacted by Coast Guard regulations that do not allow uninspected vessels to carry more than 6 passengers. We have lost business to our neighboring British Virgin Islands over the years because they have less stringent regulations and welcome the charteryachts with open arms. This newly imposed regulation is just going to once again make the BVI that much more attractive and our struggling marine economy will be severely impacted.

Our reasons for opposing this new regulation are two fold; first as stated above it will severely impact our marine economy and hamper the boats ability to conduct business. Second, since the Nations security is the primary reason for implementing this change, this new ruling will not result in any additional security since guests arriving in the U.S. Virgin Islands must still pass through Customs and Immigration screening to fly out of the islands.

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Phone: 340-774-3944
Fax: 340-776-4468
e-mail: vicl@vitelcom.net
Website: www.vicl.org

Our charter guests are coming in on either domestic or international flights or on cruise ships. If coming in on a domestic fight, then these individuals were already admitted into the U.S. If on an international flight, they are required to clear Customs and Immigration at the airport. If on a cruise

ship, they go through close scrutiny by not only Customs and Immigration but by the security personnel aboard the ship when they disembark and upon boarding the ship. The Alternative Reporting system was established for the vessels who had all U.S. citizens aboard, if they had any foreign passengers or crew they were required to clear Customs and Immigration with their guests presenting the proper documentation.

We would like to strongly suggest that INS consider reinstalling the Alternative Reporting Program for the charteryachts in the U.S. Virgin Islands. We cannot continue to impose regulations that hinder our ability to conduct business. We need to look at ways that will satisfy the needs of both parties. I welcome the opportunity to discuss ways we can work together to resolve this issue.

Sincerely,

Susan Chandler

Susan Chandler
Executive Director
Virgin Islands Charteryacht League

Cc:
Representative Donna M. Christensen
Mr. Ivan Ortiz, INS

MADELEINE Z. BORDALLO
GUAM

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RESOURCES COMMITTEE
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SUBCOMMITTEE ON NATIONAL PARKS, RECREATION, AND PUBLIC LANDS

SMALL BUSINESS COMMITTEE
SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT, AND GOVERNMENT PROGRAMS

Congresswoman Madeleine Z. Bordallo
Committee on Small Business Hearing on
"The Visa Approval Backlog and its Impact on American Small Business"

June 4, 2003

The issue of the growing backlog of United States Visa applications has many consequences, including the impact on small businesses in America. It is an issue whose negative consequences are felt in my home district of Guam.

Guam's economy is dependent on the visitor industry, and the majority of tourists are from Asian countries. Small businesses are the core of Guam's visitor infrastructure. Every year, Guam loses significant numbers of potential visitors from the Philippines and China because visa applications remain stymied in the processing backlog, which at times may be several months long.

The backlog of visa applications from the Philippines is particularly problematic for my district. Guam is home to a large and growing population of Filipino-Americans, many of whom have been patiently anticipating the arrival of friends and family members wishing to visit them. On May 1, 2003, I authored a letter to Attorney General John Ashcroft requesting that the administration consider authorizing the Republic of the Philippines to participate in the Visa Waiver Program, as provided for under Public Law 106-396. Additionally, in light of the state visit of the President of the Philippines, the Honorable Gloria Macapagal Arroyo, to the United States this past May, I joined several of my colleagues in signing a letter to President Bush requesting that the extensive backlog of Filipino visa applications be included in their bilateral discussions. The government of the Republic of the Philippines has demonstrated its commitment to fighting international terrorism. We believe that new technologies can help the U.S. government enhance visa security while at the same time expediting the visa process for legitimate visitors and reducing the processing backlog.

Biometric cards are now available that can be engineered to store the unique physiological characteristics of the card holder, which are computer generated and virtually impossible to counterfeit. Biometric cards defeat visa fraud and enable government agencies to monitor more efficiently the entry and exit of visitors. I would like to see a pilot program for this new technology and a prompt implementation nation-

wide should the results prove as positive as I believe they will be. Guam is uniquely situated to be a proving ground for this new technology in a pilot program.

The backlog of visa applications is having a crippling effect on the ability of American industries to compete in foreign markets and, in the case of Guam, to realize the potential of our tourism industry. It is a barrier to legitimate visitors who seek the American experience. The lesson of September 11, 2001 is that we must always remain vigilant in securing our nation's borders. However, the answer is not to shut our doors to the world, rather to harness the innovation and technology available to us to best serve the interests of our nation's security while protecting the international commerce that we depend on.

06-04-03 04:03pm From-Linda Sanchez 202-226-1012 T-372 P.002/003 F-020

MEMBER:
COMMITTEE ON THE JUDICIARY
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COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEES ON NATIONAL SECURITY, EMERGING THREATS & INTERNATIONAL RELATIONS
CRIMINAL JUSTICE, DRUG POLICY & HUMAN RESOURCES
COMMITTEE ON SMALL BUSINESS

Linda T. Sánchez
39TH DISTRICT, CALIFORNIA

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Opening Remarks-Visa Backlog and its Impact on Small Business
Rep. Linda T. Sánchez

June 4, 2003

I would like to commend Chairman Manzullo and Ranking Member Velázquez for calling this important hearing today. With the announcement that Foreign Service officers in many nations will now be required to conduct face-to-face interviews with millions of visa applicants, a process that may result in a more extensive backlog, our examination of this issue couldn't be more timely.

Following the events of September 11, I understand the need for our nation to be more diligent in scrutizing the applications of those who wish to visit the United States. However, this should not prohibit advances in research or academia. It also should not prohibit the economic success of business owners, especially in today's uncertain economy.

By now, all of us have either read or heard the unfortunate stories of vital research projects that had to be abandoned, students who missed partial or entire semesters, or businesses that were not able for fulfill obligations to their customers. These events are all due to problems that have arisen because of new visa regulations. Unfortunately, it does not seem that this situation will get less complicated in the near future.

Last week, the State Department ordered Foreign Service officers in many nations to begin face-to-face interviews with millions of visa applicants who previously have not merited such scrutiny. This will probably result in backlogs that are months long.

I held a roundtable discussion for small business owners last week back in my district. They are concerned not only with the delays in new visa applications, but also with the problems faced by those attempting to renew their visas. We have law-abiding, reliable, hardworking people being forced

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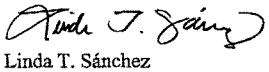
out of their jobs, and in many cases, the country due to the new procedures. I hope this hearing will shed light on what is being done or can be done in order for the visa process to work in a secure but efficient manner.

I would like to thank each of the witnesses for being here today to discuss this important topic and look forward to your testimony.

Sincerely,



Linda T. Sánchez
Member of Congress

Statement of William Reinsch, President
National Foreign Trade Council
Submitted to the House Committee on Small Business
June 4, 2003

On behalf of the National Foreign Trade Council, I am pleased to appear today to express the Council's views on the growing problem the American business community is experiencing with the processing of visa applications.

Applications are being delayed or denied in such circumstances as: buyers applying to come to the U.S. to take possession of items they have purchased (often having already received an export license from the U.S. government for the item), foreign employees of U.S. companies applying to come here temporarily for training or work on special projects, and potential customers for U.S. goods or services wanting to examine the products and negotiate a purchase.

This problem resulted from changes in the visa application review process made in response to the tragedy of September 11th. The new process ignores commercial considerations, strains our foreign relations by telling business visitors they are unwelcome, and does little to achieve the increased security objectives for which it was intended. The process clearly is in need of revision.

Until July 2002, the State Department processed visa applications involving a visitor's access to technology pursuant to a relatively transparent, time-limited process. Applications referred to Washington by foreign posts were permitted to go forward in the absence of a reviewing agency's objection within a defined period of time. The process gave a business a high degree of confidence as to when it would receive a decision and allowed it to determine where an application was in the process so that potential problems could be identified and addressed early. Only if an objection arose was the application delayed for further review. Under this system, the number of reviews was limited, ensuring speedy and thorough service such that security and immigration risks were identified without needlessly delaying applications of legitimate travelers and business people.

As a part of the war on terrorism, last summer the State Department implemented changes to its application review programs that increased the number referred to Washington to be reviewed by an interagency process that includes the FBI and CIA. Those agencies appear to have lowered the bar of what qualifies as a security threat, with the result that applications for individuals who were never previously considered threats have become subject to lengthy delays, compromising the ability of the interagency process to provide a speedy and thorough response. Furthermore, the impending transfer of authority over visa application policy to the Department of Homeland Security has redistributed responsibilities among departments in ways that are still being negotiated, thus delaying the development of a more efficient process.

What the U.S. business community initially thought was a temporary bottleneck in establishing the new procedures has turned into a serious and apparently long term problem. Since last summer, both the certainty of timing and the transparency of the process have disappeared, and, as a result, businesses inviting foreign guests to the U.S. or seeking to bring their own employees to the U.S. can no longer predict with any confidence when, or if, they will be able to do so. The lack of confidence in the timeliness of a response has hurt a growing number of industries.

While denials of these applications have had significant adverse consequences, equally troubling have been the substantial, and varying, delays for applications that are ultimately granted. The hotel industry in the U.S. has directly suffered as a result of these cases. Even though visas are eventually granted for many applications under review, the lack of timeliness and transparency in the process has caused organizers of conventions or conferences that include international guests to relocate their meetings in Canada or elsewhere in order to insure that their foreign participants will be able to attend.

In addition to the commercial interests that have suffered under the new procedures, scientific projects have been delayed. Foreign scientists working in the U.S. have met resistance in renewing their visas, which has resulted in long delays of special projects. With no action-forcing event to guarantee a dependable timeline for the renewal of visas, projects in U.S. labs have stalled under the indefinite absence of key scientists. The disruption of scientific projects has been costly monetarily. Moreover, the loss of intellectual property that could have been gained in the interim, while not quantifiable has been evident.

From a broader policy perspective, the unexplained delays in visa applications for legitimate travelers to the U.S. have tarnished the image of the U.S. in global business. Travel to the U.S. by foreign scholars, speakers, musicians, scientists, is instrumental in spreading American values and methods of doing business and in building support for U.S. foreign policy objectives, and seemingly arbitrary delays damage these valued relationships and signal to foreigners that they are not welcome here and that the United States is not interested in engaging with them..

