AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

LOWERING THE COST OF DOING BUSINESS IN THE UNITED STATES: HOW TO KEEP OUR COMPANIES HERE

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

WASHINGTON, DC, NOVEMBER 20, 2003

Serial No. 108–46

Printed for the use of the Committee on Small Business

Available via the World Wide Web: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE

92–837 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON SMALL BUSINESS

DONALD A. MANZULLO, Illinois, *Chairman*

ROSCOE BARTLETT, Maryland, *Vice Chairman*
SUE KELLY, New York
STEVE CHABOT, Ohio
PATRICK J. TOOMEY, Pennsylvania
JIM DEMINT, South Carolina
SAM GRAVES, Missouri
EDWARD SCHROCK, Virginia
TODD AKIN, Missouri
SHELLEY MOORE CAPITO, West Virginia
BILL SHUSTER, Pennsylvania
MARILYN MUSGRAVE, Colorado
TRENT FRANKS, Arizona
JIM GERLACH, Pennsylvania
JEB BRADLEY, New Hampshire
BOB BEAUPREZ, Colorado
CHRIS CHOCOLA, Indiana
STEVE KING, Iowa
THADDEUS MCCOTTER, Michigan

NYDIA VELÁZQUEZ, New York
JUANITA MILLENDER-MCDONALD, California
TOM UDALL, New Mexico
FRANK BALLANCE, North Carolina
DONNA CHRISTENSEN, Virgin Islands
DANNY DAVIS, Illinois
CHARLES GONZALEZ, Texas
GRACE NAPOLITANO, California
ANÍBAL ACEVEDO-VILÁ, Puerto Rico
ED CASE, Hawaii
MADELEINE BORDALLO, Guam
DENISE MAJETTE, Georgia
JIM MARSHALL, Georgia
MICHAEL MICHAUD, Maine
LINDA SANCHEZ, California
ENI FALEOMAVAEGA, American Samoa
BRAD MILLER, North Carolina

J. MATTHEW SZYMANSKI, *Chief of Staff and Chief Counsel*
PHIL ESKELAND, *Policy Director*
MICHAEL DAY, *Minority Staff Director*

CONTENTS

WITNESSES

	Page
Kapp, Robert A., United States-China Business Council	4
Norman, William S., The Travel industry Association of America	7
Johnson, Randel K., U.S. Chamber of Commerce	8
Yanni, Palma R., American Immigration Lawyers Association	11

APPENDIX

Opening statements:	
Manzullo, Hon. Donald A.	26
Velazquez, Hon. Nydia M.	34
Prepared statements:	
Kapp, Robert A.	40
Norman, William S.	72
Johnson, Randel K.	80
Yanni, Palma R.	97

THE COST OF DOING BUSINESS IN THE UNITED STATES: HOW TO KEEP OUR COMPANIES HERE

THURSDAY, NOVEMBER 20, 2003

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

The Committee met, pursuant to call, at 9:37 a.m. in Room 2360, Rayburn House Office Building, Hon. Donald Manzullo presiding.

Chairman MANZULLO. Good morning and welcome to everyone. Today we are looking at ways of lowering the cost of doing business in the United States. This will be, along with our Subcommittee hearings, the 51st hearing that we have had with regard to manufacturing and the loss of jobs in the United States. Today's hearing deals with, really, how to keep jobs here by changing government policies so that people who want to buy our good stuff can come to the United States, examine the products, order them, buy them, and then take them back to their respective countries.

We have numerous problems going on with the sale of our products and problems to do with our manufacturers. Today deals with the visa restrictions. We have dealt, in the past, with currency imbalances, taxes, market access restrictions, health care costs, energy costs, tort costs, regulatory burdens, et cetera.

The visa restrictions implemented since 9/11 could be changed administratively in a very short period of time, without legislation, so as to ease the way for foreign nationals to do business with and spend money in the United States without threatening our national security. Moreover, everyone seems to agree that at least half of the entire backlog of these visas is attributable to China. That is, the Chinese who are ready, willing, able and eager to buy our manufacturing products, have a difficult, if not impossible, time of getting visas to come here and place their orders. And that is what this hearing centers on today.

I have taken a hard look at the business visa backlog, because it is a huge U.S. trade barrier, that costs American companies enormous businesses, and it will encourage the companies that cannot receive foreign visitors here to move overseas where they can visit with their customers much easier than here. To understand and document this backlog, this Committee has held an oversight hearing, requested a GAO investigation, researched and resolved visa issues during travel to Asia, discussed these matters with numerous Chinese officials, and convened regular meetings with industry and the relevant U.S. agencies. Unfortunately, these

meetings have occurred separately, which is part of the problem. Much of the backlog could have been avoided or now solved, through closer cooperation and consultation between U.S. agencies and industries.

The backlog remains a serious problem. I know this through our Committee oversight work, my personal experience with our own constituents, reports from Congressional colleagues, preliminary reports from the GAO and numerous press reports such as the November 17th Washington Post editorial which is on the table. While many foreigners endure these delays, many others decide to change their plans to avoid the need to come to the United States. One of my constituents, Ingersoll Corporation, waited in vain for buyers from China to secure visas so they could inspect Ingersoll machines they wanted to buy. After seven months of waiting, bureaucratic bungling, with the United States Government presuming that any person with an engineering degree who comes here is a terrorist, making it difficult to buy U.S. products, and forcing companies to go overseas just to visit with customers. After seven months of waiting, the Chinese abandoned their efforts to come to the United States and buy products from Ingersoll Milling and the giant and proud 130-year-old Ingersoll Milling went bankrupt. And one of the reasons was caused by the United States Government.

The official policy of the United States Government is to discourage foreign visitors from coming to the United States to buy our products. The official position of the U.S. Government is to discourage foreign visitors from coming to the United States to buy our products. The official government position of our United States Government is to discourage foreign visitors from coming to the United States to buy our products. Do I have to mention it more than three times?

Because I am tired of it. And whoever is listening, anybody from the White House, anybody from the relevant agencies, would you help out our manufacturing base? Would you help my people, with 11½ percent unemployment, where we lose a factory a week? Would somebody realize that in the war in terrorism, you cannot presume that every visitor to this country is a terrorist. And that is the official policy of our United States Government, and that policy is destroying our manufacturing base, especially the high-tech manufacturing base where you need a validated license to sell. And even in those cases we don't need a validated export license. You can't blame that one on the Chinese, you can only blame it on Washington, D.C.

And Ingersoll isn't alone. According to one survey, half of all our companies operating in China lost opportunities because of delays in business visas. Half the companies in the United States that sell valuable exports to China couldn't do it, because of huge delays in bringing the Chinese here to look at products. They lose direct business, as happened to Ingersoll. They also lose as suppliers when their U.S. customers lose business. And we develop the reputation as an unreliable supplier. Why buy from the United States when you can't even come here to shop for the goods that we make. And that is caused by the official policy of our U.S. Government which presumes that anybody with an engineering degree or from a tier-three country is a terrorist.

Amway, one of the world's largest direct sale companies, decided against holding its convention in Los Angeles or Hawaii for its 8,000 South Korean distributors in the face of the new visa requirements. Instead, Amway will hold its convention in Japan. The United States Government is directly responsible through these foiled and stupid policies, for causing a great American company to hold a convention overseas because of the inability to get visas for the people that come to visit the United States. That cost at least $10,000,000 to the people of the United States in lost business.

Besides the literal cost to our economy in terms of lost business and tourism dollars, the visa delays result in loss of goodwill from people from all over the world who wish to come here for exchange programs and educational opportunities. Since its inception, this country has enjoyed a reputation for welcoming people from all over the world. Now it enjoys a reputation for not welcoming people from all over the world.

In the post 9/11 world, we must remain vigilant to keep terrorists away from our shores. But we can't shut the world out. We need to find better ways of distinguishing between friends and foe. Based on our work to date, I know the State Department, Homeland Security Department, FBI and other agencies are working to find better solutions to balance security with business necessity. But all we get is talk, interagency, looking at one another, agreeing there is a problem, but nothing gets done.

Just one such solution is to offer qualifying Chinese nationals a one-year multiple entry visa. The people who work within those departments are actually tremendous public servants. We have had a great response from them, and we can sense and know firsthand the frustration, because they know that the best interests of the United States are not being served by a bureaucracy that keeps them all from doing what they really want to do.

China also offers long-term business visas to frequent U.S. travelers. I have got a letter here from the Embassy of the People's Republic of China, Lee Ri-ho, Consul General. He simply makes reference to the Web site, the Chinese, the PRC Web site, that says that they will grant a one-year visa, multiple-entry visa, if the applicant has visited China at least twice within the past 12 months and submits a copy of it, because why not?

So Americans can go to China to buy their stuff, but the Chinese can't come to America to buy our stuff, and there is something dramatically wrong with that.

We are exploring numerous opportunities for closer agency-industry cooperation. Just one example, we have suggested a consular-trade partnership against terrorism, for visa issuance similar to the customs-trade partnership against terrorism that already exists for container and port security. In such programs, industry works with the agencies to address a security concern in exchange for a business benefit, such as faster, more efficient processing and transport of goods or people.

And when our ranking member comes back, I will give her the opportunity to do her opening statement.

Our first witness is Robert Kapp, President of the U.S.-China Business Council. You can tell I am excited, Bob. You can tell I am

excited, and here we go again, the opportunity to sell frustrated by our own government.

We have set the time clock at eight minutes, and we look forward to your testimony. The entire testimony of the witness will be part of the record. I will keep the record open for ten days. Anybody else who wants to submit something for the record can do so, however it is limited to two typewritten pages and the print is not to be less than 10 point print.

Mr. Kapp, we look forward to your testimony.

STATEMENT OF ROBERT A. KAPP, PRESIDENT, UNITED STATES-CHINA BUSINESS COUNCIL

Mr. KAPP. Thank you very much, Congressman. I am glad to be back, but I am sorry to be back. This, to me, is an update. Your own introductory remarks have pretty much said what we try to say in this testimony. The situation is not markedly improving for our corporate and business members who are trying to develop their business with China and in China.

Chairman MANZULLO. Bob, could you pull the microphone closer?

Mr. KAPP. Sure. It is now 15 or 16 months since we first wrote to the State Department to try to get a handle on what was happening in the visa issuance process, because it began to happen without anybody really knowing what was coming down. And I must say, to my regret, that I don't really feel that we have made a lot of progress.

The purpose of my coming here is not to cast aspersions on individual agencies. We know people are overworked. We know there are not enough computers. We know there are data-handling problems, and so forth. And we hear, as I say in my testimony, privately, that measures are being planned to help with some of the mechanical problems associated with this massive increase in the reviewing of applications. But the bottom line is that we are just not seeing very much progress.

In the attachments to my own testimony, there are a succession of items that relate specifically to the State Department, starting with my own first letter to Secretary Powell, and concluding with a message to Undersecretary Al Larson from the American Chamber of Commerce in Beijing just a few days ago. And those are in there not to say that the State Department specifically is the source of the problem. They are to say that the problems that I adduced as long ago as August of 2002 are still very much on the minds of the business community at the end of 2003.

Following that, you will find three examples of individual companies' experiences with the visa mess, as I call it. One of them is a small firm out of West Virginia that has spoken to your committee before. Another is a subsidiary out of North Branford, Connecticut, the story taken from a news report. And the third, I hope it is in here—I am quite sure it is—the third is just the expression of extreme impatience from a Beijing-based figure with Rockwell Automation, a company you would know well. He himself, a former, I believe, Air Force general, former attaché, defense attaché, or air attaché in our embassy there, now working for Rockwell, which is a very interesting and specific case of a company that just is not getting through this process.

In the couple of minutes that I have left, let me say that I think in one sort of philosophical sense, there is a little bit of a sign of hope here. If you live in Washington long enough, you begin to realize that there is a pattern to the way things happen here. An emergency takes place, the political system reacts with tremendous force and pushes way over to one side. The media pile in, everybody rushes over to the side of the boat. The boat practically capsizes, the rail goes under water, and then gradually, slowly, the ship begins to right itself. The media begin to notice that there is more complexity to the story than initially met the eye. Civil society groups, interest groups, social organizations, others affected by what is happening begin to find their voice and to speak back.

And I think that in a very, very tentative way that is beginning to happen now on the visa problem: The Washington Post editorial that you mentioned, Senator Cornyn's very interesting piece on another aspect of the visa system in The Washington Post the same day, November 17th are just two examples of the beginnings of a sign that the media are picking up on the fact that there are terrific collateral damages and downside costs to the measures that were taken in the aftermath of 9/11.

The signs of hope, though, are very thin. And the reason is, of course, that at the end of the day there is no arguing with the need to defend the borders of the country against the arrival of those who would cause this country grievous harm. None of us for a minute, of course, would argue that that principle or that goal needs to be compromised in any way.

But what has to happen and has not happened yet, is that people need to understand that nothing is absolutely, totally black and white; that everything is a question of probabilities and a question of costs and benefits. I understand, as I say in my testimony, informally understand, that the Technology Alert List review process which is designed to screen out people who might come to this country and gain access into inappropriate technology, the yield rate, if that is the term for it, is .04 percent out of all of these cases, which is the real hangup on the China side, the great source of delay, leaving aside the more recent imposition of a requirement that every single applicant has got to have a personal interview with a visa officer, which has created a backlog from two weeks to a month or more.

Leaving the interview question aside, the real source of the backlog on the China side is the so-called Security Advisory Opinion reviews here in Washington, interagency reviews of people who are vulnerable under this list called the Technology Alert List of sensitive technological areas. And I gather that the yield rate there is .04 percent, at least globally. The yield rate on CONDOR, I am told by the same source, which is the program we are not directly concerned with, a program aimed primarily at people of particular concern from certain countries in the Middle East and elsewhere, that is zero I am told, zero.

So the question becomes, isn't there a way to try to redefine the task so as to eliminate as much as possible of the unnecessary and concentrate on the necessary. Now, the security organizations that run this review process, their job is not to help American business. I gather, not to me but to others, they have been quite blunt about

that. Secondhand we get told, look, there are parties to this review process who just don't care whether you have got business problems. That is not their job and they are not going to budge on this.

And what we have to try to get to is a redefinition of the—as you have said so well yourself, Congressman—we have got to get back to the idea that the costs, the downside, the collateral damage of the lost business, of the lost tourism, of the canceled trade shows, of the redirection of business to European subsidiaries or Asian subsidiaries of U.S. firms or to foreign firms altogether, all of that somehow has got to be taken into the calculus with which we decide both law and policy. Most of this is administrative, but I have to say, and I know it is an uphill battle in this body and in the Senate, but my instinct after having pushed on this pillow now for 15 or 16 months, everybody says yeah, we are with you, we would really like to do it but it is not our pay grade or it is not our agency or it is not our bureau, or it comes from on high, or one of those things. My sense is that the incentives are not there in the executive agencies to redefine this calculus and begin to articulate and carry out policies that minimize the wastage and the collateral damage here.

I just don't see where it is going to come from. It is not even clear to me, for example, whether the agencies of government which we would most associate with the interests of American businesses seeking to thrive internationally, namely Commerce and USTR, are even part of the SAO process at all. Somebody told me they were not. You will probably know the answer to that. I don't know the answer to that.

So the system now is institutionally set up in a way that creates stasis and paralysis, as you have said yourself. And I just don't see the incentive structure for the executive agencies to get themselves out of it. I mean, if you are a 27-year-old visa consul and you saw the head of the Assistant Secretary of State with consular authority axed in the aftermath of 9/11 and the furor over how these people got into the United States, if you had a choice between making a decision on the spot and sending something back to Washington for an indeterminate review, what would you do? You would send it back.

So I have to say that in a slow, patient way, and we are very grateful to you, Congressman, for sticking with this issue, we somehow have to get the attention of people on the Hill as well, and get the Hill weighing in and saying look, guys, there is an economic loss going on here, as well as an international goodwill loss. This leaves aside the question of U.S. relations with other countries, large and small, who matter very much to us, even in noncommercial terms, and whose visitors and whose officials even are getting stiffed by the visa process. That is really a summary of what I had to say. Thanks.

Chairman MANZULLO. Bob, I appreciate your statement. The next witness is William S. Norman, President and CEO of the Travel Industry Association of America. We look forward to your testimony.

STATEMENT OF WILLIAM S. NORMAN, PRESIDENT AND CEO, THE TRAVEL INDUSTRY ASSOCIATION OF AMERICA

Mr. NORMAN. Thank you, Chairman Manzullo and members of the Committee. I appreciate the opportunity to testify before you on how the U.S. visa policy is impacting international travel to the United States. I am Bill Norman, and I am President of the Travel Industry Association of America, or TIA. As you may know, TIA is a national, nonprofit organization representing all components of the $525 billion U.S. travel and tourism industry. Our mission is to represent the whole of the U.S. travel industry, to promote and facilitate increased travel to and within the United States. And the travel industry is predominantly comprised of small businesses. In fact, approximately 95 percent of all of our businesses have 50 employees or fewer.

International business and leisure travel to the United States is a vital component of our national economy. In 2002 over 42,000,000 international visitors generated $83.5 billion in expenditures, $12 billion in federal, state and local tax revenues, and accounted for one million jobs nationwide. International travel and tourism to the United States is a service export, and in 2002 the United States had a positive balance of trade of $5.5 billion. However, these numbers are much lower than they have been in previous years, and our industry continues to see a decline in travel to the United States. Over the past three years, international travel to the United States has fallen by 20 percent, with over $15 billion in lost visitor spending.