In conclusion, the Council believes our visa review programs need to be reformed both to provide for our security needs and to further our foreign policy goals and commercial interests. Reinstituting a disciplined process for time-oriented, reliable and transparent processing of visa applications would serve these objectives. In addition, a return by agency officials to a balanced perspective on visa application reviews that takes into account the damage delays and denials do to international standing and commercial objectives is essential to establishing a fair and efficient application process.

Statement of

Palma R. Yanni

American Immigration Lawyers Association

On

The Visa Approval Backlog and Its Impact on

American Small Business

Before the

House Committee on Small Business

June 4, 2003

Washington, D.C.

Mr. Chairman and distinguished Members of the Subcommittee, I am Palma R. Yanni, President-Elect of the American Immigration Lawyers Association (AILA). I am honored to be here today representing AILA, the immigration bar association of more than 8,000 attorneys who practice immigration law. Founded in 1946, the association is a nonpartisan, nonprofit organization and is an affiliated organization of the American Bar Association (ABA).

AILA takes a very broad view on immigration matters because our member attorneys represent tens of thousands of U.S. families who have applied for permanent residence for their spouses, children, and other close relatives to lawfully enter and reside in the United States. AILA members also represent thousands of U.S. businesses and industries that sponsor highly skilled foreign professionals seeking to enter the United States on a temporary basis or, having proved the unavailability of U.S. workers, on a permanent basis. Our members also represent asylum seekers, often on a pro bono basis, as well as athletes, entertainers, and foreign students.

AILA appreciates this opportunity to testify today on the visa approval backlog and its impact on small business. At no time in memory have the delays in visa issuance been so acute, nor the impact so profound. Visas that once took a day now take a month—if you're lucky. Visas that once took a month now take a year—if you're lucky.

How did we get to this point? Largely for two reasons: the introduction of processes for the sake of having processes, with little regard for their effectiveness or impact; and inadequate funding for adjudications which if not properly responded to will leave these backlogs unaddressed. Few would argue that the introduction of additional security checks and precautions are not necessary or advisable. But the key is to ensure that all agencies involved in the checks regard them as a priority, and that the agencies work together to avoid duplication and minimize error. That has not been the case.

When we talk about visa issuance, we usually mean the process by which a U.S. consulate or embassy abroad issues a document that enables a person to apply for admission into the United States for a particular purpose. As I will discuss shortly, the delays in the visa issuance process alone can be monumental. But, in many cases, visas for individuals critical to a small business cannot be issued until the Bureau of Citizenship and Immigration Services (BCIS), which used to be the Immigration and Naturalization Service (INS), has approved an underlying petition.

The problem faced by businesses is that lengthy delays permeate all of these agencies.

Delays at the Consulate: Let's start at the consular stage and work our way backwards through the process. Several factors have made the process of obtaining a visa so slow that many are opting not to travel to the United States at all. Indeed, last fall the State Department had to raise its visa issuance fee by approximately 50% to make up for the shortfall in revenue created by the dramatic drop in the number of visa applicants.

Security checks account for some of the more dramatic delays in visa issuance, as some have waited two, three or even eight months or more while the State Department awaits a reply from other agencies on security inquiries. Again, few would argue that security scrutiny is unnecessary. But many of these checks are conducted for reasons that seem inexplicable. For example, persons coming to engage in activities relating to fields on the Technology Alert List are subjected to some of the lengthiest inquiries. But many of the activities on this list push the edges of credibility as areas of security concern. One can understand the need to make sure that additional bases are touched when a visitor's activities will relate to "Reprocessing irradiated nuclear fuel to recover produced plutonium," one of the entries on the list. But, lengthy investigations of applicants who will engage in activities related to geography or landscape architecture, also on the list, are less easy to understand.

But beyond the rationality of who is subjected to these lengthy checks is the question of whether the checks should be so lengthy. Most of the agencies involved in the Technology Alert checks are entities whose missions do not include the processing of applications, and therefore do not have the culture of time-critical response or the understanding of the importance of visa processing to the United States. As a result, many of these security checks languish unattended for lengthy periods.

The same phenomenon occurs with respect to FBI checks. The State Department will not issue a visa until it has heard an affirmative reply on requests that it submits to the FBI. These requests are rarely based on actual intelligence information: instead, they have been based on the ethnicity and demographics of the applicant or on the fact that, when the Department checked the applicant's name in its "CLASS" database, there was a "hit" indicating a possible problem.

Most such "hits" turn out to be nothing: either the applicant happens to have the same name as someone who is of concern, the entry in the database relates to something minor that is not a basis for denying a visa, or the entry is a mistake. But all of these "hits" have to be checked. And, that often means that the consul must wait for the FBI and CIA to reply on an inquiry. Again, because the processing of visa applications is not perceived by these agencies as mission-critical, and because application processing is not something for which they have seen reason to invest in systems, replying to these inquiries is often not a priority.

A recent example from my own practice illustrates the problem. In March a physician who is practicing with a small hospital in a rural, medically underserved area went home to Central America for a brief vacation. He was trained in the United States, had received multiple previous visas, and had a security check done both by BCIS and the Department of State prior to the approval of his change of status to H. When he went to the U.S. consulate to obtain a new visa he was told there was a "hit" on his name, albeit with a different birth date, and he had to be fingerprinted and wait for the FBI to clear him before the visa was issued. The process took 60 days, and the community struggled without this desperately needed physician.

The result of all of this? Visa delays.

Add to this the announcement two weeks ago that the State Department will now interview, with just a handful of exceptions, all nonimmigrant visa applicants, That announcement was accompanied by an advisory to posts that they would have to handle this additional workload with existing resources: no new personnel or facilities would be added. Already, visa appointments at posts like London and Bern are backed up into mid-July, and it is expected that interviews at some posts will take months to schedule.

Since the State Department has no system for pre-clearing visa applicants, the checks that I discussed previously will not even begin until the visa interview has been held. Thus, we can expect that it will not be long before it will take nine months or more to get a visa, as is the case already in some consulates. What small business can wait that long for a needed employee?

As I indicated, all of the above focuses on just the process for obtaining the visa abroad. If the visitor is going to do any work in the United States, the company here will first have to petition on his or her behalf with the BCIS. Delays on this end also are profound: it is no longer unusual for such a petition to take a year or more to clear the BCIS.

Delays at the Bureau of Citizenship and Immigration Services (BCIS): Like the consular process, the problems at BCIS stem from several causes. BCIS's predecessor, INS, developed a "backlog reduction plan" that was put in place to reduce the waiting times for the processing of many major types of petitions and applications. Just when that plan was starting to make inroads into the backlog, the word came down that no application or petition could be completed until a check was completed through the Customs Service's "IBIS" database, which contains information from a number of law enforcement agencies.

The problem was that this database, long used by INS for security checks, was not tied in with INS databases. So IBIS checks required a process separate and apart from the adjudication of the applications and petitions. This check increased the time spent on each application by anywhere from 10 to 40 percent, depending on the application type. Also, the IBIS checks result in the same kinds of "hits" as the CLASS checks that were discussed above at the consulates. The agency must clear each and every hit by contacting the agency that provided the information, sometimes ~~by~~ having to repeatedly call local police agencies or other entities until they can get an answer. As a result, applications with a "hit" can languish for months on end, only to find in the end that there is no impediment to approval. In my own practice, we have a case that has been pending since last July where we are certain there is no basis for the "hit."

These database difficulties are exacerbated by other problems. There is no way for the consul or the BCIS to update the databases when they have cleared a "hit" to indicate this clearance. So, the negative information continues in the database, often feeding into

other databases that will show a "hit" down the line. Thus, even if the BCIS has ensured that the John Smith showing in the IBIS system is not the John Smith on the application, it has no means to notify the IBIS system, or any other agency in the process of this fact. So, when Mr. Smith goes to the consulate to apply for his visa, very likely the CLASS system will show a "hit", and the lengthy clearance process will begin all over again.

These problems have recently been ever further exacerbated by a March 24, 2003 Federal Register notice in which the Justice Department declared that the FBI no longer is subject to the Privacy Act requirement that information that it enters into law enforcement databases be "accurate, relevant, timely and complete." Since information can be entered into these databases with no regard for its accuracy, we can expect even more errors in these databases, with no real means to correct them.

The database check problems, alone, rendered the backlog reduction plan no more than a distant dream. But these are not the only factors that have created nightmarish backlogs at BCIS. For the past several months, BCIS personnel were pulled from adjudication activities to register citizens of 25 predominantly Moslem countries under a program known as "call-in NSEERS". This ethnically-targeted program of questionable national security benefit absorbed thousands of work hours, thus further setting back efforts to catch up on backlogs, and in fact causing backlogs to grow.

Backlogs also have been created by a growing "culture of no" within the BCIS. A memo issued last year by the then-Commissioner of INS, indicating that there would be "zero tolerance" for INS employees' failing to follow procedure, was taken by many adjudicators to mean that they could be punished for approving cases. As a result, many applications are subjected to "Requests for Evidence" asking often nonsensical and irrelevant questions. These requests add weeks, if not months, to the process. A small company is virtually guaranteed to receive such a Request.

Also, many applications that not along ago were considered easily approvable are now denied, invoking an appeal process that in itself can take one year or more. Indeed, many of the applications now being denied are extensions or similar applications where, on the exact same facts and law, the request had been approved a couple of years ago. These denials seem to happen most often to small businesses.

Examples: How acute are these backlogs? A company based on the West Coast or in the Southeast can expect a petition for an H-1B to take six or seven months IF there is no Request for Evidence. Since there likely will be such a request if the petitioner is a small business, the actual processing time is more like ten months, assuming there is no denial and need for appeal.

These companies can have their petitions processed much faster—within 15 days (plus the time for the Request for Evidence)—but that "premium processing" costs $1,000 extra, an amount that few small businesses can afford.

So, combining delays at the BCIS with delays at the consulate, it can take companies seven to nine months to obtain a simple H-1B (not long ago considered a two-month process) in the BEST of conditions: no Request for Evidence, no database "hits", no security clearance requirement. But few cases seem to exist in the best of conditions anymore, so it is now typical for a company to have to wait more than one year to bring a critical expert to the United States to work on a project.

Examples of these situations abound:

- A Mexican national trying to establish a small business in the United States that initially would hire about 10 Americans cannot get started because the owner was faced with a "hit" in the CLASS database, due to an identity error caused by the double last names commonly used by Mexicans. He had to be fingerprinted, and the fingerprints sent to the FBI. He's been told to expect a minimum of 3 to 4 months for a reply from the FBI. In the meantime, this business is losing contracts for export work from the intended U.S. operation. It should be noted that this individual has been issued three U.S. visas in the past, and has no criminal record.

- A California biotech research company submitted an H-1B petition to the BCIS in November 2002 on behalf of a Russian scientist, to participate in a six-month collaborative program starting July 1, 2003. The petition was not approved until May 28, 2003, and now the scientist would face another delay awaiting visa processing in Moscow, which undoubtedly would include a lengthy "Technical Alert List" check. But this no longer matters: the project has been cancelled because this key participant would not be able to arrive on time. Yes, the company could have paid $1,000 for faster processing, but as is true for so many small businesses, this extra amount would have demolished the budget for the project.

- A small U.S. business that manufactures forensic document authentication software is missing key contract bidding opportunities because of the unexpected wait for a key manager from its overseas parent to obtain a visa interview.

- A small company operating small-town behavioral health centers has been desperately searching for a psychiatrist willing to serve in these areas. They finally located a doctor who was completing residency training in the United States, but before they could even petition to the INS/BCIS for him, they had to have waived a requirement that he return to his home country of Jordan for two years. That waiver, which first had to be cleared through the Agriculture Department and then the State Department, took one full year at those agencies, during which time the State Department conducted a "CLASS" database check. The company decided it could pay the $1,000 premium processing fee for the H-1B petition, but this turned out to be wasted money because the then-INS refused to complete processing of the waiver under premium processing. The waiver took seven months to clear INS. At the end of April this year, the petition and waiver

> were finally approved and the doctor applied for the visa. He has been told that the visa will take a few months because the State Department must once again run a security check on him. This small business, and the small-town communities it serves, have waited for more than 2 years for this physician, and will still have to wait several months more.

There is no question that security must be a priority. But that security must be pursued rationally, and its processes must take into account the need to keep trade and business flowing. These uncertain economic times are when we most need America's leading employers—small businesses—to flourish. They cannot do so if their position in the international marketplace is undermined by bureaucratic delays, lack of coordination, inadequate funding for adjudications, and a culture of "no."

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Comments Before House Committee On Small Business
June 4, 2003

By William McHale
Vice President of Sales
Kanawha Scales & Systems, Inc.
Poca, WV

Mr. Chairman, Members of the Committee:

Thank you for inviting me to testify at this important hearing.

I am Bill McHale, Vice President of Sales for Kanawha Scales & Systems, Inc., headquartered in Poca, West Virginia. We are a small to medium size business. We employ approximately 200 employees at 12 offices with locations in West Virginia, Pennsylvania, Ohio, Kentucky, Alabama, and Michigan. Our core business is the distribution and sales of specialized weighing and control systems. A big part of our business is in the area of designing and building of customized systems and controls for clients throughout the U.S. and Internationally. Our flagship product is our high-speed train loadout systems, which we supply worldwide. Our company has been involved in the export market since 1986 with much of our efforts focused in China.

I am appearing before the House Committee to express my concern over the growing difficulties our foreign employees, existing clients, and prospective future customers face when trying to obtain travel visas to the U.S for the purpose of business discussions, design liaison meetings, employee training, plant and equipment inspections. U.S. Companies face many difficulties in trying to do business overseas and being competitive on a Global Scale. Adding the issue of an increasingly difficult process of potential prospects obtaining visas to the United States will only further undermine U.S. Company's efforts to succeed in International Markets

We already face competing on an un-level playing field against many of our international competitors. The problems we face are well known and include the current strength of the US dollar, WTO-inconsistent subsidies and other practices of foreign governments, and rampant intellectual property rights violations, including counterfeiting.

Unfortunately, we must now add to this list ...Foreign Clients and potential customers difficulties in obtaining travel visa to the U.S for:

- Plant and Site Visits
- Equipment inspections prior to order being shipped
- Design Liaison Meetings
- Training of Customer Personnel on equipment and technology sold
- Training of our own foreign engineers permanently located in a foreign country to provide in local support of the technology and products we sell.

Each of these issues not only makes it difficult for our company to support our customers, but markedly increases the risk of contract default. Every contract we negotiate has a

clause that requires design teams from clients to travel to the U.S. for the purpose of design and drawing reviews. Every contract also has a clause that mandates inspection of all equipment at our manufacturing facility by client personnel prior to shipping.

Mr. Chairman, when actions or procedural delays raised by the U.S. government prevent our company from being able to respond to support requests within the required period of time as dictated by the terms our contracts because of the lack of trained personnel in-country, the very contracts we have fought so hard to win are placed in jeopardy

We are also greatly concerned that post-9/11 visa procedures continue to be implemented without due consideration of the resources that such new practices require.
In China, prior to 9/11, the Foreign Affairs Department of Government owned companies would submit entire delegations for visa approval as a group. Individuals and privately owned companies were required to submit to an interview process. Embassy personnel in Beijing were scheduling over 1,000 appointments per day for visa interviews. With the staff available, those interviews lasted exactly thirty seconds or less. However, It is our understanding that every single individual who wishes to come to the U.S for business purposes must now submit to a personal interview before an Embassy Consular prior to being granted a visa. Yet, while the US government has instituted these new requirements for visa processing, there is absolutely no evidence that the US government has provided additional resources for its posts to use in conducting these interviews and processing those applications, which are being returned to Washington for a "security advisory opinion".

Our company and many more like us, plus the associations of which we are members, stand ready to work with the Administration and the Congress to ensure that our visa system receives the necessary resources so that US business, and the jobs we provide, do not fall victim to a broken system.

Let me be more specific. We have tried to bring one of our foreign engineers over on two different occasions for technical training to support equipment being sold in China. Both times, he was rejected for a visa because he was viewed by the Embassy Consular as being an "immigration threat". After the first rejection, we did a lot of research into the evaluation process and what was being considered.

On the recommendation of the local representative from the U.S. Dept of Commerce in Charleston, we contacted a Representative of the Commercial Office in Beijing to get his advice on what we needed to do in order for our employee to be granted a visa the next time around. The Commercial Office Representative made it very clear that he could not guarantee or influence the result, but would do everything he could including meeting with our employee prior to his interview to prep him on how to handle himself during the interview. The Representative indicated that granting of visas was strictly the function of the State Department Representative in the Embassy and nobody could influence them. My concern is that no amount of preparation or due diligence is going to impact the outcome of a thirty second interview.

On the second attempt by our engineer to obtain a visa, we made sure that a letter was sent by our Company outlining the need for the trip, the goals that we hoped to accomplish during our foreign employee's visit here; the length of time he would be here and a description of what his job role was with assurances that he would be returning to China. In addition, this employ took documents with him to the interview showing his ties to mainland China (checking and savings accounts; home ownership; family responsibilities,

clause that requires design teams from clients to travel to the U.S. for the purpose of design and drawing reviews. Every contract also has a clause that mandates inspection of all equipment at our manufacturing facility by client personnel prior to shipping.

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etc). The Consular doing the interview did not even look at the documentation. In both cases the overview was over in thirty seconds. There is no way that this consular could have made an evaluation, let alone preview the supporting documents brought into the interview by our employee and make a determination that this individual was an "immigration threat". Our employee was directed to another office and notified that his application was rejected. The reason given in both case was "immigration tendency".

On the last two contracts our Company signed in China in April of this year, our customers insisted on inserting language into the contract that our company would get personally involved in the visa process to assist their personnel in the application and interview process of obtaining visas. In reality, there is nothing we can do to help with this.

Another fellow West Virginia Company has had similar experiences to us. Preiser Scientific of Saint Albans, WV makes lab equipment for use in Coal Quality Labs. The have experienced the same problems we have in the inability of getting visas granted for their business agent in China to travel to the U.S. in order to receive technical training so that he could adequately represent Preiser Scientifics products in China. They have also tried on three separate occasions to have the Supervisor of the Coal Quality Lab for one of China's largest Coal Company's, ATB (AntiBiao) come over for customer training on the lab equipment they sell. They had entered into a Contract with ATB for the supply of this equipment and one of the contract stipulations was that Preiser Scientific provide training in the use of the equipment to the Director of ATB's Lab Operations.

This person's application was rejected on all three different occasions. On all three attempts, she never even made it to the interview process. She was rejected at the window. ATB has blamed Preiser Scientific for their Director of the Coal Quality Lab's inability to obtain a visa to come to the U.S. for training. As a result, Preiser Scientific's business with ATB has dropped off to almost nothing because of problems in obtaining a visa for their Director of Coal Quality to come over for the contractually required training.

In talking with Steve Spence of the West Virginia Development Office, the State of West Virginia has experienced numerous problems in obtaining visas for bringing potential clients wishing to invest money and open manufacturing facilities in West Virginia. The WV Development Office has offices in Germany and Japan, and are actively recruiting firms to West Virginia as prospective investors in the state. There have been numerous problems obtaining visas for key contacts in the company to come to the US, even once a decision has been made to locate here. These people need to visit for a multitude of reasons...seeing potential sites, meeting with development authorities, deciding on housing, and finalize the details of their agreements. Due to confidentiality, the State could not release the company names, however, they have indicated that this is a recurring problem with many European and Japanese visitors.

We are particularly concerned at the moment about visa processing delays because we have delegations from two different customers scheduled to travel to the U.S in mid to late July for the purpose of conducting design reviews. If visas are not granted, we will be forced to send a large group of engineers and staff over to China to satisfy the design review criteria of our contracts. Not only will this impact the profitability of the jobs, it will impact our ability to meet production and engineering deadlines by taking that many people out of the engineering and production loop to attend the three to four weeks that the design reviews will take for the two jobs.