International travel to the United States has suffered greatly for a variety of reasons, for all of the events that have affected the international inbound international visitation, one fact that remains a deterrent are the many new U.S. policies on international travelers. TIA recommends Congress and the Administration take the following three actions to improve our policies affecting international visitors and to better facilitate these visitors.

First, we believe the State Department should revise the interim rule on interviews for visa applicants. State has raised the rate of applicant interviews to 90 percent or more at all posts. TIA agrees with this new security measure in principle. However, the State Department lacks the personnel or the space to meet the demands of this new requirement at several key locations. TIA urges the State Department to increase the interview rate only as new resources become available at high-volume visa issuing posts. Additionally, TIA urges Congress to appropriate increased funding to meet these new security requirements.

Secondly, we believe the State Department should not raise the visa application fee in 2004. The fee for non-immigrant B–1 and B–2 visas was raised in November of 2002 from $65 to $100 U.S. Raising the fee again will make the U.S. that much less attractive when compared to competing international destinations that do not require visas. If necessary, Congress will have to appropriate additional funds to support effective and efficient visa processing.

Third, Congress must immediately introduce and pass legislation that would postpone the deadline for use of biometric visas and visa waiver programs, passports, by two years, to October 26, 2006. TIA does support the use of biometrics in travel documents. Cap-

turing a person's fingerprint, eye, face, or other biometric and using it as part of the entry process will allow inspection officials to know the person before them is the same person to whom the passport or visa were issued.

However, TIA has learned that the countries participating in the Visa Waiver Program will not be ready to issue these new biometric passports until late 2005 at the earliest. And this requirement is a condition of continuation in the Visa Waiver Program. A postponement of the deadline will provide much-needed time for our major allies and trading partners to implement this necessary security program without disrupting legitimate international visitation. Without a postponement, these countries will miss the deadline and the Visa Waiver Program could be effectively terminated. Travelers who could normally visit here free would now have to apply for a U.S. visa. According to a GAO study performed just last fall, the resulting fall-off in travel would cost our economy nearly 475,000 jobs.

T.I.A. and the U.S. travel industry strongly support efforts by the Federal Government to protect our homeland from attack by those who would seek to harm our citizens, residents, and international guests. However, our government must consider the impact these efforts are having on the jobs of American workers. I urge the Congress and the Administration to seriously consider the recommendations I have made today.

Mr. Chairman, we greatly appreciate the continued leadership the House Small Business Committee has demonstrated on these issues. The hearing held by this Committee in June of 2002 was instrumental in highlighting the many deficiencies in the Immigration and Naturalization Service's proposed rule on B–1 and B–2 visa holders. And we appreciate the Chairman's attempt to make sure the indirect impact these visa rules have on small businesses will be documented and researched by agencies with the introduction of H.R. 2345.

Thank you, Mr. Chairman, and the members of the Committee, and I look forward to your questions.

Chairman MANZULLO. Thank you very much. Our next witness is Randy Johnson, Vice President for Labor, Immigration and Employee Benefits with the U.S. Chamber of Commerce. Mr. Johnson, we look forward to your testimony. And could you pull the mike a little bit closer to you.

STATEMENT OF RANDEL K. JOHNSON, VICE PRESIDENT FOR LABOR, IMMIGRATION AND EMPLOYEE BENEFITS, U.S. CHAMBER OF COMMERCE

Mr. JOHNSON. I was wondering if I could have Mr. Norman's remaining two minutes. But I do thank you, Mr. Chairman, for holding this hearing on the issue of delayed entry of legitimate travelers to the United States, and with particular focus on——.

Chairman MANZULLO. Randy, it is not an omnidirectional mike. You have got to speak directly into it.

Mr. JOHNSON. All right, thank you, Mr. Chairman.

Chairman MANZULLO. No, a little bit closer.

Mr. JOHNSON. How about this?

Chairman MANZULLO. If I say it a third time I will have to move it myself.

Mr. JOHNSON. Thank you, Mr. Chairman.

Chairman MANZULLO. You have been here before, you know how it works.

Mr. JOHNSON. I do.

Chairman MANZULLO. Thank you.

Mr. JOHNSON. Thank you, Mr. Chairman for holding this important hearing. I would like to broaden my testimony a little bit from the problems associated with visa issuance, also to include some mention of some of the issues arising at our border communities. And in this regard I would like to note that I do represent the Chamber on a Congressionally created task force to study entry/exit issues at the borders, now called the U.S. VISIT System. And I also chair the Americans for Better Borders Coalition.

Now, Mr. Chairman, as the other speakers have pointed out, we are all aware of the new environment we live in post-9/11. The Chamber has been a strong supporter of increased security. We were a strong supporter of the creation of the Department of Homeland Security. We key voted the legislation. However, we also strongly lobbied and were successful in lobbying for inclusions in that legislation which, in our view, protected the business community in the sense that it reassured us that the new Department would look at functions of economic security, it would look at the interests of the private sector.

And unfortunately, however, I think to reflect the same theme as the other speakers today, what we are seeing is that although the rhetoric of the Administration is reassuring in the sense that the Government will always seek a balance between security and keeping legitimate trade and travel moving, the rhetoric is not, frankly, living up to the actions. Some of that may be just a function of the fact that the laws do not really have standards to direct the decisionmakers to know how to strike this balance. I am not sure, but I think we are all here today to just try and educate the Congress as to the fact that regardless of what the State Department may be saying, there are, in fact, real problems out there.

And I think it is important to understand that the visa issuance is part of one puzzle. There are pyramiding deadlines approaching. All of us out here, on top of the August 1st State Department person-to-person interview requirement, there is a December 31st deadline for the U.S. VISIT requirements at airports and seaports. As another speaker mentioned, there is the October deadline for U.S. visas and passports by October 26th, biometrics, and full implementation of U.S. VISIT at the land borders at the end of 2004 and 2005.

And these are all parts of a puzzle that impact how a person can come into this country. It is not just the State Consulate, it is not just the Department of Labor, it is not just INS or Customs at the borders, or DHS. They are all part of a puzzle and the focus of this hearing today is on the visa issuance, but it is still really just one part of it.

And, for example, with regard to the borders, we have met with representatives from Laredo and McAllen, Texas Chambers of Commerce, representing many small businesses, Mr. Chairman,

and there is a strong feeling by these local communities, and I have been down there, that the government is listening, but they are really moving ahead with new requirements at the land borders without, I guess, paying much attention to what these very serious concerns are. And as one person pointed out at a State Corps meeting down there, is this because it is simply easy to ignore border communities? And now that these deadlines are approaching, there is a real sense of urgency on these businesses along the borders that a way of life is at stake.

And the same urgency is on the visa front. Our American Chambers of Commerce in places like China and South Korea report that they are actually losing businesses to European and other competitors because of the difficulties in obtaining visas for the customers and clients. Impending changes to the Visa Waiver Program will disproportionately affect key American allies such as the United Kingdom and Japan, who have told us they will not be able to meet the October 2004 deadline for issuing biometric passports, in spite of their best efforts.

In that regard we would strongly urge the other recommendation made here already, that the Congress reconsider that deadline and allow the State Department and the Department of Homeland Security to perhaps waive the October 24th deadline, or 26th deadline in appropriate circumstances.

I think there is just a sense among us that the Government may not be carefully evaluating the impact of their decisions. And the rhetoric is there, but there is a failure to understand that a way of life is at stake in many of these communities. There are true dollars and cents at stake, and dollars and cents, as you well know, Mr. Chairman, do get translated into lost jobs.

Maybe that is a communication issue on our part, or maybe it is on their part, but the perception is there, and that perception is backed up by reality. And this is not to demean these people in government. I worked half of my career in government. But I think we all know that sometimes when you are inside the bureaucracy it is easy to insulate yourself from the decisions you make, and say well, this is just what we have got to do, and then you go on. And we will continue to hammer away at these issues.

Now, Mr. Chairman, my testimony goes through many sort of specific problems that our companies have faced, our Ingersoll-Rand who chairs our Immigration Subcommittee has had many problems with delayed visas, costing thousands and thousands of dollars. There are problems with timely processing of visas in Korea, and that is impacting the travel community. We have a major industrial and chemical equipment and electronics manufacturer that has had, with a prestigious Russian institute, and the key scientist in this partnership waited six months for a visa even though the same person has been in the country many times over the last ten years. So the record was there that this guy was not a security risk. And this delay has threatened this long-continuing relationship.

I won't go on. There are many examples in the testimony. You mentioned The Washington Post article, the Amway Corporation issue—Amway is a huge member of the U.S. Chamber, by the way. It is just somewhat amazing when you hear some representatives

of the State Department continue to, I guess, take the position that really these are very isolated circumstances, and overall the process is simply working fine.

I think we are frustrated, sometimes, on the outside because we are not sure who to go to, and the government appears to us, particularly in this new reorganization, as a huge black box. And the best we can do at this stage is try and educate those people within that there are problems out here and we hope the message gets through, and we hope that that message can also get through, through a hearing such as this, Mr. Chairman.

So we do appreciate that. We have made some suggestions for improvements in the processing system in our written testimony. And I would like to thank you for this opportunity to present our views.

Chairman MANZULLO. Thank you very much. Our next witness is Palma Yanni of the American Immigration Lawyers Association. Palma, again, thank you for coming and we look forward to your testimony.

If you could pull the mike closer; do it the first time. It took Randy three times, but you know.

Mr. JOHNSON. All right, all right. I am only a vice president.

Ms. YANNI. He can help me out if it is not close enough.

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

Ms. YANNI. Mr. Chairman, distinguished members of the Subcommittee, I am Palma Yanni, President of the American Immigration Lawyers Association, and I am honored to return to this Committee representing AILA, the national bar association of more than 8,000 attorneys who practice immigration law.

Since I last talked to this Committee in June, the situation has further deteriorated. I will summarize my written testimony and ask that the whole be submitted into the record.

In any category of visa that you can name, there are severe delays or situations that hamstring or defeat the purpose of having that visa in the first place. These situations have a disproportionate impact on small businesses. And as we have discussed this morning, one thing to keep in mind regarding all these delays in visa issuance is the FBI has recently acknowledged they have not excluded a single terrorist from the United States through all of these security measures.

When we talk about visa issuance, we are generally referring to the process by which a consulate or embassy abroad issues a document that enables a person to come into the U.S. for a particular purpose. The delays in that visa issuance process have been discussed and are indeed monumental. But visa problems for key employees and consultants with small businesses actually begin long before the individual applies for a visa at a U.S. Consulate, and they continue after they arrive in the U.S. As was noted previously, people who have been here for years either working or studying, sometimes, frequently go home and then cannot return, even though they have already been cleared multiple times before.

In many cases, visas for individuals critical to small businesses cannot be issued until the Department of Homeland Security, the

Citizenship and Immigration Services, which was formerly INS, has approved the petition, which also includes a security check. There has been a marked increase in the number of cases where these visa petitions that are denied or delayed endlessly, or demands for additional documentation which are not even required in the regulations, and these burdens fall disproportionately and particularly on small businesses, which are asked to provide an incredible array of documents, from wire transfers, confidential contracts, years of bank statements and payroll records and ŕsumés for employees that are not even related to the petition, tax returns and more.

These delays can mean that the temporary professional visa, the H-Visa, will not even be available to small businesses, which use them very heavily, for this fiscal year because there are reduced numbers of those visas and bigger businesses are not subjected to these demands by the formerly-known-as-INS.

The people that are coming to these smaller employers from abroad bring unique experience in markets and technology to help the small businesses expand and fuel growth and jobs for American workers.

I was recently on a panel in an immigration conference, where I suggested that we produce posters to be distributed throughout the service centers—we probably also need them at consulates—touting the economic contributions of small business. My thought was big posters that said small business is the engine that drives the economy. They would also do well to have facts from your Committee's Web site that say 99 percent of the employers in the U.S. are small businesses, and they produce two-thirds to three-quarters of the net jobs in the U.S. Perhaps the Committee can help me with my poster project.

The delays at the consulate have very serious consequences for businesses, families, schools and others in the United States provided that you get to the point of having the initial petition approved, or you are in a category where that is not needed. The State Department cites a 15 percent decrease in the number of non-immigrant visa applications from 2002 to 2003. People are simply not coming to the U.S., in large part due to the delays and roadblocks in the visa process.

The other members of the panel have discussed the tourist problem and made reference to students, scholars and scientists who cannot bring their experience and talents to the U.S. and are going elsewhere. The National Academies of Science has issued a statement with a very dire warning. The U.S. scientific, engineering and health communities cannot hope to maintain their present position of international leadership if they become isolated from the rest of the world. And that is what is happening.

Security clearances triggered by a person's nationality, line of work or study, or unknown factors, delay the process. The special checks relating to someone's employment in a field of study, include a list of occupations that was referred to, the Technology Alert List, that is so broad that virtually any scientific or technology field could be included.

As you have emphatically said, Mr. Chairman, any engineer is deemed to be a terrorist. It is not just engineers. It is anyone in-

volved in technology, in science, in almost any field, including health professionals.

Chairman MANZULLO. Hold on. Could you go to the anecdotal stories that are on the last page? Because this is what really, when you read these things, this gets me mad.

Ms. YANNI. Well, I can make you very angry.

Chairman MANZULLO. Well, go ahead, do that; make my day. But if you could get into those accounts.

Ms. YANNI. There are many. There was a classic example of stupidity, which I believe was the word you used, Mr. Chairman. A German professor, who has visited the Institute for Surface and Interface Science at the University of California in Irvine, had come for 25 years and didn't come this year because the visa issuance situation was so onerous. He would have had to go and stand in line at 6 in the morning, and come back for days. This is a gentleman, that could have, if he wanted to, stretch the rules, just get on a plane with his German passport. But he wanted to play by the rules and get the right visa because he was going to be compensated in the U.S. He is not coming.

An engineer who had worked in the U.S. for four years under an L–1 visa status, so again, he was approved many times before in clearances, applied in Jakarta in 2002 to renew his L–1 visa. The visa still has not been issued. Some agency is conducting a check. The company could not wait longer. They transferred the engineer to an overseas project and moved the project out of the U.S. because this engineer was key.

A telecommunications engineer waited over a year for an H-visa in Saudi Arabia. The company and the engineer gave up. They could never get an answer.

A businessman coming to the U.S. to be the president of a subsidiary of a British company applied for his visa a month ago. He has a common name, so his name came up in the security database system of the FBI; his fingerprints were taken; he is still waiting. The U.S. subsidiary does not have their president, does not have a leader.

A Panamanian couple in their seventies have visited their adult daughter in the U.S. every year for 15 years. Normally they come and renew their visitors visas consistently. They happened to be born in Morocco. Because of the accident of where they were born, they have waited several months for their visas and cannot come to the U.S. to visit their family.

There is more, but I have hit the stop button. Thank you very much. I am pleased to be here today.

Chairman MANZULLO. I appreciate that. I would like to ask the same question of the other three witnesses for the anecdotal stories of people similar to Ms. Yanni's experiences. Bob, do you want to share with us? What I am trying to do is I want to quantify how much the United States loses, or at least come to some kind of guesstimate of the money that we are losing and the jobs that we are losing because of the inability of the United States Government to be a welcome host to visitors who come here for both business and pleasure. I hate to say this of my own country, but it is true.

Mr. KAPP. Well, Congressman, in the written testimony I threw in these cases from Bill McHale of Kanawah Scales and Systems

out of West Virginia. They have been at this for endless months now. The situation just doesn't get any better.

Many of our companies are large companies, but they, as you pointed out yourself, they source from American vendors and from American component makers and suppliers, and the list just goes on. I mean, I am a little reluctant to cite cases without having the documents in front of me and to talk about other companies' experiences. But if I recall correctly, there was public mention of a situation where a leading U.S. airplane manufacturer couldn't get the pilots in to pick up the planes and drive them home. That is real money. A billion here, a billion there, as Senator Dirksen once said, and pretty soon you are talking about real money.

I remember an instance which I would want to check for veracity before it was finalized, in which the United States Government bent over backwards to advocate for an American company seeking a very significant contract in China. The company got the contract, and the first batch of trainees sent by the PRC to the United States to start working up the product, which was a product that had to be developed for this contract, were denied entry to the United States. The list just goes on and on.

Quantifying is tough. And one of the reasons quantifying is tough is that it is very hard to put a dollar value on time. But the theme that comes out here, I am fascinated by the utter unanimity of what we are saying here today. What is really interesting to me is that just the black box, as our friend from the Chamber put it, the dropping of these applications into a file where you can't know where it is, you can't know who is looking at it, you can't know who has got a problem with it, and you can't know when it is ever going to come out, that uncertainty is the worst part of the problem for many of our companies.

In that regard, as I quit this question, Congressman, I do think that we have to try, again, the China cases, most of the ones that we work with have to do with the Technology Alert List and the SAO Security Advisory process. The great loss there was the elimination of this clock, this certainty that if the bureaucracies didn't make their decision after a certain number of days, the visa was going to be approved. That was killed after 9/11 and I think that is an area we really need to try to get some focus back into here. It doesn't have to be an old ten-day clock any more. We understand it is a different world. But there has got to be an understanding that there is a limit to this. And a reasonable limit. Not a six-month limit. Business can't run on six months for a visa application. But a reasonable limit, after which if the bureaucracy has not been able to make its mind up, let alone say no, then the visa goes forward. That has got to be high on the list of priorities.

Chairman MANZULLO. Bill, any anecdotal stories you want to add to this?

Mr. NORMAN. There are so many, Mr. Chairman, I am not sure where to start.

Chairman MANZULLO. Give us your most egregious.

Mr. NORMAN. I would like to just mention two, because what has happened to the U.S. travel industry has been phenomenal in the past three years. We have seen international travel to the United States fall by some 20 percent in the past few years alone. And al-

though all of it can't be directly attributable to what is happening with visas, that is a very large part, because we have become a very unwelcoming society. You ask for anecdotal information. If I may, I will just mention two.

You take our top ten trading partners in terms of travel to the United States and bear in mind that we have had a positive balance of trade which just a few years ago was running around $15 billion positive, and now it is down to five, and with all the other declines that we have seen.

Use Brazil. In order to come to the United States, one of our top trading partners, in order to come to the United States, I will use an anecdotal story, an actual story, about a family of five coming here. First of all, in order to come to the United States they have to apply for a visa. It takes anywhere in the neighborhood of four to six weeks just to get the interview. They then have to travel. In order to travel to get the interview, because they have to come to one of our consulate offices, they have to take care of hotels there, and, by the way, each member of the family must come. The visa application for a family of five is five times $100. You add to the hotel, the air, that has already been done to the $500, and the result? Four of the five family members will get the visa, but not the fifth. If the family is going to go together, they are not going to go. So after all of that trouble they have lost $500, they have lost the hotel, and they are going to go to Europe where they do not need a visa otherwise.

Take another top trading partner. Same situation, with South Korea, very important, and used as an example of what is happening overall to conventions and meetings. But let me use another example.

The Visit USA Committee, which we work with very closely here, indicates that the new visa policies and delays and everything is resulting in one of every six visitor from that country being deleteriously affected, which results in a loss to the United States of some $200 million.

And I could go on and on and on, but that is just a flavor of what is happening, and we see it, and it is affecting everyone. And it isn't out of the bounds of reality that if we go on and exacerbate it even farther by what we are talking about next year of moving into a situation in which we are going to ask for the biometrics, which they are not going to be able to do and they get out of the Visa Waiver Program, we can see a travel industry that is already decimated, is going to be in a situation that we could conceivably lose up to almost another 500,000 jobs, most of which are small businesses.

Chairman MANZULLO. Randy, do you have an anecdotal story to add?

Mr. JOHNSON. Yes, one general statement, three anecdotal stories, Mr. Chairman. The United States Chamber of Commerce has a broad network across the world through our American Chambers abroad, and the message—I mean, I have rarely dealt with these American Chambers abroad until after 9/11 for lots of reasons. But one of the biggest reasons was the whole slowdown in international commerce due to the problems we are discussing today. And the message they are telling us is, one, can't you help us? But the other

one is, look, we are losing business to our competitors because our competitors are telling clients don't deal with the United States, it is too much of a hassle. Can I quantify that? I have some examples here. I can't quantify that. We will try and do a better job of that, Mr. Chairman. But these groups would not be coming to us unless this was a serious problem.

Second, with regard to specific examples, Ingersoll-Rand, the chairman of our immigration subcommittee is waiting to close a $2.5 million deal with an entity in China, but they can't get the visas to bring these engineers over from China to inspect the equipment to close the deal so they can move the compressors back to China.

Chairman MANZULLO. Randy, if you could have her get in contact with me, I will work personally on it, and I will set a hearing. I want to ask the people that are not issuing the documents to personally show up here. If they are not here I will have an empty chair with their name. Okay? Maybe we should do one of those every 30 days until somebody realizes that we mean business around here. Go ahead.

Mr. JOHNSON. She is excellent on this, Elizabeth Dickson, so I will, Mr. Chairman, thank you.

We have an example here in our list of problems on page 5, where a logistics manager has waited over ten months for renewal. A logistics management company has waited over ten months for renewal of a manager visa, losing, according to this company, $75,000 to $100,000 per month in revenues.

We had a situation in Texas with a company that deals with the government in Saudi Arabia and private sector concerns in Saudi Arabia, and ultimately they were able to close this deal, but the message they gave to us was—the entity in Saudi Arabia to the Texas company here was, look, we got it done this time, but this is a real hassle for us and we are going to start looking elsewhere. So in that case it was done, but these are all things that pressure international customers to look elsewhere. So those are a few. But again, the overall message is clear from those people who are out there in the real world dealing with these problems.

Chairman MANZULLO. Ms. Bordallo?

Ms. BORDALLO. Thank you very much, Mr. Chairman. And good morning to all our visitors.

Chairman MANZULLO. Tell us your ship story first about the Navy not using your ports so maybe some of those people will understand why you have 20 percent unemployment.

Ms. BORDALLO. The Chairman has asked me to share a story with you on Guam. We have closed bases during 1993 and 1995, and we have a private enterprise taking over our ship repair facility. And, of course, at one time it was all MSC ships, Navy business. Then they found a loophole, and according to Navy regulations, if a ship is homeported in the U.S. you have to have it repaired in a U.S. port. But they have found that the MSC ships roam around in the Pacific, so therefore they are not really homeported in the U.S. So they go to Singapore and Japan and have their ships repaired at a fourth of the cost. And meanwhile, this private entrepreneur over in Guam is hardly making it. And so the Chairman has been very interested and very helpful, and we are

looking at that very carefully, and I think they did realize that this was something very, very unfair to us in Guam.

But let me talk about the visa waiver now. The tourist industry is the largest private-sector employer on Guam. In 1997 Guam's tourism volume reached its historical peak of 1.38 million annual visitors, more than 80 percent of them haling from Japan. However, a number of factors, including the Japanese financial crisis, 9/11, the SARS and storms and so forth have contributed to a steady decline. Visitor arrivals fell below one million last year for the first time in a decade. With unemployment, as the Chairman stated, estimated at as much as 20 percent on Guam, we cannot simply wait for the Japanese economy to rebound.

A large minority of residents on Guam, 26.3 percent to be exact, are of Filipino descent. Many have been waiting years and years for family members to obtain visas to visit them on Guam. With a population of 18 million and a strong regional connection to Guam, increasing the number of Filipino visitors would be a pragmatic solution to both increasing and diversifying our Island's visitor base. I personally would like to see us move toward including the Philippines as part of the State Department's Guam-only Visa Waiver Program.

And I might add, Mr. Chairman, that we do have a strong interest in China as well. And we have suggested that Guam be a pilot program for this biometric system for Chinese visitors.

Now, I do have some questions. To Ms. Yanni, given the many reforms implemented by the Philippine President, Gloria Macapagal Arroyo, to combat terror and strengthen economic ties with the U.S., do you feel that the current visa backlog which currently dates back to visa applications from 1995 is constructive to improve cultural interaction and commerce, and what are the reasons for this tremendous backlog?

Ms. YANNI. Obviously this is in no way constructive to improve cultural interaction and commerce. There are various reasons for the different backlogs. The Philippines are now on the list of special countries or countries of interest, which I am afraid may mean even more barriers. I think that your suggestion of that specific program that not everybody knows about, where you can get a visa to Guam only and cannot continue on to the U.S. should, in large part, answer the security programs. There is a cost/benefit analysis. Essentially, you are saying you are willing to take the risk in Guam for these relatives of the people living there, and I really think that that is an excellent suggestion that could really help your economy. It is going to have to be agreed upon now because of the new structure, by both the Department of Homeland Security and the Department of State. But I think you have an excellent possibility for really improving you economy with that.

Ms. BORDALLO. So what you are saying is we should continue to do it. We have been working on it for many years, but we will continue. Thank you.

Mr. Johnson and Mr. Norman, given the unique situation encountered by island economies such as Guam, as well as their geographic isolation, what special alternative policies specific to travel visas could be adopted that would enhance our local economies without adversely affecting national security?

Mr. JOHNSON. Well, it is an interesting question, Congresswoman. It might, given the unique nature of an island economy and the population, it might, I am putting this out as a suggestion to perhaps approach State with, this might be an area where State or DHS could explore a Trusted Traveler type of program, where individuals who chose to go through—who may go back and forth more than just once every two years or whatnot, choose to be prescreened in a streamlined process but then they get a certificate—and this is done with laser visas at the Mexican border, for example, it is done in the Nexis Program, I think, in Canada. They are prescreened and so they get an expedited clearance when they go through Legacy Customs and Legacy INS. But what appeals to me is because of perhaps the unique geographic location and the population, this might be an interested test case for that idea. That is certainly something we have been trying to push generally with regard to the broader visa areas.

Ms. BORDALLO. Yes, go ahead Mr. Norman.

Mr. NORMAN. I would concur with that. But I will also add something else. There are many things that we simply are doing that is making it more difficult. Guam and Hawaii are two classic examples. I will just use one country, Japan, where you have had a large number of visitors, it is a very important aspect of the economy, and with all of the things that we have been doing now, with the delays and others that don't allow any of the welcoming concepts in here, if we simply would look at some of the policies that we currently have. And I want to get into the issue of visa delays.

As an example, the notion that you have to interview everyone from a trusted country like Japan or South Korea, that has been doing this forever, and with these interviews, which in essence are cursory, and now moving to an arrangement by which we are going to have to add next year, biometrics, means that the already deteriorating situation is going to be even worse.

Simply delaying it. Japan simply is not in a position, as is South Korea—Japan is a Visa Waiver Country, as an example, is not in a position to have biometrics ready for next year. It then means that they are at risk of coming out of that which will cause even greater risk. So some things that could be done immediately, is to delay that so that when they are in a position it is not going to make any impact at all in terms of stopping any terrorism, as others have indicated. So just by taking simple steps of that particular nature, looking at what we do, and being more realistic about it will actually send a better picture that we are, in fact, welcoming you and we want you.

Ms. BORDALLO. When will the biometrics system be implemented?

Mr. NORMAN. It has now been set for October 26, 2004, it will have to be implemented, and if a country does not have the biometrics ready then they will come out of the Visa Waiver countries. These are the 27 countries that are our trusted trading partners. We know for a fact, given the fact that we operate with Visit USA committees, which is U.S. companies operating in countries, some 39 different countries. And we have found out from them and from our contacts overall that there are a significant number of countries in Europe, in Asia, our valued trading partners, that will not

be able to meet this deadline. By the way in which this is set up, if they are not able to have biometrics ready—which, by the way, the United States is not going to be fully ready either, with all of its passports, then they would have to come out of the Visa Waiver Programs, they would have to then get B–1 or B–2 visas. And as a consequence we would have backlogs now that would pall in comparison to what would happen there without visa waiver.

Ms. BORDALLO. Thank you. Thank you, Mr. Chairman.

Chairman MANZULLO. Let me make a clarification for the record. There are two Ingersoll companies. One is Ingersoll Milling Machine out of Rockford, Illinois, and the other one is Ingersoll-Rand which is headquartered in New Jersey. And we have a preliminary report from the GAO. They interviewed in their sampling and testing methods which have always impressed me on how they do that. They interviewed representatives of 48 U.S. companies in China regarding their experiences obtaining U.S. business visas for their employees and customers. These are Chinese customers that want to come to the United States to look at equipment, for example.

Almost half the companies reported lost business opportunities because of delays in obtaining U.S. business visas. That is based on 44 responses of the 48 companies. That is half. So these 22 companies, and these are major, major companies, that have lost business opportunities, and more than half the companies reported at least some additional expenses because of delays in obtaining U.S. business visas.

What I would like to do is, I want to establish a foreign visitors visa delayed misery index. Bob, you are in charge of it.

Mr. KAPP. Congressman, if you go to our Web site you will see the visa incident report form right there on the front page. You can click it.

Chairman MANZULLO. It is right on your Web site?

Mr. KAPP. It is for our companies, but we have the same impulse you do. Get people, easy, user-friendly.

Chairman MANZULLO. But you will be the point person on this. Don't stutter, I have just given you another job. And what we are going to do is I am going to publicize the names of the companies plus the individual names of the individuals that are sitting on these applications, and the people in charge worldwide. I want accountability to this U.S. Government. I am tired of incident after incident after incident where people want to come to the United States to buy our goods and are simply not able to come here because of the delays. And so it is accountability time.

And in January I am going to have a hearing, Bob, probably on the first ten that you give me. The ten most egregious cases where it is pending. And I am going to ask the people in charge, here in Washington, to personally show up and explain to this Committee the delays in each and every one of those. And I will give them the names so they can do their homework and come here. They may spend a lot of time in this room, and I may run a hearing that will last 10 or 12 hours, with stacks of files on my desk. If they can't process those visas, I will do it personally, because I am tired of the unemployment in my Congressional district. My heart just breaks in half that we have people that want to sell high-end quality products, and one of the finest went into bankruptcy, probably

forced there by the inability to sell to people because they simply could not get visas. This is disgusting. And it is the fault of the U.S. Government.

You know, we have had hearings on beat up on the Chinese because of their trade barriers. Beat up on the Chinese because of intervening with their currency. Blaming everybody in the world, but here is a thing that we can do ourselves and we are all stuck because there is a premise here in Washington that business visitors with certain backgrounds are terrorists. And the FBI check has turned up zero on them.

Mr. Akin, do you have some questions?

Mr. AKIN. Yes, thank you, Mr. Chairman. I guess one of the questions I would like to ask is, if there were one thing that you would change, you don't get to choose number two or number three or number four, but there is just one thing that you would like to see changed. And I understand, I guess, there must be a tension on this whole situation between the fact that we are trying to take care of homeland security, our borders are like Swiss cheese, we have people coming across. Essentially, as soon as anybody gets in this country they might just as well be an American citizen because we have almost no mechanism to ship them out, or at least we don't seem to. So you have got that problem.

On the other hand, you have got legitimate people coming and going for business purposes. With that tension, if you had to choose one thing, or let us say that you could get into whatever it is, INS, that is controlling these things. What would be the one thing that you would change in still keeping that balance but trying to deal with the problem in a balanced kind of way.

I will let a couple of you go. I don't want to overuse my five minutes, but if a couple of you want to respond to that, what would be the one thing you would change?

Ms. YANNI. The suggestion, if I may go first, that one of my colleagues made, that would solve it, is the fixed time period for clearances. Businesses can deal with a—there is a maximum of 60 days or 30 days—it used to be 30 to get a visa. And those agencies that are so concerned, the 21 agencies, some of whom we don't even know who they are, if they are told that visa will issue unless you say no within a certain period, they are going to start moving. So I think that that would solve the problem very quickly.

Mr. AKIN. Is whoever it is that has to issue these things, are they represented here? What is their problem? Why can they not do it? Are they just overloaded?

Ms. YANNI. We don't know. The 21 agencies are all different kinds of intelligence agencies, the nuclear, the nonproliferation group, Defense Intelligence Agency, CIA, a whole array of agencies. And they have other missions. As another member of the panel said earlier, their mission is not to improve trade with the U.S. Their mission is otherwise, and they sometimes just don't seem to think that this is important.

Mr. AKIN. In terms of the way they are being measured, their safest thing is to issue none of them at all, because therefore there has been no security problem, because we didn't let anybody in. In a way, right? I mean, they are measured on trying to protect our

security, right, not on trying to process visas in a timely way, right?

Ms. YANNI. That is correct.

Mr. AKIN. Okay. Does somebody else want to add to that?

Mr. KAPP. Well, Ms. Yanni took one of mine, but we are in agreement on so much of this. It is possible, as Congressman Manzullo suggested, it is possible to work bilaterally with countries to come up with longer duration, multiple-entry visas that would vastly reduce the workload at the consular windows and in this whole process.

If a guy has come into the United States, and he is vetted, you know, and he is cleared and he is fine, and he goes back and forth on business, why make him come back any more often than you possibly have to? I mean, do year-long multiple entries. Do 18-month if you can get 18-month. The sheer reduction in the flowthrough at the windows is doable, I think. The bringing of fewer people into the process by recognizing that there is a logic here. If you cleared the guy, you have gone through all of this stuff, eight months ago, ten months ago, twelve months ago, why stick him through it again? And in the business sector a great deal of the travel is repeat travel, those who go back and forth.

Mr. AKIN. I was going to say, Bob, doesn't it seem like it is going to be one of these things, we used to call it the 80/20 rule at IBM. You see it applying a lot. And that is that 80 percent of the people coming across, those are people that are going back and forth multiple times. So that if you can deal with that you have got a huge bulk of the visas already taken care of and not having to keep reissuing. Isn't part of the problem that if you did put a specific timeframe on it that all these agencies couldn't really check their backgrounds in that amount of time? Isn't that what part of the problem is?

Ms. YANNI. We know that most of the agencies, anecdotally we know that virtually all of them do respond back quickly or very, very quickly. But the information is not public. I think some of it may even be classified. You cannot find out who the—you can find out—who the agencies are that are holding it up.

Mr. AKIN. Well, it sounds like also you need some sort of a customer service front-end window to those agencies. However they want to organize themselves from the back side, the bureaucrats can set that up. But from the front end, you need some simple front end, an easy in and out, and this is the procedure, and run through it. I think that is what you are saying.

Mr. KAPP. There is no organized interface now between the affected constituencies and the people who are making these decisions. There is nothing. I mean, we can have meetings, mostly with the State Department. You can get a meeting, sit down with people. They are very nice and they have been very forthcoming about sitting down with us. But there are 21 agencies involved here. There is no structured dialog between the affected constituencies and those who are making these decisions.

Mr. AKIN. Just off the top, do you know who is—is this within the Department of Homeland Security at this point?

Ms. YANNI. No, these agencies, the clearance comes if a consular officer determines that somebody might have one of these sensitive

technologies. The process has changed recently. They send, essentially, a broadcast e-mail to all of the indicated agencies, and say we need a clearance. And then they have to wait for each agency to return. It used to be that it all came through the visa office in Washington, and only the visa office knew, if they knew, who was the holdup. Now, I think consular officers may have access to that, but it is secure information. Even the exact nature of the CONDOR visa is classified. The list of countries that we all know is classified. It was published in The New York Times, so we know anecdotally which they are, but officially that is classified information. So obviously it is not available to the visa applicant.