Let me offer you some additional perspectives on Kanawha Scales' international business, so that you and the Committee can see why these issues matter so much to our company and our workers:

- Over the years, our export business has accounted for 12-21% of our Total revenue. In fact this year, due to the flatness of the economy in WV, our export business will account for over 25% of our total gross revenue
- The export business we do (particularly in China) helped justify a 9,000 foot expansion to our sales and engineering offices
- It supports or helps support 8-12 jobs at our company. If it hadn't been for the business we've booked year to-date in China, we would have faced with the prospect of laying people off for the first time in the fifty history of our company
- Since 1991, we have done close to 22 Million Dollars in Business in China
- This year alone, we have booked close to $4 Million in new business through May 1st.The expertise and technical capabilities we have developed on doing business in China has carried over and has enhanced our capabilities for domestic projects in the U.S.

Going beyond our own company's concerns, I would like to offer some broader information that helps to explain why the issuance of visas for small firms' overseas clients is such a big issue. Consider the following facts.

- 82% of U.S. Exporters to China are small and medium size business.
- 97% of all exporters world wide are small businesses employing fewer than 500 people
- China ranks as 14th largest export market for WV Companies
- China is the number one producer of coal in the world with an annual production of 1.3 million tones of coal. So as not to cause undue alarm what the impact of this could be to the world economy and more importantly to jobs in the U.S, China total exports of coal accounts for less than 5% of their total production, so this is not a threat to U.S. jobs. On the contrary, with China outsourcing much of their technology and equipment needs, this has created or sustained many jobs among U.S. companies such as our selves. If we don't furnish that technology or equipment some other country will gladly fill that void we leave.

In closing, I feel that procedures need to be put in place that don't penalize U.S. Company's ability to get visas granted to foreign employees for training purposes; for existing clients and future business prospects. The deck is already heavily stacked against U.S. Companies trying to do business overseas. We don't need to compound that by making it even more difficult for our foreign customers to do business with us.
I don't mean to diminish the importance of screening potential visitors to the U.S in light of the terrorist activities throughout the world. However, a thirty second interview is not going to accomplish that either. The current process is broken and very badly needs to be fixed.

Thank you for the opportunity to share our companies' and our employees' concerns with you today. It is heartening to see that the Small Business Committee of the House of Representatives has taken an interest in this serious and so far undiminished problem.

TESTIMONY OF CHIP STORIE
VICE PRESIDENT, AEROSPACE SALES
CINCINNATI MACHINE
ON BEHALF OF
AMT — THE ASSOCIATION FOR MANUFACTURING TECHNOLOGY
BEFORE THE
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES
JUNE 4, 2003

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I. INTRODUCTION

Mr. Chairman, members of the committee, good afternoon and thank you for inviting me to participate in this hearing on how the visa program is affecting the business community. Today I will be speaking on behalf of AMT – The Association For Manufacturing Technology. I serve on the association's Government Relations Committee. AMT's 360 member companies manufacture production machinery such as machine tools, software, and engineered products and systems.

Pursuant to House Rule XI, clause 2(g)(4), I am obligated to report to you that AMT has received $219,000 in fiscal years 1997-2000 and $84,200 in fiscal year 2002 from the Commerce Department's Market Co-operator Development Program to help pay for a service and training center in China.

My company, Cincinnati Machine, a division of Unova, is a manufacturer of machine tools. As you know, Mr. Chairman, machine tools cut and shape metal to make the parts that go into almost everything that is manufactured, ranging from pumps to automobiles to aircraft. Without machine tools, none of these items can be effectively produced. Exports account for more than one-third of industry sales.

As you also know, Mr. Chairman, the machine tool industry in the United States today is in crisis. Consumption of machine tools in the United States has decreased by approximately 60% over the past five years. There is a direct correlation between the amount of manufacturing done in the U.S. and machine tool consumption here in our home market. As a result, a once strong U.S. machine tool industry has seen many of its best, most innovative companies go out of business in the last four years.

As an aside, Mr. Chairman, I'd like to thank you for your strong leadership – along with Congressman Neal of Massachusetts – of the House Machine Tool Caucus, which has provided invaluable support and encouragement for our industry during these difficult times.

II. DIFFICULTIES IN OBTAINING VISAS

While less and less manufacturing takes place in the U.S, there is more and more in places such as China (*see attached graph*). As machine tool companies worldwide must necessarily follow manufacturing work, China has become the leading consumer of machine tools in the world. Simply put, U.S. companies must adapt in order to sell to China if we wish to survive. Many U.S. companies are doing this, but we find that roadblocks to success can often be traced back to our own governmental policies and practices. One of these roadblocks is how visa applications are currently being handled for Chinese business associates.

Specifically, we are finding that visa applications which were taking a matter of days to process prior to 9/11 are ***now taking six months or longer***. Please don't mistake my desire to get the visa process fixed for legitimate business partners with a lack of concern for national security. No one wants a repeat of the express visa process that supplied many of the 9/11 terrorists with their entry passes into the United States. The desire of the business community is that the process is reformed so that legitimate business people are provided timely visas in order to allow for trade with U.S. companies.

The situation as it exists today certainly does not help promote trade. In fact, it is currently driving potential customers to our European and Japanese competitors. Let me provide specific examples of how the visa process is hurting U.S. companies.

- Moore Nanotechnology Systems, a small manufacturer based in Connecticut, recently sold a $500,000 machine to a university in China. When after five months one of the university's professors had not received a visa, and no one could get any information regarding the status of the visa, the customer cancelled his contract. This single sale would have accounted for 10% of Moore's revenue in 2002.

- Cincinnati Machine, my company, sold $5 million worth of equipment to Chengdu Aircraft in China. After a vigorous export license review, we received the export license to be able to ship the machines to Chengdu. In the normal course of satisfying a contract of this nature, a delegation of Chengdu engineers and managers must come to Cincinnati to inspect the equipment prior to it being shipped. Unfortunately, it took six months for the visas to be approved. During this time, I had $5 million of inventory which I was unable to ship and collect the payments on. From the customer's perspective, he fell behind in commitments to his customer by approximately five months while the machines collected dust in Cincinnati.

- I am currently pursuing a new contract with Chengdu Aircraft for additional equipment so that they can produce the Boeing 757 tail section. Even though they prefer Cincinnati-built equipment, they are considering both European and Japanese suppliers' equipment because they do not feel they can count on either quick export license approval or timely visa approvals if they provide Cincinnati Machine a purchase order.

- I currently have a $1.5 million piece of equipment on my floor ready to ship to Xian Aircraft in China. It has been four months since the applicable visas were applied for but, as of today, we have no idea as to the status of the applications. It is difficult to determine who, if anyone, is working on it. As with the Chengdu Aircraft case, both Cincinnati Machine and Xian Aircraft are suffering. In negotiations with Xian Aircraft, we asked them to assign personnel who had been to the United States before so that there was an established track record of them coming to the U.S. and going back home within visa guidelines. This approach has not helped.

- As with Chengdu Aircraft, I am pursuing additional business from Xian Aircraft. This potential contract could exceed $6 million, a substantial sum for a company of my size. The Xian purchasing team is certainly using the visa problem as a part of the decision making process. Thus far I have been unable to ship the aforementioned piece of equipment to them, so they are very uncomfortable in providing me with an even larger contract. My German competitor has assured them that they can travel to Germany whenever they wish.

I could list a dozen more examples just from Cincinnati Machine. But this problem is affecting thousands of companies just like Cincinnati. We and many other U.S. companies are fighting for survival. We need this problem fixed, and it must happen quickly. We must find a way to process legitimate visa applications for Chinese customers in a timely manner.

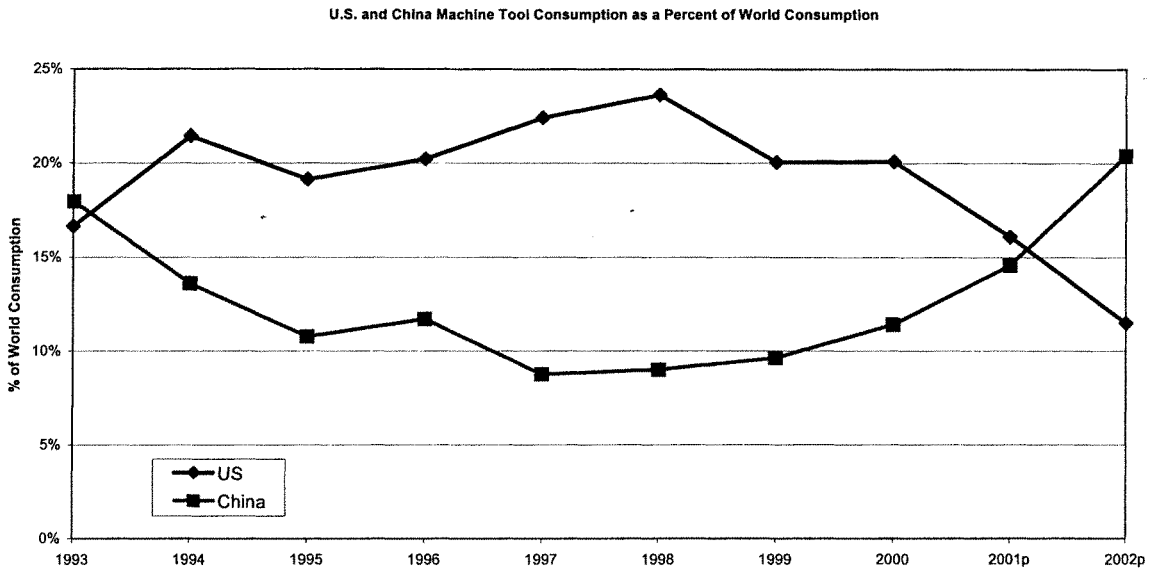
In March of this year, we were encouraged by Secretary Powell's testimony before the House Appropriations Subcommittee on Foreign Operations. In this appearance, the Secretary acknowledged the ongoing problems with processing legitimate visa applications and pledged to members of the subcommittee "we will fix this." Unfortunately, we in the business community still await that relief. In fact, the *Wall Street Journal* reported on May 16th that the State Department plans to conduct face-to-face interviews with almost everyone seeking a visa to enter the United States. While this sounds like a prudent step for certain geographical areas of concern, it will take an already lengthy process for many legitimate applicants from China and make it completely unworkable.

III. CONCLUSION

In summary, I want to reiterate that this issue is having very serious consequences on the United States machine tool industry as well as other industries that must bring overseas customers to the U.S. to effectively do business. Jobs are at stake and companies are at stake. Time is of the essence.

I hope and trust that these comments will be helpful in your efforts to shape policy so that we balance legitimate security needs with those of a strong economy. Mr. Chairman, our industry applauds your attention to this matter and hopes to continue to work with you in your efforts to build a stronger America.

I will be pleased to respond to your questions. Thank you.



Source: National Machine Tool Trade Associations or Government Sources; Metalworking Insiders' Report

Statement of Gary Shapiro
President and CEO
Consumer Electronics Association

On behalf of

International Association for Exhibition Management

Before the Small Business Committee
U.S. House of Representatives

Hearing on the Visa Approval Backlog
and Its Impact on Small Business

June 4, 2003

Statement of Gary Shapiro
On behalf of IAEM

Thank you Mr. Chairman and distinguished Members of the Committee. I appreciate this opportunity to discuss how the interruption of inbound international travel is affecting this nation's exhibition industry and the U.S. companies who rely upon exhibitions to reach overseas buyers.

I am Gary Shapiro, president of the Consumer Electronics Association, the U.S. trade association owning and producing the nation's largest annual exhibition, the International CES. I also appear before you on behalf of the International Association for Exhibition Management (IAEM). IAEM is the professional association for some 3,000 U.S. members involved in the management and support of the exhibition industry.

On behalf of both CEA and IAEM, I urge you to carefully consider the impact that onerous visa requirements impose upon our nation's ability to attract foreign buyers to our shores to do business with tens of thousands of entrepreneurial companies that participate in U.S. trade shows.

A trade show or exhibition is an event where buyers and sellers (and media and investors) meet to see new products, exchange ideas and build relationships. Trade shows often highlight the largest companies, but it is the smallest and newest companies that gain the most benefit per dollar from these events. Like many shows, our philosophy is to run the CES so that any entrepreneur with an idea created in a garage can reach buyers and media from all over the world for a small investment of a few thousand dollars.

Indeed, the current Chairman of CEA, Kathy Gornik of Thiel Audio, began her Lexington, Kentucky manufacturing company with an idea for a loudspeaker she exposed first at CES in 1977. Kathy and her partners had so little money; they packed their food in Kentucky, and drove to our show, where they met buyers from around the world who embraced their new concepts for loudspeakers. Today, her company Thiel Audio derives a significant amount of revenue from exports to international buyers who learned of Thiel through the CES.

This is not a unique story. It is repeated throughout the consumer electronics industry, and throughout many industries. Buyers, media, health care professionals, scientists, and the financial community from around the world flock to the United States to see the newest and best, the latest and the greatest.

According to the Center for Exhibition Industry Research, over 11,000 exhibitions are produced annually in the United States. CEIR estimates that these events directly produce nine billion dollars in revenue to their organizers and some $60 billion indirectly to the cities hosting them.

However, the U.S. is not the world leader in exhibitions. Germany, with its central location, large exhibition halls, government commitment to exhibitions and freedom of travel and the phenomenal European train system, hosts many of the world's largest events.

But we have an opportunity. The U.S. can take over world leadership in the exhibition industry. Most major U.S. cities have new, spectacular convention centers, they offer tremendous hotel capacity, they maintain the highly skilled labor necessary to build exhibits and run exhibitions. Moreover, the U.S. is considered a desirable destination. And the recent devaluation of the dollar enhances our ability to attract international visitors.

But we give a mixed message to many international visitors. Our challenge is that onerous visa polices discourage international visitors from those countries where a visa is required. For example, our Chinese attendees increasingly tell us that the visa process appears arbitrary and lengthy. First, they must appear in person and apply. They must provide financial statements and bank documentation. They must arrange for an interview, and they must await the result. This process can take up to nine months. As most exhibition attendees make a decision to attend an event on average three months before the event, we know we lose many international attendees who simply cannot complete the process in time, even if they are ultimately granted a visa.

We agree that national security must remain our highest priority. Without effective and comprehensive protective measures in place, neither our industry nor our nation can enjoy security from those who wish us harm. We are Americans and we do not want evildoers to gain access to our country.

At the same time, we believe that our national security also depends upon U.S. economic growth and our continued ability to do business with those from outside the United States.

Since the events of September 11, it has become much more difficult—and in some cases, impossible—for legitimate parties abroad to obtain visas to attend exhibitions in the U.S. Indeed, the new rules are so restrictive that some foreign nationals are even refused visas in connection with trade missions that are sponsored and funded by the US Department of Commerce.

In an already difficult economic environment, U.S. exhibition organizers are being routinely and materially harmed by the loss of participation in their events by both exhibitors and visitors.

In a typical recent case, ten Asian exhibitors at the May World Wine Markets Exhibition in San Francisco were forced to cancel their participation at the last minute because they could not obtain visas. These exhibitors had started the

visa process at least five months before their anticipated departure date. An event organizer from Beijing wanted to bring a reverse investment seminar to the United States. He has abandoned the idea, at least for now, because of his growing awareness of the visa difficulties that now create a significant obstacle to trade. At the recent E3 event in Los Angeles, six French journalists were handcuffed, detained overnight and ultimately could not attend the event because they each had a business visa rather than a journalist visa. In each of these cases, the exhibition producer and the event's participants were hurt, and in each case we are sending the message to the world that the welcome mat from the U.S has been pulled. And I am sorry to say these cases may just be the tip of the iceberg.

Sadly, potential attendees and exhibitors from emerging economies--who provide U.S. business owners with the greatest opportunities for business growth and development--are those who are the most unlikely to be granted visas today, even if they have been repeat business visitors to the United States who have not violated U.S. Immigration policies or law.

The cancellations resulting from our visa policies leave U.S. exhibition organizers unable to resell space or deliver high quality international buying audiences to those exhibitors who are able to participate.

Perhaps the most worrisome aspect of the current situation is a growing perception that the US is becoming a uniquely difficult and inhospitable place to conduct international business. This perception, if left to grow unchecked, could harm the American economy for years and even force parts of the exhibition industry to leave the US entirely.

It is for these reasons that we advocate the creation of a new "Fast Track" visa approval system that safely discriminates between those who have demonstrated their trustworthiness and those who have not.

Persons who have been provided with business travel visas in the past, have participated in business events, and have not violated U.S. immigration laws or policies should be issued expedited visas if their names do not appear on any of the nation's security watch lists. This "Fast Track" approval system would at least allow our nation to conduct its international business through our trade events with those who have demonstrated that they possess legitimate business interests for travel to the United States.

Those who do not qualify for "Fast Track" issuance can legitimately be subjected to a thorough investigation, before a visa is issued to them for travel to the United States. For those visa applicants subject to a more thorough review, we urge the Committee and members of Congress to allocate the necessary funding to ensure timely processing. We also urge the Committee to explore the option of allowing exhibition organizers to ensure through bonding the return of those

attendees where the risk is not of national security but of undesired emigration to the United States.

In closing, Mr. Chairman and members of the Committee, we urge you to consider the creation of more deft and defined policies that will result in a much more efficient system of visa issuance that will not have the unintended result of blocking America's access to international buyers and also hurting one of our nation's most vital industries. We would be very pleased to work with you and your staff to perfect such a system.

Thank you Mr. Chairman. I would be happy to answer any questions you or the Members of the Committee may have.

No Visa, No Show

Stricter State Dept. Rules Cause Concern for U.S. Show Organizers

By Gary Tufel

Obtaining visas has always been cumbersome for international exhibitors and attendees of U.S. shows. But in the wake of Sept. 11 and the Iraq war, it's become even harder and, for some, impossible. Now managers of shows with major international participation have one more obstacle that, in some cases, may take years to overcome.

The U.S. State Department recently announced it may start interviewing virtually every first-time visa applicant. Kelly Shannon, spokeswoman for the U.S. State Department's Bureau of Consular Affairs, said laws have always been in place that require applicants to appear before a consular officer, but the officer could waive the interview. There will be fewer waivers in the future, but final guidelines have yet to be set.

Further, the department by the end of this year will implement plans to photograph and fingerprint all visitors at U.S. points of entry. Immigration officers at U.S. ports of entry already have the authority to refuse entry to arriving visa holders, although up to now they have rarely done so.

Show managers are particularly frustrated by these developments, because federal officials have left them few options to resolve their dilemma other than warning those who plan to attend their shows that they need to apply early.

"We want to open doors and to facilitate commerce as much as possible, and we want to address show managers' concerns," Shannon said. "But our No. 1 priority is security."

Given all this, do U.S. show managers' strategies for coaxing more overseas exhibitors and attendees to their shows still make sense?

"In most cases, probably not," said Michelle Bruno, principal of The Bruno Group consulting firm and an authority on visa issues. "This is a very serious situation for international shows. Everyone wants to be global, but the reality is that the whole international market is shrinking. That calls into question how effective it really is to go global."

Michelle Bruno

"Everyone wants to be global, but the reality is that the ...international market is shrinking."

Some shows are already highly dependent on international attendees and exhibitors. The triennial *CONEXPO-CON/AGG*, for instance, attracts 15,000 international participants. For them, there may not be much to do but make the best of a less-than-ideal situation. "If an association has a mandate to expand internationally, it has to do so," Bruno said.

Three Chinese exhibitors who wanted to be in the April *International Sign Expo* in Las Vegas were unable to get visas.

Most, but not all, visitors to the U.S. require visas. The government's visa waiver program exempts visitors from 27, mostly Western European, countries. However, said Shannon, contrary to popular misconception fueled by recent media reports, even those from the waiver nations need visas when coming to the U.S. for business or to attend school.

Shannon said the government informs visa applicants of the need for additional screening when they submit their applications and advises them to expect delays – the length of which are difficult to predict. "We recommend that individuals build in ample time before their planned travel date when seeking to obtain a visa," she said.

Brian McNamara

(Continued on p. 40)

What It Takes to Get a U.S. Visa

Applications for U.S. visas are accepted at U.S. embassies and consulates. The following are required:

- A completed and signed Nonimmigrant Visa Application, Form DS-156 (February 2003 version).
- In some cases, a Supplemental Nonimmigrant Visa Application, Form DS-157, providing additional information about travel plans. This is required of all male applicants between 16 and 45 years of age and of anyone age 16 or over from North Korea, Cuba, Syria, Sudan, Iran, Iraq or Libya. Also, a consular officer has the discretion to require any nonimmigrant visa applicant to complete this form.
- A passport valid for travel to the United States with a validity date at least six months beyond the applicant's intended period of stay.
- One passport-type photograph.
- An application processing fee of $100.
- Additionally, if the visa is issued, there will be a visa issuance reciprocity fee, if applicable, depending on the applicant's nationality. If there is a fee for issuance of the visa, it is equal as nearly as possible to the fee charged to U.S. citizens by the applicant's country.
- Evidence of compelling social and economic ties abroad.
- Evidence of funds sufficient to cover the visitor's stay in the U.S.
- Finally, a letter of invitation from the show manager may speed up the application process.