Chairman MANZULLO. Ms. Napolitano?

Ms. NAPOLITANO. Thank you, Mr. Chairman. I apologize for my being late, but I had other meetings that demanded my attention. But I have a great interest in this, first of all from the small business standpoint, but secondly because it has been a problem in some of my areas of business.

I am interested in the question and answer you were giving about the 21 agencies not having a standardized focal point that you can go. So you are saying there are 21 agencies involved that have jurisdiction over the application process? Anybody?

Ms. YANNI. That is right. Once the clearance is requested, all of those agencies must sign off before the visa can be granted.

Ms. NAPOLITANO. And do you have any idea or any knowledge of which ones work together in tandem?

Ms. YANNI. No, I don't.

Mr. KAPP. Congresswoman, I had a conversation the other day with a person in one of the agencies who suggested that in the next few months one progressive step is going to be made, first on a pilot basis and then on a broader basis. And that is, the extension of what I believe he called the consular database for use throughout all of the agencies in this multi-agency review process. He suggested that there are technical problems that have slowed everything down, and that they are working on them, of course, and that one of these has to do with the standardization of the database on which everybody draws to see if a person is a bad guy or a good guy. And he was a little surprised that we weren't giving credit where credit was due, and I explained to him that this would be a pilot project three months from now and it wouldn't be fully installed for six months or a year. So how could we give credit when we had seen no results?

But if you do probe further into this, you may discover that there is something going on at the technical database sharing level that I, for one, didn't know about until yesterday.

Ms. NAPOLITANO. Thank you, Mr. Kapp. I am just curious, when you are talking about systems, do the systems talk to each other?

Mr. KAPP. Well——.

Ms. NAPOLITANO. Do they have connection so they are able to bring up information to at least have an idea whether or not they need to delve further into this particular individual.

Mr. KAPP. You know, we all use the word anecdotal at this moment. I used it in my testimony, and I am sure we all did, because a lot of this is gossip. We are talking about classified processes here that the uncleared, namely us, we, are not permitted to know.

So you get rumors, and people say well, it is not our agency, it is those guys over there. We have heard anecdotally, and I think staff to this Committee has heard, that there were particular problems of data compatibility in certain agencies on the law enforcement side of the fence. But I can't comment with any authority on which agencies those are or whether they had or have solved their problems, because we just don't know. It is a black box, as Mr. Johnson suggested.

Mr. JOHNSON. Congresswoman, I do serve on a task force that studies entry and exit issues at the borders, and I note that you are originally from Brownsville, Texas.

Ms. NAPOLITANO. Right.

Mr. JOHNSON. So I am sure you are familiar with sort of cross-border traffic and how important it is to those communities. But one of the demonstrations we have had, and I think I can say this without violating any confidentiality, is in Los Alamos, on the interaction of all these computer systems, and they put it up on a board, and I can tell you, it makes spaghetti look organized. But they are working on it. Now, to what degree——.

Ms. NAPOLITANO. They being who, sir?

Mr. JOHNSON. The government.

Ms. NAPOLITANO. Which government? Big Brother?

Mr. JOHNSON. Justice, DHS, the State Department, they have their class systems, IBIS. You look at a GAO report and you look at the list of computers and computer data bases and there are probably 50 of them and it is an alphabet soup that boggles the imagination. But they are working on that. How far along they are, it does depend on who you talk to.

Ms. YANNI. I can tell you that the FBI and Department of State databases are not compatible.

Mr. KAPP. But I have to say, we will wait forever if we say it is a technology problem and it is all fixable, just give us time to fix the technology, we are going to wait forever on this thing. This has to do with the definition of goals and a provision of incentives to behave in certain ways. And the incentives are not there now to maximize the economic value to the United States from the flow of persons in and out of this country. There are no visible incentives that we can see in that regard. All of the incentives are on the other side. And the institutional arrangements that flow from those incentives are on the other side. So we can sit here and talk about whether the computers mesh or not, and I agree, it is important, of course. It is a national effort that is being done on shipping, on containers, on everything. It is a huge reorganization of the whole notion of data for national security in this country.

But that alone is not the only problem to be resolved here. It has to do with behaviors and instincts, and the instincts right now, the incentives tell you your instincts should be, throw it into the black hole. First of all, you will cover your rear end by doing so, and second of all, at least you don't do any harm by doing so.

Ms. NAPOLITANO. Mr. Chair, I am not sure what you would propose, but I would certainly love to see you convene an agency meeting or task force or organization to bring these people before them.

Chairman MANZULLO. Matthew Szymanski, who is the Chief of Staff of our Committee has met with folks from State, from Home-

land Security, FBI and CIA. These people are stellar. I mean, several testified here. They get A-plus in their devotion to duty, their honesty. They are just great people. And they work with us and they are not stroking us, and they are very, very—Randy, you know what I am talking about. These are some of the finest public servants that we have. And they are really frustrated because with all the different agencies they are trying to get a hold on this thing. Because they know the stakes. They know the frustration that is going on. And we want to work with them, and we have been.

But we just can't break this thing loose. It is not a matter of incompetent people.

Ms. NAPOLITANO. Well, no, I am not saying it is.

Chairman MANZULLO. I know that. But I just want to state for the record that these are just fabulous public servants.

Ms. NAPOLITANO. Well, just continuing on with my statement is that we need to be able to help business be able to continue to put some pressure not only—and this is talking to business—because business is too busy making money and doing business and trying to stay afloat and trying to survive during this recession. But they need to understand that if they do not call and advise, whether it is the administration or their elected officials about how it is affecting your ability to get foreign business, because you can't bring people in, or you can't travel within the United States.

And I have heard from my businesses, well, what have you done? And unfortunately they do not feel—first of all, they don't know how, they don't know who, and they are afraid that if they do they are not going to be able to have a voice later because they will be labeled as rabble-rousers, et cetera, whatever.

But my contention is that business needs to come to the table and raise their voices. Your travel agents, your business people, and start saying to this administration you need to make this change so that they can then tell the agencies, sit at the table. Get this done, and get it done soon, because we need to improve our economy, and we can't do it if we are sitting there trying to figure out which agency has jurisdiction over the approval.

Thank you, Mr. Chair.

Chairman MANZULLO. Well, we want to thank you all for coming. Randy, I am still trying to figure out this idiom, make spaghetti look organized. You know, being an Italian American, I——.

Mr. JOHNSON. My oversight.

Chairman MANZULLO. I know there was no reference there, but I understand that we in America are—you are turning red there, but that is all right. We appreciate it very much.

Again, I want to thank each of the panelists for your input. Bob, I have tasked you with helping us, I guess, on our Web site for the Small Business Committee, to be the Foreign Visitors Visa Delayed Misery Index. If you could work with Matthew again, on another project, maybe we could do it by a link to your Web site or however we do it.

And the other thing I want to do is I want to try to quantify this loss so that when it comes time to fund the agencies, I want to put in an amendment to cut the agencies by that amount of money in lost business, just to drive home the point in the form of an amendment. Again, we are out of the appropriations cycle, that is the

time to do it, and the amendment will probably not be in order. I am used to that. It has happened time and time again.

But the agencies have to understand that what is at stake here is American jobs. We have lost three million manufacturing jobs. Yesterday word came out, the statistic is 750,000 high-tech jobs have gone overseas. We continue to bleed in this economy, and we would address those issues and try to come up with some solutions.

But this is an easy one. It simply asks the United States Government to allow people to come here within a relatively short period of time of application to buy the products that we sell.

Again, we want to thank you for coming, and this Committee is adjourned.

[Whereupon, at 11:00 a.m. the Committee was adjourned.]

Opening Statement

Good Morning and welcome to everyone. Today we will be looking at ways of "Lowering the Cost of Doing Business in the United States: How to Keep Our Companies Here." In my view, there are at least these eight things making it too costly or difficult for our manufacturers to remain in the United States: visa restrictions, currency imbalance, taxes, market access restrictions, health care costs, energy costs, tort system costs, and other regulatory burdens. Of all of these, there is one that could be resolved immediately.

The visa restrictions implemented since 9/11 could be changed administratively to ease the way for foreign nationals to do business with and spend money in the

United States without threatening our national security. Moreover, everyone seems to agree that at least half of the entire backlog is attributable to China, that is, the inability of the Chinese to get visas to come to the United States to buy our products or otherwise do business and spend their money here.

I have taken a hard look at the business visa backlog, because it acts as a trade barrier that costs American companies enormous business and will encourage those companies to offshore more operations and jobs to avoid the need to bring foreign buyers and business partners to the United States. To understand and document this backlog, this Committee has held an oversight hearing, requested a GAO investigation, researched and resolved visa issues during travel to

Asia, discussed these matters with numerous Chinese officials, and convened regular meetings with industry and the relevant U.S. agencies. Unfortunately, these meetings have occurred separately, which is part of the problem. Much of the backlog could have been avoided, or now solved, through closer cooperation and consultation between the U.S. agencies and industry.

The backlog remains a serious problem. I know this through our Committee oversight work, my personal experience with my own constituents, reports from my Congressional colleagues, preliminary reports to me from GAO, and numerous press reports, such as the November 17th Washington Post Editorial (which is on the table). While many foreigners endure these

delays, many others decide to change their plans to avoid the need to come to the United States.

One of my constituents, The Ingersoll Corporation, waited in vain for buyers from China to secure visas so that they could inspect the Ingersoll machines they wanted to buy. After seven months of waiting, the Chinese buyers instead purchased comparable machines from another country. When Ingersoll, a classic small business, lost this multi-million dollar deal, it was plunged into bankruptcy and liquidated.

Ingersoll isn't alone. According to one survey, half of all our companies operating in China lost opportunities because of delays in business visas. Our

small businesses lose two ways. They lose direct business, as happened to Ingersoll. They also lose as suppliers when their larger U.S. customers lose business.

Amway, one of the world's largest direct-sale companies, decided against holding its convention in Los Angeles or Hawaii for its 8,000 South Korean distributors in the face of the new visa requirements. Instead, Amway will hold its convention in Japan. It is estimated that the convention would have brought in $10 million in business to the US destination.

Besides the literal cost to our economy in terms of lost business opportunities and tourism dollars, the visa delays result in loss of goodwill from people from all

over the world who wish to come to the United States for exchange programs and educational opportunities. Since its inception, The United States has enjoyed a reputation for welcoming people from all over the world. Now many of our State Department officials worry whether America is still perceived as a place that welcomes foreign visitors.

In the post 9/11 world, we must remain vigilant to keep terrorists away from our shores. But we cannot shut the world out. We need to find better ways of distinguishing between friend and foe. Based on our work to date, I know the State Department, Homeland Security Department, FBI, and other agencies are working to find better solutions to balance security with business necessity.

Just one such solution is to offer qualifying Chinese Nationals a one-year multiple entry visa. I am working with our State Department to expedite discussion with Chinese officials to come to a reciprocal understanding, so that each country's business representatives can qualify for such visas on similar terms. China already offers long-term business visas to frequent U.S. travelers and I'm confident we can reach an understanding. This solution would have an immediate impact and might reduce the enormous China backlog considerably.

We are exploring numerous opportunities for closer agency-industry cooperation. As just one example, we have suggested a consular-trade partnership against terrorism (C-TPAT) for visa issuance similar to the

customs-trade partnership against terrorism (C-TPAT) that already exists for container and port security. In such programs, industry works with the agencies to address their security concerns in exchange for a business benefit, such as faster, more efficient processing and transport of goods or people.

I now turn to my colleague, the Ranking Member, Nydia Velazquez for her Opening Statement.

STATEMENT
of the
Honorable Nydia M. Velázquez, Ranking Democratic Member
House Committee on Small Business
"Lowering the Cost of Doing Business in the United States:
How to Keep Our Companies Here"
November 20, 2003

Thank you, Mr. Chairman.

Today's global marketplace is crucial to the success and strength of the U.S. economy.

And it is small businesses that play a large role in international trade. However many are now struggling due to immigration policies implemented as a result of the terrorist attacks of September 11. While there is no doubt that our nation's security is of the utmost importance – it is also necessary to recognize that America's borders are an entrance for people, goods and services, which help drive our economy.

All 19 of the September 11 terrorists entered our country on valid visas and this situation has rightfully prompted the Department of State and the Department of Homeland Security to implement policies aimed at toughening entry into our country. Unfortunately, some of these changes have had the unintended consequences of creating barriers for domestic small companies.

The Committee held a hearing earlier this year on this exact topic. We determined that a problem does exist with the impact that these immigration policies are having on our nation's small firms – and in my opinion – real changes have yet to be made.

The Bush administration now requires the State Department to conduct face-to-face interviews and more thorough background checks in conjunction with the FBI. However, once again this administration has failed to follow up its tough talk with adequate funding. The result is a prolonged time for obtaining a visa, going from what used to be a few days – to what is now a few weeks – or even a few months.

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

Sadly, many small businesses, including those in the manufacturing, tourism and trade sectors – 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 lengthy setbacks are pushing clients to seek products from U.S. competitors.

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.

The U.S. tourism industry, which is one of the leading retail industries in this country, is also being negatively impacted. In 2001, the U.S. travel industry received more than $555 billion dollars, including international passenger fares from domestic and international travelers. These expenditures generated nearly 7.9 million jobs for Americans, with nearly $174 billion in payroll income. As one of America's largest employers – with one in every seven workers employed directly or indirectly in travel and tourism – this vital industry has experienced significant setbacks due to the stricter immigration laws.

Too many of our nation's most prosperous industries – including travel, tourism, and manufacturing – have been put at an unfair disadvantage. The need for increased security is certainly warranted. But we also need a healthy balance between protecting our nation and ensuring that small businesses can successfully compete in today's expanding global marketplace.

These immigration policies, and the impact they are having on small businesses, must be revisited in order to ensure that we are keeping out those who intend to harm us, while admitting those individuals who come here to make positive contributions to our economy.

Thank you.

COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING OF NOVEMBER 20, 2003

TESTIMONY OF ROBERT A. KAPP, PRESIDENT
UNITED STATES - CHINA BUSINESS COUNCIL

Chairman Manzullo, members of the Committee:

Thank you for inviting me to appear before you today for a continuation of an important Committee review of the situation regarding American visa policies and processes and the impact of those policies and processes on working Americans.

I am Robert A. Kapp, president of the US-China Business Council. Founded in 1973, the Council is the principal organization of American companies engaged in trade and investment with China. Primarily a provider of business services to our 200 member firms, the Council also engages frequently and productively with both US Government figures and Chinese government agencies on questions of concern to our members. The Council often serves Members of Congress and staff members with advice, information, referrals, and other forms of assistance. A snapshot of the Council's many activities can be gained at our web site, www.uschina.org. The Council also publishes the principal analytical publication on US-China business, the bimonthly China Business Review, of which portions may be viewed online at www.chinabusinessreview.com

In that regard, I hope the Committee will permit me to pay special tribute to Chairman Manzullo and his staff for investing heavily of their time and ideas in the strengthening of mutual exchanges between the United States Congress and the National People's Congress of China. We have watched with admiration as the US-China Interparliamentary Exchange has grown under the Chairman's leadership, involving larger and larger numbers of American legislators. Our Council is very strongly supportive of this effort, and looks forward to future opportunities to work closely with the Interparliamentary Exchange -- a project which we know the Chinese participants take very seriously as well. We encourage all Members to respond to the Chairman's invitations to involvement in future activities of the US-China Interparliamentary Exchange.

I appreciate the opportunity to appear before you today for another round of discussion of an persistent and serious problem: the economic and political costs to the United States arising from current inadequacies in the system governing the issuance of visas to foreign citizens seeking to come to the United States for activities directly connected to the interests of American companies, their employees and their communities.

BEIJING
USA HEAD OFFICE 1818 N Street, NW Suite 200 Washington, DC 20036
Tel: 202-429-0340 Fax: 202-775-2476 Email: info@uschina.org www.uschina.org
SHANGHAI

I. The problem at the most general level: The US visa system, as experienced by many US companies, is dysfunctional.

A fundamental imbalance today informs the process by which visa applications are reviewed. The consideration of economic and political costs arising from the current malfunctioning -- indeed, dysfunctional -- visa system appears to have vanished. Procedurally, institutionally, there appears to be no channel for the introduction of concerns over collateral damage arising from the current design and implementation of the US visa review process. While the inter-agency process in this area remains opaque, it appears that those agencies most capable of speaking to the question of collateral economic damage arising from present practice are external to the design of visa review processes. Further, it appears that the economic impact of current practices plays little or no role either in the design or the implementation of the visa review process itself. Furthermore, with the exception of this Committee, there appears to be little concern in the Congress over the deleterious unintended consequences, whether economic or political, of current visa procedures. In the vernacular, the visa mess does not have "legs."

II. Institutional Problems.

What this means is that the costs to the United States of this dysfunctionality -- the economic losses, the evaporation of commercial and employment opportunities for US firms, the loss of international goodwill and cooperation, the disruption of our higher educational institutions, the diversion of beneficial flows of trade and persons from the US to other countries, etc. -- appear to be beyond the pale of US visa policy and practice. We feel that this fundamental imbalance, if not addressed, will cause increasing economic damage to American firms large and small, their employees, and their communities. It will also inflict needless and even dangerous damage on US relations with other countries, at least some of whom are vitally important to the US pursuit of basic national objectives.

Let me take the experience of the business community that I know best as an example.