No Visa, No Show,
continued from p. 39

Not an easy request to accommodate in the tradeshow world, where budgetary concerns are causing companies to put off until the last minute decisions to travel to shows.

Brian McNamara, senior vice president of the International Sign Assn., said he had three Chinese exhibitors who wanted to be in his April *International Sign Expo* in Las Vegas but couldn't get visas. Two of them had applied nine months in advance. Other Asian participants canceled at the last minute due to considerations about sudden acute respiratory syndrome, or SARS.

Shannon said the State Department recognizes these delays are having an impact on visa applicants, but it has streamlined the process consistent with its security and legal responsibilities.

Two of *CONEXPO-CON/AGG*'s most important target markets are South America and China, said Dennis Slater, managing director of *CONEXPO-CON/AGG* Show Management Services. Chinese applicants for U.S. visas were already targeted for closer scrutiny before Sept. 11. Things have only gotten worse since then and many visa applications have been denied. The need to apply early for a visa is also acute in South America. Exhibitors and attendees from that market are typically late responders, said Slater, and early application for a visa is vital now.

Slater said he is baffled by the extreme measures the State Department is considering. "I understand that it's being done for security reasons, but it hurts us. The visa issue is not going to go away," he predicted.

The next *CONEXPO-CON/AGG* will be held in March 2005, and the promotional campaign for it is already beginning. It will include more visa information than ever, and will suggest applicants begin the process at least nine months out under current conditions.

"If they wait until three months out, they probably won't receive a visa in time," said Petra Kaiser, the show's manager of international promotion. The show is part of the U.S. Department of Commerce's International Buyers Program, which promotes international participation in U.S. shows. "(The commerce department) helped us with China for the last show, but there's only so much they can do, since the State Department has the final authority," she added.

New regulations are requiring show organizers to keep much more accurate and detailed records of their international participants in order to confidently issue letters of invitation. For example, a letter of invitation is more necessary than ever for Chinese applicants, who in the past could routinely get visas, Kaiser said.

Jim Boney, manager of the International Buyers Program, has provided model letters of invitation for show managers.

For prior participants of shows, Boney also suggested that managers welcome the visa applicant back to the show in the letter of invitation, and include mention of the applicant's past history of participation.

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STATEMENT OF JANICE JACOBS

DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES

UNITED STATES DEPARTMENT OF STATE

BEFORE THE COMMITTEE ON SMALL BUSINESS

UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

THE VISA APPROVAL BACKLOG AND ITS IMPACT ON AMERICAN SMALL BUSINESS

JUNE 4, 2003

Thank you very much Mr. Chairman and Members of the Committee. I welcome the opportunity to testify today regarding your concern about visa approval backlogs and their impact on our economy, particularly small business.

While it is easily discernable that in certain respects and for some applicants obtaining a US visa has become a lengthier process, it is also true that in virtually all of these cases delays have been the result of our efforts and those of other Federal agencies to increase the security of our borders and of our homeland. Visa work has always been about striking the proper balance between protecting US borders and facilitating legitimate travel. Our operating environment changed forever on September 11, 2001, and there is no turning back the clock. Security is and will continue to be the top priority in the processing of visas for international visitors. The State Department is committed to strengthening the visa process as a tool for protecting U.S. national security interests. We've made a number of changes since 9/11 and will continue to do so in response to the security needs of our nation and recommendations by law enforcement and national security agencies, and of course the Department of Homeland Security. At the same time, the State Department is keenly aware of the need to balance national security interests with other strategic interests such as promoting U.S. business interests, tourism, exchanges and the overall health of our economy.

Enhancing U.S. security means pushing borders out to our visa processing posts abroad. Here, I am happy to report that we've made enormous progress in identifying individuals who may present a threat to our nation through enhanced inter-agency data sharing. Since 9/11, we've added over 7.3 million new records, primarily FBI NCIC (criminal history) data, to our Consular Lookout Automated Support System (CLASS). The "TIPOFF" database on suspected or actual terrorists has incorporated into CLASS over 73,000 entries, an increase from 48,000 records on 9/11/2001.

We try to work "smart". We have been big users of automated tools. Thanks to the work of Congress our Machine Readable Visa fees have allowed us to invest in technology. We continue to refine this technology and to increase connectivity between the Department, overseas posts, and other agencies. But technology can't do it all. We're working with other interested agencies on a rational, more targeted clearance process that is both transparent and predictable.

We're in pretty good shape to find the "bad guys" who have already been identified by other agencies and are included in our visa lookout system. Dealing with what we don't know is of course more of a challenge. For that we have the security advisory opinion process to permit other agencies to take a look at a case before we issue.

The Department of State has long used specialized clearance procedures for the review of visa applications of individuals whose proposed activities in the U.S. may have security-related or other concerns. These programs have been carried out by the State Department at the request of and in coordination with other Federal agencies. Most of the delays that you have heard about are the result of the termination of "clocked" clearances, and the large increase in security related checks, including the Visas Condor program. The Condor program requires consular officers to obtain specialized security clearances from participating security agencies for applicants of many nationalities. When the Condor program was first instituted, it was put on a "clock," a procedure traditionally used in many of the clearances. If the Department had not received derogatory information from a cooperating agency or agencies within thirty days of the date of the cable, then we could assume that other agencies had no objection to the issuance of a visa.

The Visas Condor program resulted in a significant increase in the number of cables sent to Federal agencies for review. All participating agencies found their resources strained as they took on substantially more work. In the summer of 2002, the "clock" system was ended because it was no longer reliable. Agencies were having trouble meeting the 30-day period. Instead, we now wait for an affirmative response from agencies before approving a visa. In some cases, the extra waiting period has been lengthy, but the vast majority of cases are processed in less than three weeks.

The Visas Mantis program is another specialized security screening program. It relates to technology transfer concerns, some of which can arise out of visa applications of businesspersons. Federal agencies participating in the Visas Mantis program review select applications and provide the information needed by State to determine an applicant's visa eligibility under section 212(a)(3)(A)(i)(II) of the Immigration and Nationality Act. That section provides in relevant part that:

Any alien who a consular officer or the [Secretary of Homeland Security] knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in -
(i) any activity . . . (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information . . . . is ineligible to receive a visa.

Prior to 1998, the Department reviewed cases for controlled technology, sensitive information concerns under several nationality-based programs, e.g., CHINEX for PRC nationals, SPLEX for nationals of the Soviet Union and Eastern Europe. In 1998, the Department consolidated these nationality-based, Cold War era screening procedures into the Visas Mantis program. The Visas Mantis program is an effective tool for U.S. national security and law enforcement offices and agencies to support consular officers in screening individuals and entities that seek to gain controlled goods, technology and sensitive information in violation of US export laws.

Most other special clearance procedures are triggered by clear and objective circumstances, such as applicant nationality or CLASS name check results. However, in cases

of illegal technology transfer, falling within the purview of INA Section 212(a)(3)(A)(i)(II), the Department must rely to a great extent on the observations and judgment of consular officers in the field to identify applicants of any nationality who may be subject to this ineligibility. To assist officers in this difficult and vitally important task the Department, in conjunction with Federal intelligence and national security agencies, regularly updates a list of policy objectives and critical technologies, which trigger special clearance requests.

In deciding to submit an application for review for reasons related to possible illegal technology transfer, the consular officer must first determine whether the applicant's proposed activity in the United States would involve exposure to any of fifteen sensitive technologies included in the Technology Alert List (TAL). In deciding whether one of the listed TAL activities may be in violation of US export control laws, the consular officer must review that activity in light of the following broad policy objectives related to technology transfer:

o Stem proliferation of weapons of mass destruction and missile delivery systems.
o Restrain the development of destabilizing conventional military capabilities in certain regions of the world.
o Prevent the transfer of arms and sensitive dual use items to terrorist states.
o Maintain U.S. advantages in certain militarily critical technologies.

Second, for applicants from any of the countries designated by the Department to be state sponsors of terrorism, (Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria) consular officers are instructed to assume that any visit providing exposure to any of the technologies on the Technology Alert List will conflict with the policy objectives, and therefore a Visas Mantis special clearance is mandatory under these circumstances.

Third, consular officers may send to Washington any case that appears to warrant further interagency review.

The Visas Mantis program, therefore, provides the Department and other interested agencies with an effective mechanism to screen out those individuals who seek to evade or violate our laws governing the export of goods,

technology or sensitive information. This screening in turn addresses significant issues of national security and works to enhance our national security. The Visas Mantis program allows all participating agencies to provide information and raise any particular concerns they may have regarding the applicant and/or the proposed activities in the U.S.

The Department strives to balance this effort to protect our national security with our responsibility to facilitate legitimate business travel and scientific exchange. We recognize that the nation thrives on international business relations. We, therefore, have worked diligently and creatively to clear legitimate travelers subject to Mantis clearances as quickly as possible and, at the same time, to deter or prevent potentially inadmissible travelers from gaining entry to the United States.

The Visas Mantis caseload grew significantly from calendar year 2001 through 2002. At any given moment, we have from 1,500 to 2,000 Mantis cases pending in this interagency review process. The increase is attributable to increasingly vigorous interagency review of Mantis cases, and has led to an increasing number of refusals under section 212(a)(3)(A)(i)(II) of the Immigration and Nationality Act. Almost 4000 Mantis cases were sent during the first four months of this year.