Since the summer of 2002, when the disruption of normal visa processes descended without warning, and in spite of unending efforts by larger and larger groups of companies and trade associations to find effective channels of communication with those in government responsible for policy design and administrative execution, the voice of the affected constituency -- in this case international business, but the point applies to education, tourism, and others equally -- has failed to penetrate the curtain of vagueness and secrecy surrounding our failing visa system.

We know that what we see as "the problem" is a) of an inter-agency nature; but b) not regarded as a "problem" by some of the agencies involved. We have had sixteen months of quiet meetings, and occasional larger meetings, with a variety of US Government agencies, each of them unfailingly gracious. But the end result has been, to the affected parties' eyes, nothing.

Instead, we find horizontal bureaucratic insularity ("Not our bureau's responsibility," "Not our Department's legislatively mandated role"); vertical paralysis ("That came from higher up," "There's nothing we can do; that came down from the top"); superficial sympathy with no follow

up ("Our door is always open"); and of course, secrecy ("We can't discuss with you where the hang-ups are, and of course we cannot discuss cases with you.")

The problem, I say most respectfully, also involves the Congress. Ultimately, the executive agencies carry out the laws established by the Congress, and their financial sustenance comes from the Congress. With the praiseworthy exception of this Committee's hearings on this subject, and one or two other hearings, we have seen few if any public indications from the Congress of recognition of the severity of the problems arising from our dysfunctional visa system. Indeed, it seems to be common coin of the realm that any expression of concern over the costs to America, let alone to American business, of the current malfunctioning visa system, in the post-September 11 context, would be politically unacceptable, given the manifest threats to US national security that have burst upon us since September 11.

In my view, on this subject as on many others, the power of the Congress to "shock and awe" the executive branch agencies is enormous -- far greater, frankly, than I understood until recently. The understandable sense of urgency in the Congress in the aftermath of September 11, and the crucial responsibility borne by all in national public service to prevent any recurrence of the September 11 tragedy, engendered intense Congressional interest as to how foreigners are admitted to the United States. Executive Branch agencies were called to account. Some senior officials lost their positions. In the wake of this furor, the bureaucrats posted abroad and assigned the responsibility of deciding who may and may not enter the United States have understandably moved even more fully in the direction of risk avoidance, especially after the summer of 2002, as revisions of US visa procedures made available a wider array of options for referral, scrutiny, or outright denial.

III. The case of China.

Mr. Chairman, we meet at a time of simmering tension between the US and China in the area of trade relations. Much of the brooding animosity resides in the Congress. I have no illusions that, in this Committee or in the House as a whole, a deep current of support for cordial and productive US-China relations is flowing at this time.

Yet no one in Congress, surely, is unaware that the PRC, whose economy continues to grow at 8 or 9 percent a year, is America's fastest-growing overseas market. Few will be unaware that US exports to China have grown more than 20% a year in each of the last two years. Many will have read of the rapid expansion of China's domestic market; of the emergence of hundreds of millions of Chinese people from poverty into the first stages of a life of disposable income; of China's large purchases of US agricultural commodities such as soybeans and cotton; of the reduction of China's tariffs on many important US export products under the terms of its WTO obligations; of China's receptivity both to foreign products and to foreign investments. Most will be aware of China's rapid ascent from a position of commercial insignificance to the upper ranks of the world's trading nations in a mere two decades.

The US and China are both large continental nations, with economies that span the full spectrum of human economic activity. US companies therefore are actively developing business opportunities in China in every sector, from the primary extractive industries through the energy

sector, heavy infrastructure, a vast range of manufacturing opportunities, agricultural commodities and agricultural machinery, and increasingly the services sector -- transportation, banking, insurance, tourism, software, engineering and construction, and many other fields -- which China is progressively opening to foreign participation under the terms of its WTO agreements.

In the process, China has developed a very strong export sector, particularly in products involving the "processing" by Chinese workers of imported raw materials and components. China exports heavily to the world, and to the United States. Indeed, the growth of Chinese exports to the United States has reflected the diversion into China of massive production capacity formerly located in such Asian supplier locations as Taiwan, Hong Kong, Korea, and Japan.

The short of this is that China is three things to US business: a large and growing market for our products and services, a provider of imports to the US (particularly to the retail sector serving Americans of modest means), and -- very importantly -- a participant in the complex "supply chains" that increasingly characterize the organization of global production.

This large and growing economic interaction -- really, integration -- inevitably is reflected in the flow of human beings between the US and China. Short of trained personnel capable of functioning in the 21st century global business and technical environment, China sends thousands of its brightest young minds to the United States for training, whether in universities or in American companies, after which many find opportunities with US firms in China urgently seeking scarce managerial personnel. US companies participating in giant infrastructure projects in China work intensely, day in and day out, with their counterparts. American manufacturers send their technical and sales people to China and bring their Chinese customers to the US for negotiations, inspections of purchased products, technical training, and contract signings. US companies maintaining joint ventures with Chinese counterpart companies work to build seamless cooperation with Chinese executives, sales people, engineers and others. American companies bring their China teams to the US for global strategy sessions, executive training programs, sales meetings, and all the other kinds of gatherings that bring global teams together in the US under US corporate leadership. And international professional meetings, trade shows, and conventions bring Chinese participants -- often potential buyers -- to the United States for direct contact with US firms.

All of this entails the movement of large numbers of Chinese people to the United States. The sheer magnitude of the flow of business people from China to the United States, by comparison with the flow from most other nations, meant that, when the axe fell on normal visa procedures in the summer of 2002, the number of disruptions inflicted on US companies would, inevitably, be very high.

The US-China Business Council has worked hard on the "visa mess" since the summer of 2002, when the impact of unannounced changes in US visa procedures suddenly burst upon this massive cross-Pacific business flow. My first letter to Secretary Powell on the subject dates from August 16. Since that time, our Council has tried to play an active role in the evolution of a much broader coalition of business organizations and non-business groups working on the dysfunctional visa system. Singly, however, our organization focuses on the difficulties facing US companies seeking to maximize business opportunities with China.

At the outset, and even now, the great accumulation of visa mishaps -- delays, unexplained refusals, disappearances of applications, disruption of urgent business travel, and so on -- has occurred in the area the government refers to as VISA MANTIS, a program established long before September 11 and focused on the goal of preventing the misappropriation by foreign nationals of sensitive US technologies, particularly those with potential significance to US national security and nonproliferation concerns.

As we understand it, at the heart of the MANTIS process lies the Technology Alert List -- the "TAL," literally a list of technological and scientific fields deemed sensitive. A visa application from someone whose work lay within one of the many sensitive TAL fields was liable to the requirement of an "SAO" -- a Security Advisory Opinion, arrived at through a complex Stateside inter-agency consultation involving, at a minimum according to our understanding, the Departments of State and Commerce, certain intelligence agencies, the Federal Bureau of Investigation, and perhaps other bodies.

Before the summer of 2002, the SAO process meant a longer processing time than a routine visa application might require, but there was, for the applicant, a saving grace: the "clock." The "clock" required that, if a verdict on an SAO'd visa application was not reached in 10 days, the visa would be approved. The "clock" was a critical piece of insurance against utter randomness and unpredictability, and against inordinate delay resulting from inter-agency communications failures or other bureaucratic breakdowns.

It is worth stopping here to point out that, from the outset, the problems of dysfunctionality in visa processing relating to China have NOT stemmed principally from the response to the terrorist threat. The last two years have seen other border control programs erected to scrutinize visa applications by visitors from countries deemed to pose higher risks on the terrorism front; the best known of these programs is called "VISA CONDOR." I will not detail that here, because it does not apply to China. China is not regarded as a high-risk source of visa applicants from the standpoint of terrorism.

With September 11 and its aftermath, however, two very different streams flowed together, in ways that to this day we in the business community cannot fully perceive.

On the one hand, the Security Advisory Opinion inter-agency review process got new rules. In particular, the ten-day "clock," the bulwark against interminable and inexplicable delay in the processing of visa applications, was, eliminated on grounds of national security. At the same time, new guidelines were issued to the visa officers on the front lines, in the US embassies and consulates in China and elsewhere, which raised very rapidly the number of visa applications shunted back to Washington for the SAO process, no longer bounded by the 10-day "clock" guarantee.

On the other hand, as I noted earlier, the tremendous political furor that focused on the US visa-granting system after September 11 took its toll, and left the visa staffs of US posts in China and elsewhere not only overburdened as never before, but personally risk-averse as never before, given the clear encouragement to push visa decisions back to the interagency SAO process in the interests of national -- and bureaucratic -- security.

Other developments have followed. The requirement, for example, that each and every applicant for a visa in China appear for a personal interview with a US visa officer, introduced months after the elimination of the "clock" and the expansion of the TAL/SAO process, has imposed often onerous requirements of travel and expense (there are, after all, only five US consular locations in all of China) for applicants ranging from students to senior government officials, lengthened the time necessary for the initial review of each visa application, and has resulted in waiting lists -- simply for three-minute visa interviews -- of anything from a couple of weeks to over a month..

Meanwhile, the elimination of a longstanding program providing for the expedited issuance of visas to a large number of Chinese citizens carrying so-called "public affairs" passports, apparently in light of evidence of falsification of information on many visa applications, brought large numbers of new applicants into the waiting lines at US consular posts in the PRC.

In all of this, note that the system plays no favorites: the Chinese engineer employed by a US company who needs to race back to the States for a consultation with his colleagues, or the Chinese infrastructure project manager who needs to head for the US to inspect heavy machinery in production at a US plant in time for scheduled delivery to the work site in China, stands in the same waiting line with the student, the tourist, and the father-in-law. There may be a certain brute equity in that; American's don't play favorites. But if we are here concerned with the economic damage wrought by the current visa handling process, there may be merit in focusing separately on the problems affecting commercial visitors, on the one hand, and on non-commercial applicants on the other.

In any event, the system yields results: dozens and dozens of cases, large and small, of business deals scotched; transactions delayed, foreign competitors chosen over American producers, trade shows relocated to non-US locations; products sourced from overseas affiliates of US-headquartered firms because it's just too difficult to source the products in the USA.

Ironies abound. Many of our friends and colleagues in the US China Business community would observe that while we berate China for its alleged manipulation of its currency to the detriment of American exporters, our disheveled visa system stymies US companies seeking to conduct normal operations in the pursuit of export sales, market development, and other core elements of any successful international business.

IV. Hopeful signs?

The hopeful signs that I personally discern in all of this are very faint, but they are there. We hear occasionally, and have heard recently, of inter-agency discussions of technical aspects of the visa-processing problem, and of attempts at technological improvement aimed at facilitating inter-agency technical communication, consultation, and decision-making. We occasionally hear, from government sources, gross worldwide figures suggesting that SAO times are down, visa processing times are down, and so forth. While all such scraps of information are welcome, I must say again, from the perspective of our Council's members, any internal improvements that may have been achieved have yet to show up decisively in the actual experiences of our companies, whether on the ground in China or working in the US to bring vitally important Chinese customers, company personnel, and others to the United States on company business.

At a more "philosophical" level, we have all seen, over and over again, a familiar pattern of policy-making in the United States. An emergency occurs. The political system responds rapidly, sometimes very very bluntly. The media leap into the fray, driving the political system even further to extremes. The "ship" heels way over under the force of the original emergency and then of the political system's response. All seems black and white; nuance and complexity are banished. Then, slowly, the pluralism of American life reasserts itself. The voices of the affected begin to speak. The free media begins to notice. Once the media are engaged, the few in the political system begin to see a more subtle challenge. Civil society, in the form of organized communities and interested groups, begins to assert itself. In due course, from the original emergency and the ensuing political and bureaucratic counter-blast, a better policy emerges and at least some of the damage that resulted from the first response to emergency is curtailed or undone.

The hopeful signs, as of now, are thin.

V. Beyond Complaint

Mr. Chairman, thanks to your and your Committee's rare willingness to spend time on the dysfunctional visa system, this is not our first conversation here. I sit before you today, not to introduce a problem to you that you and your colleagues have not heard of before, but to update you on a problem that is not going away.

Our purpose is emphatically NOT to caste blame on individuals, on agencies, or on any Members or Committees in the Congress. On the contrary, we in the international business community sympathize powerfully with understaffed and at times badly equipped US Government agencies struggling to fulfill the most elemental responsibilities for the security of our nation.

Our purpose is even more emphatically NOT to suggest any diminution in the nation's ongoing efforts to protect its citizens by protecting its borders. None of us, as Americans, forgets for a moment the horrific experience of September 11 and the daily realities of terrorism and lethal violence directed against our country and our fellow citizens.

But, Mr. Chairman, let me say as a personal matter that I reject the notion that any criticism of current law, policy or regulation in the area of this dysfunctional visa system is tantamount to tampering with our national security.

It is not enough to content oneself with throwing out the baby with the bath, on the grounds that at least no waterborne pests were allowed to remain in the house. We must do better than that. Permit me to close with a few recommendations.

A. Mandate the immediate establishment of an institutionalized dialogue between the makers and executors of US visa policies, on the one hand, and key representatives of the critically affected constituencies, on the other. At present there is nothing of this kind. After fifteen months, those most affected by this "visa mess" continue to poke the pillow, essentially without effect, unable even to discover where responsibility for improving the system lies, let alone to have a sustained and results-oriented dialogue with responsible parties on how to minimize the damage from present policies. I cannot even tell you, Mr. Chairman, who

should do the "mandating;" I hope you and your Committee will help us even to navigate that basic question.

B. Work for steady, step-by-step, improvement of a failing system, not for the elimination of all problems at a single stroke. For example, work toward the liberalization of visa procedures for key segments of the travelling population, and by so doing, eliminate some of the overwhelming workload imposed on US visa offices abroad. This means that, probably on a bilateral basis, the United States should find common ground with other countries -- very much including China, given the large numbers of Chinese applicants for visas -- to provide visas of longer effective duration for travelers moving repeatedly in and out of the United States. This will affect large numbers of business travelers, whose required re-applications for visas after unnecessarily short intervals clogs the visa system.

   It is my understanding, from an anecdotal conversation, that over the life of the program the rejection rate from all "Technology Alert List" visa reviews is approximately .04%. Surely the possibility of increasing the "yield" of the TAL/SAO process -- by exploring ways of diminishing the SAO work load, thus eliminating unnecessary disruptions of legitimate business travel benefiting US companies and workers -- is worth exploring, is it not?

C. Restore the "clock," at a meaningful level. While I am sure that many in the business community would dearly like to see the "clock" restored as it existed before September 11, no one believes for a minute that the world has not changed deeply as a result of that tragedy and ensuing global developments. We understand, moreover, that there may be extremely vigorous resistance to any restoration of a fixed time limit for the processing of visa applications, on the grounds that in some cases absolutely NO time limit should be imposed on the investigative process lest an unforeseeable breach of security result.

   We would respectfully suggest, however, that even on this matter, the belief in 100% certainty is misplaced, and the matter must be seen in terms of probabilities, costs and benefits. The conduct of international business depends both on speed and on predictability. Even if speed must be sacrificed to some degree, predictability remains utterly important. A four-month process to acquire a visa to come to the US on business (i.e., a month's wait for an interview, then a three-month wait for SAO approval) is, in many cases, a commercial death sentence. Balance needs to be restored to this process.

D. Bring the Congress back into this picture. The more we labor in this visa labyrinth, the more clearly we sense that the Congress, whose initial reactions to the emergency of 2001 impelled the reworking of the US visa system, must return to the subject and deal with the unintended collateral damage growing from its decisions.

   Clearly, Congress cannot micromanage the infinitely complex processes, whether administrative or technological, that response to the stark daily challenge to American national security has posed, and it must approach the work of the Executive Branch agencies as a partner in a great national effort.

   But we find it increasingly hard to escape the conclusion: there seems to be little effective incentive among the executive branch agencies to assign to the norms and requirements of the commercial sector a legitimate place in the operation of the visa system, or to positively

support America's engagement with the world through the medium of a more effective visa system. From outside the government, our impression is that incentives are keyed to closure, to exclusion, to prevention, with no balancing considerations.

They will remain that way until, and unless, the Congress ordains otherwise. If the Congress is too busy, or is unwilling, to recognize that US national interests are multiple; that the multiple costs and benefits of any visa strategy must be identified and balanced; that the ability of Americans to compete and succeed in the global marketplace is inseparable from the ability of foreign citizens to visit the United States on legitimate business; that discontinuities among government agencies must be ironed out and irrationalities eliminated -- if the Congress is unable to grapple with these complexities, we might as well all go home. It is my personal impression that the agencies will not grasp this nettle on their own, because the agency-transcending incentives are lacking. We hear again and again: "We're really with you on this, but you have to understand that there are parties to this visa process who have absolutely no time for the needs of American businesses, and until they do, you will get nowhere on this."

Mr. Chairman, I don't see how hard-working American companies, large AND small, can get out from behind the eight ball on this problem unless the Congress, led by dedicated Members such as those serving on this Committee, can make progress happen.

Thank you.

Attachments: I have attached a small number of documents here that illustrate a) the situations facing American companies struggling with the business consequences of the current visa situation; and b) some of the forms of engagement that I and the US-China Business Council have had with representatives of the US Government. These materials are illustrative, not comprehensive. Through our "Visa Incident Report Form" on the US-China Business Council web site, the Council has amassed in standardized forms numerous examples of commercially disruptive visa situations among member companies, and on occasion has shared them with public officials. Singly and in combination with other groups, the Council has participated in numerous meetings with executive and legislative branch representatives and has corresponded at far greater length with public officials than this small sample indicates.