In summary, the addition of the Visas Condor program and the requirement for positive responses from participating security agencies to security check requests have increased the time necessary to complete significant numbers of visa cases, including Mantis cases. Since last summer, each agency has taken measures to improve or increase resources to address the greater workload. The Bureau of Consular Affairs also worked to better improve its performance as the clearinghouse for compiling other agency responses and provide a coordinated reply to the consular officer overseas. In concert with other agencies we implemented a number of procedures to improve our use of automation and add personnel. To date these measures include:

- The addition of two permanent visa specialists and 8 contract employees,
- the "detail" of two clerical employees,
- the cross-training of other clerical staff to provide overtime support,
- the improvement of case tracking methodology,

and
o the improvement of automation related to data sharing between agencies.

In general, the Bureau of Consular Affairs has noted the measures taken by all participating agencies have improved response time so that clearances on most cases raising no problems are available to consular officers within thirty (30) days or less.

The Department is also making major changes in our use of automation in light of the creation of an interagency network known as OSIS, i.e. Open Source Information System. We will spend close to one million dollars over a one-year period to eliminate telegrams from our overseas posts as the vehicle for disseminating cases to our federal partners in the security advisory opinion process. We will use real-time datashare and eliminate virtually all manual manipulation of routine data. We expect to field test the new system in the fall and deploy it worldwide in January 2004. Our objective is to push cases to intelligence and law enforcement analysts as quickly as possible and eliminate any time period that a case awaits processing by administrative staff. This development in itself could shorten processing times by approximately five business days and better track the status of specific cases.

The Department has engaged in significant outreach to our federal partners to work through problems and to improve predictability for the business and other communities about visa processing. This outreach includes regular and frequent contact with the Homeland Security Council since its inception in September 2001, and now with the Department of Homeland Security. We have also met with various private sector groups, including with representatives from U.S. business firms, the travel and tourism industry and the scientific and academic communities. Our goal is to rationalize the clearance process in light of today's national security threats and re-establish rational, transparent clearance procedures that focus on those applicants who present the highest risk. The Department also participates regularly and frequently in interagency meetings convened by the White House Office of Science and Technology Policy (OSTP).

The proposed Interagency Panel on Advanced Science and Security (IPASS) proposed by the Administration grew out of such OSTP-convened meetings. The proposed IPASS process is meant to increase the involvement of US Government scientific experts to work with intelligence, counterintelligence, and law enforcement representatives to advise the Department of science-related visa applications, beginning with students and visiting scholars. The White House (Office of Science and Technology Policy and the Homeland Security Council), the Department of Homeland Security, and the Bureau of Consular Affairs continue to convene meetings to work out details of the IPASS process. Members of the US Government scientific community participate actively in these meetings, to the extent allowed by their level, if any, of security clearance.

I would like to add a bit of perspective to the subject of visa clearances. The percentage of total visa applications (both nonimmigrant and immigrant visas) subject to a Washington agency name check is less than two percent. The percentage of total issuances subject to a Washington agency name check is less than 2.5%. This means that around 97% of all visa applicants are processed quickly, usually within 24 to 48 hours of application. In FY 2002, the Department issued a total of 6.2 million nonimmigrant and immigrant visas out of a total of 9 million that were processed. Of the 6.2 million issued, roughly 144,000 applicants underwent some type of security clearance. This was 144,000 out of a total of 9 million visas processed, or roughly 12,000 Washington agency checks per month. As you can see, the vast majority of applicants are processed quickly.

I would like to take this opportunity to also explain our visa interview policy. A number of members of Congress have noticed that we recently revised guidance to consular officers as to when they may waive the interview of a nonimmigrant visa applicant. In its October 2002 study of the visa function, the GAO noted that the Department of State had given overseas consular sections substantial discretion in determining the level of scrutiny applied to visa applications. We were generally urged to establish clear policies to better address national security concerns. This view was widely endorsed by members of Congress.

We have therefore established clear guidelines concerning the circumstances under which a consular officer may waive a visa interview. The guidelines provide that the consular officer may routinely waive the visa interview for:

--Children under the age of 16;

--Individuals over the age of 60;

--diplomats and government officials;

--Individuals who are seeking a timely revalidation of their visa; and

--limited emergency circumstances.

There is public concern that we do not have sufficient resources overseas to carry out this standard. I would point out that most of the short term visitors to the US are nationals of countries that participate in the Visa Waiver Program. They are unaffected by our new policy. I would also point out that in most countries of the world consular officers already have been interviewing approximately 90% of the visa applicants. We have identified some posts, primarily those in Western Europe, Japan, and Korea that will require additional resources and are making preparations to augment their resources.

The policy also permits me, as the Deputy Assistant Secretary for Visa Services, to identify a class of individuals for whom the visa interview may be waived on an exceptional basis. I assure you that no exception will be made without a reasoned threat analysis.

Requiring additional interviews is also consistent with the Department's legislated mandate under section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 that requires the State Department to include a biometric identifier with visas that we issue by October 26, 2004. We will have to see applicants in order to collect a biometric. So, the requirement to interview more people will help posts prepare for 2004.

The Department is in direct contact with the business, scientific, academic and legal communities regarding visa policies and procedures. In various briefings, we have explained the basis for the new security-related procedures

and the challenges we face in today's world of protecting U.S. security interests while facilitating the travel of those coming to the U.S. for legitimate purposes. The Department is committed to working towards a continued free flow of people, information and ideas that is the foundation of this great country. Secure borders, open doors, that is what we are working towards every day.

Thank you Mr. Chairman. This concludes my statement. I would be happy to answer any questions.

ROBERT J. GARRITY, JR.

Mr. Garrity was born and raised in the Baltimore, Maryland metropolitan area, where he received his early education. He graduated from the University of Maryland Baltimore County with a bachelor's degree in psychology; the University of Baltimore School of Law; and earned a Master's of Public Administration degree from the University of Southern California. He entered on duty with the FBI in 1976 and, following a period of training, was assigned to the Savannah Field Office. In 1977, he was transferred to the Statesboro, Georgia Resident Agency. In 1978, he was transferred to the New York Office, where he was assigned to a foreign counterintelligence squad investigating the activities of the Soviet Military Intelligence (GRU). He was promoted, in 1980, to Supervisory Special Agent and transferred to the former Intelligence Division and assigned as an attorney to the Special Staff, the precursor to the National Security Law Unit. In 1983, he was reassigned to the Soviet Section, as a supervisor providing guidance, oversight and support to offices conducting counterintelligence activities against the former Soviet Committee for State Security (KGB).

In 1984, he was transferred back to the New York Office as the supervisor of a squad engaged in counterintelligence activities directed against the KGB. In 1989, he was promoted and transferred back to FBI Headquarters as the Chief of the GRU and Arms Control Treaties Unit in the Intelligence Division. In 1992, Mr. Garrity returned to criminal investigative assignments and was designated the Special Assistant to the Assistant Director, Criminal Investigative Division. In 1995, he was promoted to the position of Assistant Special Agent in Charge of the Dallas Field Office, where he was responsible for the day-to-day operations of the division.

In 2001, he was selected into the FBI's Senior Executive Service at the rank of Inspector, and assigned to the Office of Inspections. In this capacity, he was responsible for leading inspection teams to ensure field office and headquarters division compliance with existing policies and regulations, and to facilitate the improvement of performance by providing independent, evaluative audits of all investigative and administrative operations. He served as the Inspector-in-Charge of the Information Security (InfoSec) Working Group, analyzing the FBI's InfoSec policies, practices and procedures in light of the damage committed by a former Special Agent who was convicted of committing espionage.

In July 2001, Inspector Garrity was appointed the FBI's Interim Records Officer, reporting directly to the Acting Director, and charged with the responsibility of assessing the FBI's records management systems in light of the belated production of documents in the Oklahoma City bombing investigation. After assessing the records management system, Inspector Garrity recommended re-commissioning the Records Management Division (RMD), to bring all records management functions under a central manager during the records lifecycle. The FBI hired a professional records officer and then Inspector Garrity was detailed to serve as his deputy during the formulation stages of this new organizational entity. In January 2002, Inspector Garrity was detailed to the RMD as the Acting Deputy Assistant Director. On May 22, 2002, Director Mueller selected Inspector Garrity as the Deputy Assistant Director of the Records Management Division. In January 2003, DAD Garrity was named the Acting Assistant Director.

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To Whom it may concern;

During late 2001 our China Agent Bright Dynasty tried to get Visa's for representatives of The China Coal Ministry responsible for the Jaio Zuo Aes Wanfang project. However the Visa's were denied. However the delegation was welcomed with open arms to Germany and the German companies we were competing with for the Laboratory portion Of the contract got the vast majority of the business.

In April of 2002 we tried to get a Visa for the Laboratory Director of The An Tai Baio Surface Mine Mrs. Qiao Yu Hua to visit Preiser Scientific, Inc. to attend a personal showing of our equipment and capabilities. Mrs Qiao Yu Hua is a very respected member Of the Chinese Mining Community concerning Laboratory analysis. Her Visa was denied Without even a personal interview.

In June of 2002 we again tried to get a Visa for Mrs. Qiao after contacting the American Embassy for advice. And the U.S. Commercial Service in Beijing. After months of writing letters and E-Mails Mrs. Qiao was rejected again on June 21 without a personal Interview. No explanation was given as to her rejection.

These rejections caused much embarrassment to Mrs. Qiao and to Preiser Scientific,Inc. Our company relationship with ATB has been damaged to the extent that we are still trying to repair.

I personally made a trip to China on business in the Fall of 2002 during this time I contacted the U.S. Commercial Service in Beijing to try and find the problems in getting These Visa's. I was told by the Commercial Section that the majority of their time Was spent in trying unsuccessfully to gain Visa's for American Companies. So I tried myself to talk to the Visa Section at the American Embassy in Beijing and after numerous phone calls and left messages which no one returned I went to the Embassy And was denied permission to the Visa Section without an appointment. As a TAX Paying business citizen I find this very frustrating.

We are now involved in trying to get Visa's for 8 persons from the China National Bureau, Shandong Bureau, Rizhao Bureau, Rizhao Port Authority and The Tianjin Institute for the Rizhao Project. I met with these people on my last trip to China and they are willing to pay their own way to see our equipment first hand for their project. I can only pray they do not meet the same fate and we have at least a level playing field with foreign competition.

Very Truly Yours,

John Gatens
Vice President

TRAVEL BUSINESS
ROUNDTABLE

October 23, 2002

The Honorable Colin L. Powell
Secretary
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

Dear Secretary Powell:

On behalf of the Travel Business Roundtable (TBR), a 75-member CEO-based organization that represents the broad diversity of the U.S. travel and tourism industry, I am writing to express our concern about a visa policy change currently under review within the State Department that could have a serious impact on the ability of international businesspersons and tourists to enter the United States.