Letter from the President

THE US-CHINA BUSINESS COUNCIL
美 中 贸 易 全 国 委 员 会

Robert A. Kapp
PRESIDENT, THE US-CHINA BUSINESS COUNCIL

Reprinted from *The China Business Review*, July-August 2003

Of Viruses and Visas

Before atypical pneumonia, before the Metropole Hotel super-spreader, before the World Health Organization (WHO) advisories on travel to China, there was the visa mystery.

Long before China declared publicly that it faced a medical emergency in severe acute respiratory syndrome (SARS), American businesses knew they were facing a different emergency of unknown origin.

Last August 16, I wrote to the leadership of the US Department of State (DOS) that American companies working in the People's Republic of China were facing sudden, unexpected, and disruptive changes in procedures governing the issuance at US posts in China of visas for PRC citizens seeking to enter the United States for purposes directly related to legitimate US commercial interests.

The Council's corporate members were unable to learn the content and extent of the new procedures that seemed to be operating. Normal business functions in the large and expanding arena of US-China commerce were, and still are, severely challenged.

Nearly a year has passed since the visa mess insinuated itself without notice into the normal operations of American businesses—and universities, research labs, student exchange programs, and other forms of American interaction with the world.

In contrast, two and a half months have passed since SARS burst onto the world stage. Today, while uncertainties remain, the SARS tide appears to be receding. There can be little doubt that the energetic actions of governments at the local and national levels, along with the strenuous efforts of international health agencies led by the World Health Organization (WHO), have been crucial to stemming the epidemic.

On the visa mess, however, progress toward the restoration of balance is far less clear. US companies engaged in normal trade and investment with China continue to report that Chinese citizens on legitimate business missions are finding the process of securing normal US travel documents impenetrable, unpredictable, inordinately time-consuming, arbitrary, and more frequently negative where once it was otherwise.

The cost of this systemic implosion is clear to the affected individuals and businesses, whether the firms are small or large. A snapshot of the damage inflicted on smaller US companies by the visa mess was offered at a recent hearing by the House Small Business Committee. So far, other congressional committees with more direct jurisdiction over the entire visa process have failed to confront the visa problem, either in regard to China or globally.

Viruses and visas are different issues, of course, but some of the contrasts in the two situations are instructive.

The central contrast between the US and global responses to SARS, on the one hand, and the continuing visa meltdown on the other, lay in public authorities' approach to public information. Faced with the SARS crisis, national health authorities in the United States and many other nations leapt, together with the WHO in Geneva, into the work of hard science and of instant, sustained public outreach.

The authorities quickly informed health workers and the general public across the globe about what was happening and what could be done. (China was, as noted in my last Letter, slow to act, but then acted with energy). A whole set of policies and measures—especially the rapid deployment of information resources—are at the core of the decline in SARS numbers worldwide as summer begins.

Contrast the visa mess.

The visa crisis emerged in the wake of September 11, 2001. The impulse to act immediately to strengthen US border security was both understandable and necessary.

THE US-CHINA BUSINESS COUNCIL is a private, not-for-profit trade organization founded in 1973. The Council serves as the principal organization of US corporations engaged in trade and investment with the People's Republic of China. With offices in Washington, DC, Beijing, and Shanghai, the Council provides research and analysis to its more than 220 member companies, and produces *The China Business Review* and other publications.

1818 N Street, NW,
Suite 200
Washington, DC 20036
USA
Tel: 202/429-0340
Fax: 202/775-2476
e-mail: info@uschina.org
www.uschina.org

The SARS virus declines; the visa mess continues.

That the response was also profoundly bureaucratic and heavy-handed was perhaps, at first, inevitable. It also carried heavy political freight. As the attempt to rationalize and strengthen the management of US border security got going, DOS, which had always held authority over the granting of visas, came in for withering political criticism for having granted visas to people bent on committing terrorist acts against American citizens within the United States. In due course, heads rolled in Consular Affairs. Junior officers handling visas heard a loud and clear message.

Furthermore, a tightening of border security revealed massive technical obstacles, including the existence of numerous bureaucratically distinct databases whose integration across agency lines now loomed as critically urgent. The government turned simultaneously to the tasks of institutional reorganization (including the formation of the Department of Homeland Security), technological rationalization, and tighter restriction on access to the United States.

Although details remain sketchy even now, it is clear that the visa process underwent massive changes in the early summer of 2002. A new program called CONDOR raised the bar for visa applications by certain citizens of certain countries and territories deemed to present the highest risk of terrorist infiltration into the United States. That was the bluntest new instrument deployed in the visa system.

China, however, was never regarded as a special source of potential terrorist infiltration into the United States. On terrorism, the United States has consistently regarded China as a cooperative partner.

Yet, by midsummer of last year, visa applications from Chinese nationals directly associated with American business operations in China were disappearing into a void, an opaque US review process with no explanation of what was happening and when decisions would be reached.

The kind of competent informational effort so quickly evident in the SARS case was regrettably absent in the case of the visa mess. For months, businesspeople and Washington-based organizations like The US-China Business Council probed politely, wrote letters, and talked to friends in government, simply trying to understand what had befallen them. Answers were often friendly, usually vague, never definitive.

It became clear that the big slowdown on China visas resulted from the vast increase in referrals from consular posts worldwide to an interagency "Security Advisory Opinion" (SAO) review process in Washington. We learned some other things along the way:

1 The "clock," as it was called—the familiar system whereby, in the absence of a formal decision on a particular visa application within a fixed period of time, the application was automatically approved—was unplugged. No time limit on the review of visa applications was retained. Thus reviewing agencies no longer felt a strong incentive to act expeditiously.

2 In early August, 2002, a new "guidance" was sent to consular offices worldwide, updating the wide-ranging Technology Alert List (TAL) on which visa officers were to focus and counseling them on when to reach out for a multi-agency SAO instead of making their own visa decisions. This guidance, called "Using the Technology Alert List (Update)" makes clear the confluence in midsummer 2002 of the emergency response to terrorism and longer-term challenges, such as "maintaining US advantages in certain military critical technologies." This program of interagency visa review, established years earlier, was called MANTIS. For China, it was not CONDOR but MANTIS that was now at the forefront.

Recommending that the so-called "critical fields list" attached to the update be "posted at the interview window where staff can become familiar with the contents," the update also encouraged visa officers to trust their instincts. "There may be times," visa officers were advised, "when the consular officer suspects *for whatever reason*, that an applicant may be /of concern/ *despite the absence of the applicant's profession or area of study on the TAL. Such cases can and should be submitted in an SAO for the Department's advisory opinion.*" (Emphasis added).

With the antiterrorism border-control effort (not aimed at China) thus melded with the broader goals of the MANTIS-TAL process by August of 2002, and visa officers urged to "trust their instincts" by moving visa decisions to interagency review, it is no surprise, in retrospect, that the number of MANTIS review cases for China quickly shot upwards, to perhaps four times prior levels.

Draped in the emergency response to September 11, the mysteries of the visa crisis remained unsolved to those, including a great many legitimate American companies in China, caught in the downdraft. Well-intentioned officials would explain obliquely that decisions were coming from "above." Sympathetic listeners would point out that the manpower in the embassies, consulates, and overburdened investigatory bodies in Washington was lacking, as were the technical resources: computers were ancient, systems did not interconnect, administrative priorities were elsewhere, and so forth.

Once it becomes clear who has the authority to repair this extraordinary bureaucratic flameout, balance simply must be restored to a visa system that must shut the door as tightly as possible to those who seek to destroy the security of the United States while keeping the door open to foreign citizens, including Chinese, whose entry into the United States is inoffensive or beneficial to this country.

The SARS emergency to date has demonstrated the capacity of national and international government agencies to respond vigorously, creatively, openly, and effectively to sudden dangers.

The visa mess has not done so.

If current SARS trends continue, Americans pursuing opportunities for successful business with China will soon flow in and out of China again in normal numbers. Meanwhile, they wait none too patiently for normality to return to the flow of Chinese customers, business partners, and employees to the United States. Whether the bureaucratic systems struggling to perform essential security tasks can develop the skills needed to minimize random damage along the path to protection is a critical question that demands an answer. 完

The United States-China Business Council

1818 N Street, NW • Suite 200 • Washington, DC 20036 Telephone: 202/429-0340 Fax: 202/775-2476

August 16, 2002

Hon. Colin L. Powell
Secretary of State
United States Department of State
Washington, D.C. 20520

Dear Mr. Secretary:

In recent weeks, American companies engaged in commercial relations with the People's Republic of China have experienced unexpected and disruptive changes in procedures governing the issuance at US posts in China of visas for citizens of the People's Republic of China seeking to enter the United States for purposes directly related to legitimate American commercial interests.

In response to the sudden emergence of urgent concerns among our Council's corporate constituents, we have attempted to determine the facts and the rationales surrounding this apparent change in U.S. visa procedure. Regrettably, we have not been able to gain a dependable understanding of what is transpiring. While it is now clear to us that new procedures have indeed been put in place, the full content and extent of those procedures remains difficult to ascertain. This poses severe challenges to normal business functions in the large and expanding arena of US-China commerce.

While we are given to understand that these procedures are in some way related to American national security concerns and are not specific to China, it seems that they are being applied to a limited list of nations of concern, on which the reasons for China's inclusion are not self-evident. At the same time, we are given also to understand that the sudden emergence of extensive delays in the processing of visas that normally would have been managed under the so-called "Ten Day Rule" may arise from changes in the handling of visa applications for travellers working in a specified set of economic and technological fields of particular concern to the US Government. We have not been able to discern whether this development is particularly directed at China-originated visa applications, but the effect is being felt strongly among our constituent firms in the PRC.

The United States-China Business Council will be joining immediately with other associations to request, of the Department of State and other relevant US Government agencies, formal public clarification of the procedures that have been put into place in the visa process worldwide or in a list of designated countries. The commitment of American companies to the defense of US national security is full and beyond question. Clarity and predictability on a matter of such salience to international commerce as the

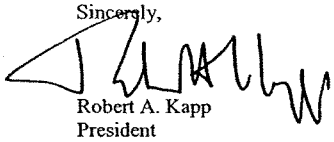
issuance of U.S. visas, however, should be a baseline for effective policy implementation and defense of US interests, whatever the content of the new measures.

As regards the situation in China in particular, this Council will attempt in the days to come to provide you and your Department with useful detailed information regarding the impact of the perceived new visa procedures on American business interests with China. I can assure you even now that very substantial and concrete interests are being affected by the altered visa-processing environment.

We very much appreciate your personal interest in the impact of these as yet unpublicized new visa procedures on American interests throughout the world. We look forward to joining with the Department of State and the United States Government to maximize our common commitment to American national security while minimizing the disruptive effects that have already begun to be felt by individuals and companies within the community working so hard for American success in China's growing economy.

Please do not hesitate to contact me at any time.

Sincerely,



Robert A. Kapp
President

cc: Philip M. Condit, Chairman, US-China Business Council
Christopher B. Galvin, Vice Chairman, US-China Business Council
Sen. J. Bennett Johnston, Vice Chairman, US-China Business Council
Hon. Alan P. Larson, Under Secretary of State for Economic, Business and Agricultural Affairs
Hon. Grant S. Green, Jr., Under Secretary of State for Management
Hon. Grant D. Aldonas, Under Secretary of Commerce for International Trade
Hon. James A. Kelly, Assistant Secretary of State for East Asian and Pacific Affairs
James F. Moriarty, Senior Director for Asia, National Security Council

THE SECRETARY OF STATE

WASHINGTON

September 19, 2002

Dear Mr. Kapp:

Thank you for your letter of August 16. I appreciate hearing from you about the difficulties that U.S. businesses have been experiencing because of changes in the visa application procedure.

Responding to the attacks of September 11, 2001, the State Department, working with other U.S. Government agencies, has been engaged in an extensive and ongoing review of visa issuing practices as they relate to our national security. Visa applications are now subject to a greater degree of scrutiny than in the past. Applicants affected by these procedures are informed of the need for additional screening at the time they submit their applications and are being advised to expect delays.

We recognize that these delays are having an impact on legitimate business activities, and we have already had success streamlining the process, consistent with our security and legal responsibilities.

We want to continue to hear your concerns and ideas as we attempt to design better solutions to these problems. We welcomed your participation in our September 10 briefing – the first, I hope, of a series of such consultations. I look forward to working with you and the United States-China Business Council to achieve our mutual goals of securing our borders and facilitating legitimate international contacts.

Sincerely,

Colin L. Powell

Mr. Robert A. Kapp,
President,
The United States-China Business Council,
Washington, D. C.

RECEIVED
SEP 23 2002

U.S. DEPARTMENT OF STATE
INTERNATIONAL INFORMATION PROGRAMS
Immigration & Population

16 April 2003

U.S. Committed to Achieving Both "Secure Borders" and "Open Doors"

Assistant secretary for consular affairs comments on U.S. visa regulations

"Secure borders" and "open doors" -- two goals of U.S. visa policy -- are not mutually exclusive, according to Maura Harty, Assistant Secretary for Consular Affairs at the U.S. Department of State.

Speaking April 16 at a forum on "Sustaining Exchanges While Securing Borders" in Washington, Harty said the United States values visitors from overseas, and she outlined government efforts taken to achieve both security and openness.

"We are an open society. We welcome the diversity and richness of experience that attends international exchange. We must not, as Secretary [of State Colin Powell] Powell has said so eloquently, become a gated America," Harty told an audience of international educators gathered at George Washington University.

Discussing changes in U.S. visa policy since September 11, 2001, the assistant secretary said the United States now requires more information from all applicants and places more emphasis on the visa interview.

In addition, if security concerns are indicated when a name is run through a database, an interagency review in Washington may be required.

While fewer than 2.5 percent of visa applicants worldwide are referred for additional background checks through interagency review, Harty said that "glitches in interagency communications" have resulted in significant delays for those applicants, particularly toward the end of 2002.

But she said the government has "made great strides forward" toward solving these problems and at present 80 percent of these cases are cleared within two weeks of application.

"We are making continued improvements in the efficiency of this process, without sacrificing anything in thoroughness," added Harty.

The assistant secretary explained that most visa denials are based not on security concerns but on the statutory requirement that applicants for non-immigrant visas be presumed ineligible until they establish to the satisfaction of a consular officer their "entitlement to a legal nonimmigrant status."

"Most applicants who fail this test do so either because their economic and family situation makes them seem likely to overstay their visas or because their stated reasons for visiting the United States do not seem credible," she said.

In response to rumors that the United States is denying all visas or large numbers of applicants indiscriminately, Harty said, "the reality is that the laws relevant to visa eligibility have changed only slightly since September 11."

"While procedures have been tightened substantially, we have made every effort to minimize inconvenience to the applicant," added Harty, who said the United States continues to welcome legitimate visa applicants and issue millions of visas. "We want to facilitate legitimate travel just as we want to identify those who might want to do this country harm," she said.

She encouraged potential visitors to visit a new Web site, www.unitedstatesvisas.gov, designed as a single point of access to information about U.S. visa policy and procedures.

Following is the text of Harty's remarks as prepared for delivery:

Remarks by Maura Harty
Assistant Secretary of State for Consular Affairs
Open forum on "Sustaining Exchanges While Securing Borders"
The George Washington University
Washington, D.C.
April 16, 2003

I'm happy to be here today and to have this opportunity to share with you some comments on visa regulations and educational exchange.

America's educational institutions are a national treasure and one of the main attractions for foreign visitors, who continue to view the United States as the premier place to study.

I believe that international educational and cultural exchange is one of our most potent means of influencing world opinion and developing lasting and meaningful relationships. Such exchanges add strength to this nation in the realm of ideas and, frankly speaking, add to our national bottom line.

Department of Commerce data places U.S. Higher education as the country's fifth largest service sector export. International students contribute some $12 billion annually to this nation's economy in the form of tuition, living expenses and related costs. Nearly 75% of student funding comes from personal and family sources outside the United States. The national interest in encouraging this exchange is obvious.

I think however that it is important for you to hear me repeat what Secretary Powell has said many times since the terrible attacks of September 11, 2001. Consular officers serve in the front line of this nation's defense as they interview visa applicants around the world. They do their job with security in mind first. But they are also mindful of the great strengths of this country which must be nurtured and preserved. We are an open society. We welcome the diversity and richness of experience that attends international exchange. We must not, as Secretary Powell has said so eloquently, become a gated America.

Our policy toward the visa function is best summarized in the phrase, "secure borders, open doors."

Let me talk first about secure borders. The events of September 11 made clear to the public something that consular officers have long keenly felt: the moment of visa adjudication is the first and best opportunity we have to keep dangerous people out of the United States. Since September 11, we have redoubled our efforts to use that opportunity to best effect.

Security review procedures in place before September 11, 2001, are still in effect, with some additional procedures now also in place. We are requiring more information from all visa applicants, and scrutinizing every application more closely. We are placing

more emphasis on the visa interview, as an opportunity to assess the applicant's credibility face to face. We have established additional screening requirements in many cases, whereby the consular officer must refer certain categories of applications for an interagency review in Washington. Working closely with other U.S. Government agencies, we have vastly expanded the visa lookout database, against which every applicant is checked before visa issuance. We have also taken steps toward implementing a statutory mandate to incorporate biometric identifiers in U.S. Visas.

I should point out that most visa denials are based not on security concerns, but rather on the statutory requirement that each applicant for a non-immigrant visa must be presumed ineligible until he or she establishes to the satisfaction of a consular officer his or her entitlement to a legal nonimmigrant status. Most applicants who fail this test do so either because their economic and family situation makes them seem likely to overstay their visas, or because their stated reasons for visiting the U.S. do not seem credible.