It is our understanding that, starting November 1, the Department is planning to require all applicants for "J" and "F" visas to appear for in-person interviews with a U.S. consular officer. We further understand that in the coming months, this interview policy is to be expanded to all non-immigrant visa applicants at all U.S. consulates. If in fact you are planning on expanding this policy in such a manner, we are particularly concerned that if this proposal is implemented without substantial staff increases to consulates, it will result in severe backlogs that will hinder the travel of legitimate tourists and businesspersons to the U.S. If expansion to all non-immigrant visa applications is not your intent, we would greatly appreciate a clarification.

Please understand that TBR is extremely supportive of your Department's mission and the tireless efforts of the U.S. government as a whole to ensure that terrorists and other individuals who wish to do harm to the U.S. and its citizens are prevented from entering our borders. Indeed, for all of us, the security of our nation is the highest priority. However, it is our hope that the Department will implement this policy in a manner that will minimize disruption to the travel and tourism industry in part and the U.S. economy as a whole. In 2000, international visitors spent an estimated $106.5 billion in the U.S., supporting more than 18 million jobs and $92 billion in federal, state and local tax revenues. As President Bush and Office of Homeland Security Director Tom Ridge have stated, it is imperative that the U.S. seek solutions that will balance our security needs with our need to ensure that the flow of U.S. commerce continues.

With that in mind, TBR respectfully requests that you will consider ways of implementing this policy in a manner that will have minimal impact on our economy. Some suggestions for your consideration would be to phase in the interview requirement to allow time to increase consular staff, or to apply the interview requirement to a certain percentage of applicants, selected at random.

TBR stands ready to work with you and other federal officials to ensure that those who wish to do harm to our nation are prevented from traveling to the U.S., while those who seek to visit our country for legitimate reasons are treated respectfully and are admitted in an efficient manner. We appreciate your consideration and hope that you will call on us if you have any questions or would like any further information on this matter.

Sincerely,

Jonathan M. Tisch
Chairman

TRAVEL BUSINESS ROUNDTABLE

MEMBERSHIP

Jonathan M. Tisch
Chairman, *Travel Business Roundtable*
Chairman & CEO, *Loews Hotels*

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American Express Company
American Gaming Association
American Hotel & Lodging Association
American Resort Development Association
American Society of Association Executives
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United States Chamber of Commerce
United States Conference of Mayors
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Walt Disney Parks and Resorts
Washington D.C. Convention and Tourism Corporation
Waterford Group, LLC
WH Smith USA
World Travel and Tourism Council
Wyndham International
Zagat Survey, LLC

TRAVEL BUSINESS
ROUNDTABLE

June 4, 2003

The Honorable Donald Manzullo
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the Travel Business Roundtable (TBR), I would like to thank you for holding a hearing on the critical issue of the United States' policy on the issuance of business visas. TBR represents the broad diversity of the U.S. travel and tourism industry, with more than 80 member corporations and associations. Many of our member organizations represent or support small businesses that have been negatively affected by the slowdown in the processing of visas, particularly in the wake of September 11, 2001. Though TBR remains supportive of U.S. efforts to ensure that our borders are secure from those who wish to do us harm, it is imperative that this task be carried out in a manner that does not discourage legitimate visitors from coming to our country.

While your hearing will naturally focus on the plight of small businesses and the processing of business-related visas, it is worth noting that the types of policies that the State Department has undertaken in the past year-and-a-half have had broader effects on travel and tourism businesses of all sizes. Foreign tourists, businesspeople and workers are crucial to our industry's success – and in turn critical to our nation's economic health. Travel and tourism is America's third largest retail industry. It created $98.8 billion in federal, state and local tax revenue in 2001, and despite declines in international visitorship in recent years (2001 international arrivals were down 12 percent from 2000, and estimates show a 7 percent decline in 2002 from 2001 levels), it has emerged as America's second largest service export, having generated a trade surplus for 14 consecutive years. TBR remains concerned that the State Department's recent determination that most visitors coming from the Middle East, Asia and Latin America will be subject to in-person interviews at U.S. embassies – implemented without additional staff or resources to ensure that the interviews and attendant visa processing procedures will be conducted in an expeditious manner – will discourage and possibly dissuade foreign tourists, businesspersons and much-needed seasonal industry workers from coming to the U.S. at a time that we need them most.

TBR has been working – and hopes to continue to work in a constructive manner – with Congress, the State Department and the Department of Homeland Security to ensure that the nation's security interests are balanced with the necessary assurances that legitimate visitors feel welcome to travel, conduct business and work in our country. We further support the provision of necessary funds to facilitate this process. Again, TBR thanks you for examining this issue in your Committee and for the opportunity to provide our input. Attached for your further information, please find a letter we sent to Secretary Powell regarding our concerns about visa processing delays.

Sincerely,

Jonathan M. Tisch, Chairman

Testimony of
The Travel Industry Association of America

For The

Committee on Small Business
U.S. House of Representatives

On

Visa Approval Backlog And Its Impact On
American Small Business

June 4, 2003

The Travel Industry Association of America (TIA) is the national, non-profit organization representing all components of the $525 billion U.S. travel and tourism industry. TIA's mission is to represent the whole of the travel industry to promote and facilitate increased travel to and within the United States. Its 2,100 member organizations represent every segment of the industry. And while TIA has many large companies as members, more than 98% of industry companies have less than 500 employees.

TIA is very concerned with backlogs and delays in processing of non-immigrant visa applications. Visa processing for non-immigrants should take at most one or two weeks. Wait times beyond that have the potential for forcing business travelers to choose other markets and suppliers. Leisure travelers faced with long waits have many options for alternative destinations in which to spend their time and money, many of which do not require visas for entry.

Overview of International Travel to the U.S.

International business and leisure travel to the U.S. is a vital component of our national economy. In 2002, over 41 million international visitors generated $88 billion in expenditures, $12 billion in federal, state and local tax revenue, and accounted for over one million jobs nationwide. International travel and tourism to the U.S. is considered a service export, and in 2002, the U.S. had a positive balance of trade of $8 billion.

The continuing decline in international visitation over the past two years has drastically reduced the flow of tax revenue to all levels of government and reduced our international balance of trade. Over the past two years, the loss of international travel to the U.S. has cost our economy $15.3 billion in expenditures. Below is a review of key international market performance since 2000, based on 2002 and 2001 arrivals figures:

2000 Ranking	Arrivals in U.S.	change in 2002 from 2001	change in 2002 from 2000
	Total arrivals	-7.0%	-19.5%
1	Canada	-4.0%	-11.1%
	Total Overseas	-12.4%	-26.4%
3	U.K.	-6.8%	-18.8%
4	Japan	-11.2%	-28.3%
6	Brazil	-26.5%	-45.1%
Note: Japan and the U.K. are in the Visa Waiver Program, which only requires a valid passport for entry. Travel from Brazil requires a valid passport and U.S.-issued visa. Different rules apply to Canada.			

The decline in travel is due to a variety of reasons, including fear of travel because of terrorism, a downturn in the global economy and confusion over new U.S. visa and border security procedures.

Delays in Non-Immigrant Visa Processing

A noticeable shift in border security policy has occurred over the past two years. The federal government has "pushed the borders out" from the traditional concept of inspections at airports, seaports and land border crossings. Border security has now been expanded to include advance review of air passenger data, sending customs agents to overseas seaports to inspect cargo, and a greater emphasis on screening of visa applicants abroad.

As security has become a paramount concern in visa processing, it now takes longer to process non-immigrant visa applications. The State Department is taking more time to review applications, requiring more documentation and conducting more personal interviews. The greater attention to visa screening is justified for national security reasons, but it should also be accompanied by necessary resources so as not to impede travel and trade with key markets around the world.

On behalf of the nation's travel and tourism industry, TIA urges Congress to require the U.S. Department of State to identify the resources necessary to carry out careful yet efficient visa processing. Congress then must fund those essential requirements *or* the State Department must refrain from fully implementing new security procedures without sufficient staff or facilities.

TIA is alarmed by a May 21 State Department cable instructing U.S. embassies and consular offices to dramatically increase the number of personal interviews of non-immigrant visa applicants. This new policy is to be implemented no later than August 1, 2003, and is to be carried out utilizing "existing resources." Although current U.S. law requires personal interviews for all non-immigrant visa applicants, for years consular officials have routinely

waived interviews for a large number of low-risk applicants. This new interview requirement could double or triple the interview workload of consular offices. TIA does not dispute the need for more interviews. However, it is inconceivable that the State Department can avoid increased backlogs let alone reduce the existing backlog of visa applications under this new regime, which calls for at least a 90% rate for personal interviews. TIA urges the U.S. Department of State to delay implementation of this new rule concerning personal interviews until the necessary personnel and facilities are in place.

Conclusion

Backlogs and delays in non-immigrant visa processing deprive U.S. businesses of the most basic component of a business plan: customers. No matter how good the product a business wishes to sell, they can not sell it if their potential customers are never given the chance to purchase it. The backlogs and slowdowns in non-immigrant visa processing, with waits of several months, prevent potential international leisure visitors from purchasing U.S. travel and tourism products, and keeps international business travelers from viewing and buying American products manufactured in this country. This drives America's customers into the arms of our competitors.

TIA urges the House Small Business Committee to use its leadership role to highlight problems and concerns with respect to non-immigrant visa processing delays. Both the Administration and Congress need to come together to honestly assess our current visa procedures. Without additional resources, it is very unlikely that consular officers will be any more effective in screening out terrorists and preventing them from obtaining visas for travel to the U.S. And already the State Department acknowledges that requiring personal interviews for virtually all non-immigrant visa applicants will worsen a bad situation and create additional delays.

Defending the U.S. homeland against attack should remain our highest priority; however the federal government needs to develop practical, common sense strategies that balance the needs of national security and economic security. These are not mutually exclusive goals, but must go hand-in-hand if we are to be successful in preventing the entry of terrorists into our country, while at the same time facilitating legitimate, low-risk international visitors. Continued long delays in visa processing serve neither our nation's security nor our economy.

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