To sum up our "secure borders" policy, our goal is to make sure that the visa issuance process is as secure as possible and supports our overall security and counter-terrorism efforts, taking into account all intelligence and law enforcement information available to the U.S. Government, so that -- with the addition of the immigration check and review at the border, and taking advantage of the enhanced capabilities of the new Department of Homeland Security -- it will form a coordinated and interlocking network of border security in which the American people and our many foreign visitors can have confidence.

The other aspect of our approach to visa work is, I suspect, also of great interest to this group. Open doors.

We in the Department of State, who study foreign languages and live and work abroad for extended periods, are acutely aware of the importance to our country of international exchange. We deal with foreigners every day, and we know from experience that the vast majority of visa applicants harbor no ill intent. On the contrary, they seek to come for family reasons, tourism, business, studies, and cultural exchange. They generally support and admire the United States, and they tend to return to their home countries with a favorable impression, spreading their views to others.

Visa demand was strong throughout the last decade, rising from 7 million in 1993 to 9.5 million in 2000. Since 9/11 that trend has gone into reverse; demand fell off immediately after September 11, and although visa applications are up in some countries, overall demand has declined dramatically. For planning purposes we project 6 million applications for the current fiscal year.

What are the reasons for this decline?

Travelers are concerned about the risk of terrorist attacks on airplanes or airports.

Some may be put off by greater security measures at airports.

Some may fear that foreigners are less welcome in the U.S. today than at other times in our history.

Some decide not to travel because of the global economic downturn.

Some may stay away because of antipathy toward a particular U.S. Foreign policy.

With these possible reasons, and I am sure many others, it is impossible for us to tell

to what extent people are deterred from coming to the U.S. by concerns about the perceived difficulty of the visa process.

Many applicants have heard stories about long delays in visa approval. It is true that, during the latter part of 2002, we experienced real glitches in interagency communications, resulting in significant delays for those travelers whose visas required referral to Washington. While we have not entirely solved these problems, we have made major strides forward. At this point, more than 80 percent of such cases are cleared within two weeks of application, and we are making continued improvements in the efficiency of this process, without sacrificing anything in thoroughness.

One area in which we are still experiencing longer delays involves vetting of applicants whose travel raises concerns of possible harmful transfer of high technology. Of course, we recognize that this part of the process will often affect scholars and exchange students.

Let me assure you that we are working closely with other federal agencies, such as the departments of Homeland Security and Justice, to implement a process for tracking the status of foreign students that is minimally disruptive and less time-consuming.

I know that you are concerned with the impact that the implementation of the Department of Homeland Security's SEVIS (Student and Exchange Visitor Information System) database has had on our ability to issue visas to students, exchange visitors and their dependents in a timely manner.

First, let me give you the good news; at this time, well over 400,000 SEVIS records have been posted to our consular consolidated database.

This data is made available to consular officers around the world for adjudication, record keeping and reporting. We have issued tens of thousands of student and exchange visitor visas since the full implementation of SEVIS on February 15.

And while we, too, know that some SEVIS records are still not being made available to our embassies and consulates, due to technical glitches, I can tell you that state and DHS data technicians cooperate daily to locate, correct, if necessary, and forward these SEVIS files to our consular consolidated database. This is a small number of cases, and they are receiving a great deal of attention.

Many unsubstantiated rumors have circulated, indicating that we are denying all visas, or large groups of applicants, indiscriminately. The reality is that the laws relevant to visa eligibility have changed only slightly since September 11. While procedures have been tightened substantially, we have made every effort to minimize inconvenience to the applicant.

Yes, there are new name check procedures in some cases. To put the issue of special clearances into perspective though, it is important for you to know that fewer than 2.5% of visa applicants worldwide are subject to additional background and security checks. The other 97.5%, if otherwise eligible and approved for issuance, generally receive their visas in one or two days.

The most important thing we can do to dispel unwarranted concerns about the visa process is to provide information and predictability. We want the public to know that we continue to welcome legitimate visa applicants, and we continue to issue millions of visas. We want to facilitate legitimate travel just as we want to identify those who might want to do this country harm.

The state department has established a web site, www.UnitedStatesVisas.gov, to provide public information about visa policy and procedures. I would encourage you

and your foreign interlocutors to check this site, as well as our main site, www.travel.state.gov.

You in the academic community occupy key positions in promoting the public image of the United States abroad. I have no doubt that you understand the reasons for our primary emphasis in the visa process on "secure borders," and I hope that you also are clear that we remain strongly committed to the "open doors" aspect of visa work. We want the world to know that we value our visitors and that we want them to come to the United States to enjoy the richness our country has to offer in so many areas. We want them and our own citizens to be safe while they are here. Toward that end we are taking extra precautions, but America remains an open and welcoming country.

I do not believe that we need to choose between secure borders and open doors. Together with our partners and colleagues in other agencies of government, we at the Department of State are committed to achieving both goals. We hope that the very valuable asset of international exchange continues to thrive -- in a nation that is both open and secure for its citizens as well as those who would join us here.

Thank you.

end text

This site is produced and maintained by the U.S. Department of State's Office of International Information Programs (usinfo.state.gov). Links to other Internet sites should not be construed as an endorsement of the views contained therein.

back to top

IIP Home | Index to This Site | Webmaster | Search This Site | Archives | U.S. Department of State

November 4, 2003

The Honorable Alan P. Larson
Undersecretary for Economic, Business, and Agricultural Affairs
Department of State
Washington, D.C.

Dear Ambassador Larson,

On behalf of the American Chamber of Commerce-China, I would like to thank you for the very stimulating discussion of issues at the breakfast meeting during your recent visit to Beijing.

The following suggestions respond to your request for improving the visa situation. As you are well aware, current procedures are having a highly negative impact on many American companies which are exporting products to China. Member firms report to us that potential Chinese customers are shifting their business to U.S. competitors because of the difficulty in obtaining visas. These customers need to travel to the United States for sales contract negotiations, training, and exhibitions, among other purposes.

We believe that some changes of procedures would help relieve bottlenecks while not compromising United States security. Specifically, we recommend:

1. Formation of a joint Department of State-Private Sector committee to confer on visa policy procedures in general and the Technology Alert List (TAL) in particular. The goal would be to produce a TAL which is specific enough to differentiate threatening technologies from the benign. Such an arrangement has worked well to relieve bottlenecks in working with United States Customs.
2. Relaxation of the standard whereby consular officers in China, Hong Kong and Taiwan are required to refer to Washington cases in which they have "any doubt" about the security implications of a given technology. This "any doubt" standard results in excessive referrals under the SAO system. Consular officers should have more leeway in deciding whether there is sufficient basis for referring a case for further review in Washington. This is especially true in China where over 8,000 SAO referrals have only resulted in a handful of denials.
3. The State Department guidance accompanying the TAL needs clarification so that consular officers know that they are to use the four military security criteria to justify an SAO referral.
4. Formation of a private sector expert panel in China to aide consular officers in understanding technologies on the TAL. At minimum, companies should have an opportunity to comment before a consular officer refers an application to Washington.
5. Adoption of a rule for China, Hong Kong and Taiwan which empowers the Embassy to issue a visa if there has been no response from Washington agencies within 15 days of an SAO request.

6. Elimination of the requirement for a mandatory interview for Chinese invited to the U.S. by American companies. This would recognize the fact that China is in a lower terrorism risk category than certain other countries and reduce the number of interviews of low-risk visa applicants.
7. An increase in the number of consular officers so that the interview process ultimately adopted can proceed without backlog.

We look forward to your reaction to these suggestions and are very willing to discuss any or all of them with you in greater detail.

Sincerely yours,

Christian Murck
Chairman
American Chamber of Commerce-China

CC:

The Honorable C. Lawrence Greenwood
Deputy Assistant Secretary
International Finance and Development
Department of State

Mr. Earl James Steele
Chief, Energy and Natural Resources Division
Department of State

Mr. Christopher J. Marut
Deputy Director for Economic Affairs
Office of Chinese and Mongolian Affairs
Department of State

Mr. William A. Heidt
Special Assistant to the Under Secretary for Economic
Business and Agricultural Affairs
Department of State

Mr. Albert Keidel III
Deputy Director
Office of East Asian Nations
Department of Treasury

The Honorable Ambassador Clark T. Randt Jr.

COMPANY EXAMPLE - KANAWHA SCALES & SYSTEMS, INC.
POCA, WV 11/19/2003

To give you an update on the status of the Shenhua Zhungeer Delegation:

My initial report indicated a group of six engineers; 3 from Shenhua Zhungeer and three from the Shenyang Design Institute who are the Engineering Group of record for the job. Actually there were only two engineers from the Shenyang Design Institute. All three from Zhungeer were rejected as indicated in my incident report. The two from Shenyang Design Institute never followed through with their Interview when they heard the three from Shenhua Zhungeer were rejected. The three people from Shenhua Zhungeer were interviewed at the Beijing Consulate Office. The two from the Shenyang Design Institute were to interview at the Shenyang Consulate Office. The initial design liaison trip was scheduled to take place at the end of September. We have had numerous meetings/discussions with Shenhua Zhungeer who have been extremely upset with delays and problems. We had to send two engineers in October to the Shenyang Design Institute to clarify some several of the critical design elements. We were fortunate that they were already in China for meetings with another company and we did not have to send from the US. But this did not take the place nor satisfy the Contract Requirements for the First Design Liaison which was to take place here in the U.S. The project is now going to be more than three months behind schedule. Our cash flow on the project has been impacted because we have been incurring cost, but have been unable to invoice. We received an 10% upfront payment and where to get another 70% upon shipment of materials. Assuming the group is approved (and their is no guarantee at this point based on current events and practices, that they will be approved) for a trip in December to complete the Design Liaison, the earliest we can complete engineering and production of the equipment for shipment would be March of 2004. This, according to the contract was to take place in mid December 2003. The group is reapplying during the first week of December for the Design Liaison Trip.

If they are again rejected, we will have to re-enter into negotiations to decide how to satisfy requirements of the Design Liaison, re-negotiate delivery schedules. At this point there has been no discussion on invocation of the penalty clauses for late delivery on the Contract. As of December 15th, we will be in technical violation of the Contract because of not being able to make delivery. The Contract allows for a 1% penalty of the total contract price per week due to late delivery with up to a maximum accumulative penalty of up to 5% of the Contract Price which could be as much as $85,000. If we have to send an Engineering team to China, those cost will be on top of the penalties.

We are in an extremely vulnerable position on this Contact at this point because of the current practices put in place on visa application approvals. In addition, our future business with the Shenhua Group is hanging in the balance. Our primary competitor for this equipment is an Australian Company. Shenhua has let us know that they will look for real hard look at using the Australian Company on future projects based on current difficulties dealing with a US Company. As I indicated in an earlier email, our company has already lost a contract to the Australian Competitor for around $1.1 million at the Port of Qinghuadao. One of the reasons given was that the current difficulties in obtaining travel visa to the US made it advantageous to award the business to the Company from Australia because of anticipated schedule delays resulting from

inability of their key project people to obtain travel visas to the US for Design Liaison and Equipment Inspection purposes.

We have another group from the Port of Dalian that is scheduled to appear for their visa interviews on Nov 28th on a 2.1 Million Dollar project we currently have in house, for equipment inspection purposes. If their Visa are denied, we are going to be in jeopardy of meeting our shipping schedule on that project. We can't ship the equipment until it is inspected by the Port of Dalian. Similar late shipment penalties exist on that contract as well.

If these kinds of problems continue, our company is going to have to take a hard look at whether we want to continue in the export market in China. We can not afford to incur these kind of loses on job after job. Our exports to China this year will account for close to 25% of our total revenue. Without that business we may have to cut back in our work force.

Regards;
Bill McHale
Vice President
Kanawha Scales & Systems, Inc.

COMPANY EXAMPLE - ROCKWELL AUTOMATION

Statement for the Record – US Visa Issues 19 November 2003

Rockwell Automation is now selling almost $100 million dollars of our product into the China market. Our ability to continue to sell US product and to compete in this dynamic market is being severely threatened due to misguided US visa policies. The US visa policy has reached a point where it is becoming too difficult for Chinese companies to do business with Rockwell Automation and US companies in general. As a result business is going to French, German and Japanese companies. It has reached the point where being an American company in the global market place is much more of a disadvantage than an advantage. The USG has created an unlevel playing field or companies trying to export US made product to China.

The problem for Rockwell Automation resides in a program called the Security Advisory Opinion (SAO) which requires visa officers to send the application back to Washington for an opinion on whether a visa applicant deals with technology on the US government's Technology Alert List (TAL). The TAL is in many areas extremely vague. The processing of the SAO can take anywhere from three weeks to six months, thus we can not get our Chinese employees, partners and customers back to the US for training and contract negotiations in a timely manner. Not only does this time delay impact on the ability of US companies to compete in the market, and not only do US companies lose projects, but much more important is the loss of credibility and the creation of a reputation that American companies are too difficult to deal with.

The TAL was originally designed to help maintain technological superiority over the Warsaw Pact and was targeted at individuals from the Soviet Union and other Communist countries. In 1996, the TAL was revised to broaden its focus and reflect more accurately current laws restricting or prohibiting the export of goods and technologies related to weapons of mass destruction and their delivery systems. After September 11th the TAL was revised again to render inadmissible aliens who there is reason to believe are seeking to enter the U.S. to violate U.S. laws prohibiting the export of goods, technology or sensitive information from the U.S. The TAL and related laws are designed to further four important security objectives:

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

While all Americans support the objectives of such a policy we fear that the TAL is overly vague and broad. We strongly believe that the USG needs to correct the imprecise language in the TAL document. Combined with the State Department guidance to visa officers to refer an applicant for an SAO if there is any doubt, means companies that operate in areas where TAL is not well defined are at special risk. Due to the imprecise nature of parts of the TAL, it appears that industrial automation companies like Rockwell Automation could have every applicant referred for an SAO. The TAL category that Rockwell Automation is being placed in is paragraph N covering ROBOTICS. The subcategories are technologies associated with:

- Artificial intelligence
- **Automation**
- Computer-controlled machine tools
- Pattern recognition technologies

There is no description or further elaboration of the term Automation or any of the other terms in the ROBOTICS paragraph. It would be useful to find out what was the intent of putting the term "Automation" in the TAL. If the intent was to include "industrial automation" then all US manufacturing companies could be vulnerable. If the USG takes a broad view of the TAL as written, US business will have a very hard time operating in the most innocuous of fields. For example we have had customers in the cement and iron and steel industries referred to Washington for an SAO.

This policy needs to be amended to continue to provide for US national security while at the same time providing US companies the opportunity to compete in the global market place. This policy is impacting on our ability to create jobs for US workers and to help redress the trade imbalance with China.

Michael T, Byrnes
VP, China Operations
Rockwell Automation

factiva® Dow Jones & Reuters

FEELING PINCH OF VISA RULES FIRMS SAY DELAYS COSTING MILLIONS
HFCT000020030930dz9u00052
MAIN
DAN HAAR; COURANT STAFF WRITER
1369 Words
30 September 2003
The Hartford Courant
7 SPORTS FINAL
A1
English
Copyright 2003, The Hartford Courant. All Rights Reserved.

``THIS IS A REALLY IMPORTANT ISSUE for us. It's killing us, '' says John Herbst, president of Integrated Industrial Systems of Wallingford, about the new visa requirements of the State Department.

Once a year, Honeywell International Inc.'s fire alarm systems business holds a splashy conference for distributors of its flagship Notifier brand. This year's event, underway this week in Phoenix, is the biggest ever, with visitors from 70 nations looking to see and touch Honeywell's latest alarm systems.

China is the fastest-growing market for the division, which is based in North Branford and has $600 million in sales, with 500 local employees. But the marketing manager for China, Lawrence Liu, isn't in Phoenix. He's back home in Shanghai, cooling his heels.

Despite two months of trying, Liu couldn't swing a visa from the U.S. consular office in time for the Arizona confab.

He's not the only one. At least 11 independent distributors -- all of them in East Asia -- couldn't gain the permits needed to join Honeywell this week.

The giant technology manufacturer is hardly alone. Companies and business groups are finding the once-routine task of securing temporary visas for customers, consultants and even their own foreign employees is anything but routine. Because of new rules and new enforcement of old rules, they face long delays and, in some cases, outright rejection.

No one can say how many deals have died as a result, but by many accounts, the cost is real -- and growing.

``We never had a problem with visas until after Sept. 11,'' said Paul Harris, international vice president for Honeywell's Fire Systems Group.

Some smaller companies, including Integrated Industrial Systems, a maker of steel-rolling machines in Wallingford, say their inability to bring customers here is knocking them out of contention for crucial contracts. If they can't bring their customers here, they can't sell their products.

The crackdown on business visas -- on all temporary visits by foreigners, in fact -- is an unintended consequence of the post-Sept. 11 vigilance at the gates of America. It also reflects a tighter U.S. border policy against illegal immigration at a time when jobs are scarce.

But the State Department, which operates the consular offices, says there is no problem.

``We haven't seen a slowdown. We haven't heard complaints that people are being delayed," said Kelly Shannon, spokeswoman for the Bureau of Consular Affairs.

On the contrary, said Theresa Cardinal Brown, director of immigration policy for the U.S. Chamber of Commerce. ``They've been saying that for a year and a half, and we've been talking with them for a year and a half about it."

Foreign business travelers long accustomed to easy access to the coveted passport entry stamps are wondering, Brown said, ``why are you treating us like criminals?"

They -- and the American companies that depend on their visits -- are caught in a clash of two needs, both more intense than ever: immigration security vs. fast turnaround in the world of commerce.

Whatever the origin, it's bitterly ironic. The tight-border policy gnaws at the ligaments -- global trade deals -- that unite the world and thereby help defend against terrorism. More to the point for the companies affected, it hurts the very same U.S. exporters who are most successful at countering the nation's ballooning trade deficit.

The consular offices have no time limits in which to approve visas, and they don't offer special treatment to business VIPs, Shannon said. Officially, that's the way it has always been. Line up with the tourists and students, and they'll get to you.

But in reality, it wasn't that way before the terrorist era. Names such as Honeywell -- one of the 30 bellwether firms on the Dow Jones -- once guaranteed a smooth ride in the U.S. consular outposts. A request on company letterhead, or better still a well-placed call to a contact in the U.S. Commerce Department, was all it took.

No more. Harris, at Honeywell, was unable to bring three Chinese engineers to the North Branford plant earlier this year -- engineers who would have made the rounds, bringing details on Chinese building codes.

``When they were denied outright, I went personally to Beijing," Harris said.

He found little sympathy at the U.S. Embassy. At the Commerce Department office nearby, he appealed for help.

``Stop right there, Paul. There's nothing we can do," he recalls being told.

``How sad is that?" said Harris, a combat veteran of Vietnam and a longtime volunteer firefighter, whose North Madison unit helped the recovery effort at the World Trade Center. ``I'm not going to try and sneak in terrorists."

Instead, he sent three engineers to China to gather the information. But that's slower and not as effective, and it misses the chance to send a foreign delegation back with a strong impression.

At the heart of the slowdown is a new requirement as of Aug. 1 -- a new enforcement of an old requirement, actually -- that most foreign nationals seeking non-immigration visas sit for an interview with consular officials. Lawrence Liu, for example, was granted an appointment for Monday, too late for the Phoenix trip.

Consular offices now work closely with the new Department of Homeland Security and its list of 16 million foreigners whose applications receive special attention. The scrutiny is not especially targeted at the Middle East.

In Stamford Thursday, the local chamber of commerce sealed ties with Jiangdu, China, as a sister city -- with only six Jiangdu visitors on hand, instead of more than two dozen. The chamber of commerce president was among those left behind, visa-less, as time ran out.

``We'll figure out how we'll make another event happen," said Jack Condlin, the Stamford chamber president. As for the delays, he added, ``you've just got to build it into the process."

But two or three months of lead time isn't a luxury some companies have. Integrated Industrial Systems in Wallingford has lost millions of dollars in business in the explosive China market, company president John Herbst said.

``We have at least a dozen pending projects in China. Our competitors are the Japanese, Germans, French, Indians, Italians, British, and now low-cost China domestic suppliers," Herbst said. ``Our greatest sales asset is our modern factory and the U.S.A. Our potential customers require a U.S.A. trip for in-depth technical exchanges and plant inspections prior to placing orders."

During their business trips, customers typically visit Niagara Falls or other tourist stateside highlights, Herbst said. That, of course, can help put them in a buying mood.

The delays are hardly caused by a crush of visa applications. In the year after the 9/11 attacks, the number of people seeking non-immigrant visas fell by 25 percent from a peak of 10.4 million, and the number fell further in the last year. The percentage of rejections is rising, but only slightly.

At Integrated Industrial Systems and at Honeywell's complex in North Branford, it's easy to see what is at stake. By growing their export sales, these companies have bucked the outbound tide of manufacturing jobs in the United States, a loss of 2.7 million positions since mid-2000. The Honeywell business, formerly Fire-Lite Alarms Inc./Notifier, has grown from $14 million in the late '80s to its current size, expanding its modern building in lock step along the way.

The solution may seem easy: The State Department could add more staff, respond to business deadline needs and make sensible exceptions to the interview rule. But, despite two Congressional hearings, no progress has happened, said Brown, at the U.S. chamber, in part because no one -- in business or government -- wants to look soft on border control.

``Somehow they believe that an interview requirement will help them catch terrorists," Brown said. ``My answer is, maybe, but I have a problem with how they're implementing it."

PHOTO: (b&w), Patrick Raycraft / The Hartford Courant

For assistance, access Factiva's Membership Circle.

(c) 2003 Dow Jones Reuters Business Interactive, LLC. Trading as Factiva.All Rights Reserved.

THE US-CHINA BUSINESS COUNCIL
美中贸易全国委员会

Robert A. Kapp
PRESIDENT, THE US-CHINA BUSINESS COUNCIL

Reprinted from *The China Business Review*, September–October 2000

The RMB Controversy and Beyond

As the US Congress departed from Washington for its long summer recess, more than a few members took time to put statements on the record, or to propose legislation, with regard to the following:

- The value of China's currency, the renminbi (RMB), against the US dollar;
- The rapid growth of Chinese exports to the United States;
- The growth of US investment in China, including manufacturing investment;
- The difficulties facing workers in the US manufacturing sector;
- The allegedly causal relationships among the preceding.

The executive branch felt the heat. Letters from Congress to the president and other messages from the Hill to the executive agencies urged the administration to convince China to float or revalue its currency against the dollar, or else to strike back at China for its alleged manipulation of the currency to cheapen its goods in US markets and suck employment-creating US investment into China. A publicity trip by cabinet members to midwestern plants unleashed a torrent of anxiety over China's economic prowess.

This wave of American resentment toward China is not universal. It is focused, as trade-related concerns have been in the past, on sectors of the US economy most directly affected by foreign competition. It is impelled forward in part by American companies facing diminished business prospects in a slow US economy, rising competition from Chinese rivals, and layoffs of American employees. It draws as well on familiar constituencies and political figures who, a few years ago, vigorously opposed US granting of Permanent Normal Trade Relations (PNTR) during the great congressional debate on PNTR. But it also includes the voices of some traditional supporters of expanded trade with China.

Concurrently, American textile trade groups are fiercely making the case that unless the US government acts quickly to protect endangered textile firms and workers, China's overwhelming prowess in textile and apparel manufacturing will doom the entire US industry.

On the non-trade front, ironically, the United States and China are getting along on the surface better than they have in years. There is cooperation on North Korea and counterterrorism. The two sides have reached a new maritime agreement after 10 years of discussion. The Chinese defense minister will soon visit Washington after years of estrangement between high military authorities in the two nations. The battles against HIV/AIDS and severe acute respiratory syndrome have brought about closer bilateral contacts. Old frictions seem under control for the time being.

Does the current furor over the RMB and China's impact on the US economy mean that despite these positive developments we are falling into a crisis with China? It could, but I don't think it does.

At the heart of this summer flareup is a paradox. No practically imaginable increase in the RMB's value would eliminate the very phenomena that have led to US demands for PRC action on the currency in the first place: rising exports to the United States, growing US investment in China, increasing competitiveness of Chinese firms both in the Chinese market and abroad, and job losses in the US manufacturing sector.

Widening the RMB trading band by 1 or 2 percent—a possible PRC response to American,

THE US-CHINA BUSINESS COUNCIL is a private, not-for-profit trade organization founded in 1973. The Council serves as the principal organization of US corporations engaged in trade and investment with the People's Republic of China. With offices in Washington, DC, Beijing, and Shanghai, the Council provides research and analysis to its more than 220 member companies, and produces *The China Business Review* and other publications.

1818 N Street, NW,
Suite 200
Washington, DC 20036
USA
Tel: 202/429-0340
Fax: 202/775-2476
e-mail: info@uschina.org
www.uschina.org

View this Letter from the President online at www.uschina.org

The paradox: No practically imaginable increase in the RMB's value would eliminate the very phenomena that have led to US demands for PRC action on the currency in the first place.

European, and Japanese unhappiness over the RMB's value—will make little difference on those three fronts. Even if China takes the advice of some economists and undertakes a one-time revaluation of the RMB of, say, 15 or 20 percent, the move would not invalidate China's positive economic fundamentals: a large and rapidly expanding domestic economy, increasing technological and managerial sophistication, prospects for at least gradual further improvement in the Chinese business environment under World Trade Organization (WTO) rules, a high domestic savings rate, and a large supply of low-cost labor.

Unless those fundamentals shift—and it is no secret that China's economy lives under multiple threats ranging from high unemployment to the HIV/AIDS time bomb to a notoriously frail banking system—the recent pattern of interconnected, rapid economic growth and increasing foreign direct investment is likely to persist whether the RMB rises or not.

Out of this barely explored thicket emerge the following observations.

First, whether the US economy is in the midst of a relatively cyclical downturn or something more worrisome, the central policy issues facing the US economy are domestic ones. Focusing on the RMB question is no substitute for a forthright discussion between policymakers and the public about the causes of the current painful condition of certain sectors of the US economy and on how to respond to them. The abysmal US savings rate and continuing weakness in the country's education system are two perennial, but unresolved and very salient, issues.

Second, to the extent that those who have energized the fracas over the RMB realize that RMB revaluation is unlikely to make much difference to the deeper problems it is supposed to resolve, other motives may be at work. US economic and trade relations with China should not become a safety valve for the relief of domestic pressure simply because the search for long-term solutions to bigger economic questions proves politically difficult.

Third, China's decisive implementation of its outstanding WTO commitments is critical. Substantively, WTO implementation remains the key to major new opportunities for American businesses in China, while increased Chinese purchases of foreign goods and services will help to moderate the growth of China's trade surplus with the United States. Politically, the failure to demonstrate clearly its attainment of its WTO targets will leave China far more vulnerable to political and popular criticism in the United States.

While the current RMB controversy has evoked a modest "I told you so!" chorus from people who never wanted to see China in the WTO in the first place, the logic that prevailed in the US debate on PNTR in 1999 and 2000 remains valid. The United States and the world are far better off with China committed to global rules of the road and subject to WTO remedies if it violates those rules. The elimination of barriers to international products and services in China offers the best chance for key sectors of the American economy to maximize the benefits of China's broad economic emergence, and for China to maximize the benefits it enjoys in the global economy.

The controversy of the hour, sparked by the convergence of a slow US economy, the US dollar's decline against other key currencies, and the Chinese economy's rapid growth, points toward bigger, more tidal trends with which the United States must grapple. The problem was foreshadowed by the arrival of Japanese industrial might on the world scene in the 1960s and 1970s but is not altogether the same. By mastering the coordination of labor resources, advanced technology, and modern managerial skills, China and other lower-income developing countries are increasingly able to perform tasks that once could only be undertaken by the most advanced economies. (A cognate, sadly, of this economic trend in the national security arena is the widespread evidence of developing countries' progress toward the production of weapons of mass destruction.)

Thus, the anguish now felt in some parts of the US economy points not only to the pains associated with the low point of the business cycle, but also to longer-term and more difficult challenges for American policymakers and corporate strategists. Today's RMB controversy will likely fade; the bigger questions implied by China's arrival as an effective player in the global economy, with all the benefits and difficulties for China itself as well as for its global trade partners, will not. These questions require analysis, thoughtful policymaking, and international consultation. Unfortunately, if the present RMB firestorm is any example, the signals from Washington these days do not point in that direction. 完

THE US-CHINA BUSINESS COUNCIL
美 中 貿 易 全 国 委 員 会

Robert A. Kapp
PRESIDENT, THE US-CHINA BUSINESS COUNCIL

Reprinted from *The China Business Review*, November-December 2003

A Winter of Discontent?

To live in Washington this fall, you would think there was a crisis coming in US-China relations. Bill after bill, resolution after resolution pops up in Congress, blasting China for alleged "manipulation" of its currency to cheapen its products on world markets and deprive US companies and workers of opportunities and jobs. In manufacturing-heavy states, where unemployment is high and plants are shutting down, politicians are being subjected to "all China all the time" from angry and worried constituents. The US-China trade relationship, at least inside the United States, is now a point of friction at the political level. US business is divided, with thousands of smaller domestic firms already on the warpath about the China threat driving the big trade associations toward protectionism, while large international firms with major China operations lie low to avoid the familiar political dangers of demagogic denunciation and populist reaction.

Outside of trade, the United States and China seem to be managing their official relations reasonably well. The visit of Premier Wen Jiabao to the United States in early December, the expected meetings of presidents George W. Bush and Hu Jintao at the Bangkok Asia-Pacific Economic Cooperation meetings, the visit of the PRC Defense Minister Cao Gangchuan to the United States, and the visits of the whole top echelon of the Bush Administration's economic cabinet (Treasury Secretary John Snow, US Trade Representative Robert Zoellick, and Commerce Secretary Donald Evans) suggest that mature government-to-government contacts at the highest levels are now routine—as they need to be, if problems in the US-China relationship are to be managed successfully.

Aside from the lurking possibility that some uncontrollable chain reaction arising from the politics of Taiwan's March presidential election could put the United States and China at loggerheads, trade friction is the potential collision *du jour*.

The animus, for the moment, is on the US side. The pressure to "do something about China" is coming from small businesses and manufacturing interests increasingly concerned about Chinese inroads into the US market and Chinese competition on price in third-country markets—all facilitated, they argue, by an RMB-dollar exchange rate that renders China's goods artificially cheap. China surely has a list of dissatisfactions with US treatment, ranging from antidumping and safeguard cases against Chinese imports to security controls on US dual-use exports, but for the moment China is not initiating conflict with the United States.

That could change. One bill now before Congress, for example, would slap a 28 percent tariff on all Chinese imports if China failed to revalue its currency to suit US tastes. That would likely initiate a cycle of retaliation that would not only corrode trade ties, but would pollute the broader US-China engagement in which both sides have invested heavily over the past several years, especially since September 11, 2001.

In a US election year, there's always the possibility of unexpected mayhem on international affairs. Hammering one's political opponents for not dealing properly with foreign miscreants is a staple of the campaign season. It has happened on China before. It could happen again.

When all is said and done, though, I remain cautiously optimistic that we'll get through the coming year without a trade-focused China eruption. Here is why.

1 The central case in question is not open and shut

On the debate over the value of the renminbi (RMB, or yuan), the focal point of US political energies directed at China these days, Congress's own research arm, the Congressional Research Service, in a brilliant and succinct report dated September 29, 2003, *China's Currency Peg: Implications for the U.S. and Chinese Economies*, says:

THE US-CHINA BUSINESS COUNCIL is a private, not-for-profit trade organization founded in 1973. The Council serves as the principal organization of US corporations engaged in trade and investment with the People's Republic of China. With offices in Washington, DC, Beijing, and Shanghai, the Council provides research and analysis to its more than 220 member companies, and produces *The China Business Review* and other publications.

1818 N Street, NW,
Suite 200
Washington, DC 20036
USA
Tel: 202/429-0340
Fax: 202/775-2476
e-mail: info@uschina.org
www.uschina.org

View this Letter from the President online at www.uschina.org

In the medium run, an undervalued yuan neither increases nor decreases aggregate demand in the United States....[I]t is expected to have no medium or long run effect on aggregate US employment or unemployment. As evidence, one can consider that the US had a historically large and growing deficit throughout the 1990s at a time when unemployment reached a three-decade low. However, the gains and losses in employment and production caused by the trade deficit will not be dispersed evenly across regions and sectors of the economy.

Another acute observer, economist Arthur Kroeber of *China Economic Quarterly*, cuts to the bone on the notion that the RMB should be valued at a particular level against the dollar, a concept that drives much of the fiery animus in the Congress:

Every time you see a currency analyst announcing that the "true" value of a currency is such-and-such, ask yourself why that person is toiling at an investment bank rather than sitting on the beach at Bora Bora counting his or her winnings from the currency trading casino. The fact is that no one knows what value the RMB would have if it floated tomorrow, and there is even less way of knowing what its value might be six months out.

On the merits, then, the furor over the Chinese currency lacks persuasive power. In the end, substance does matter; "politics" alone will not be determinative.

2 The political realities

One could argue that a big congressional dust-up over China, fed by the anti-PNTR (permanent Normal Trade Relations) coalition of 2000 and a new array of trade associations driven by angry constituents, offers political temptations.

Hitting alleged foreign mischief-makers for harming the US economy beats trying to come to grips, for example, with the colossal budget deficit that leaves Uncle Sam dependent on infusions of capital from hard currency holders like China and Japan.

Throwing a nearly 30 percent tariff on a hundred billion dollars' worth of imported products going to US consumers might look more politically palatable than just raising taxes forthrightly.

Whacking at foreign trade offenders might also prove easier than trying to deal with perennial questions of workforce training or structural economic adjustment, at a time when public schools are closing early for lack of funds and community colleges are shutting the door on young Americans' hopes for self-betterment because there is no money for staff and equipment.

Nevertheless, my hunch is that the China fury won't fly.

For one thing, a number of congressional leaders have already displayed little enthusiasm for legislating China's international monetary policy, and, equally important, many other congressional leaders have paid no attention to the China currency issue at all. There is a big difference between introducing legislation and steering it through Congress to final passage.

For another, much of the rising congressional chorus on China aims primarily to pressure the executive branch to "do something," and the executive branch normally has a more measured approach to frictions with China. No one really expects Congress to make a difference through constructive contact with China on outstanding economic issues; one does expect that from the Bush Administration.

Third, there has been no media feeding frenzy on the central issue, i.e., the alleged Chinese "manipulation of the currency." The media don't exactly drive the government, to be sure, but it is revealing and significant that major daily newspapers like the *New York Times* and the *Wall Street Journal*, and magazines like *Business Week*, have refused to jump on the punitive bandwagon. Quite the contrary: These mainstream publications have questioned the validity of the accusations against China on the currency issue and have counseled against confrontation on the matter.

3 The benefits of engagement

The potential for a corrosive degeneration of US-China relations over trade and economic frictions over the next year cannot be dismissed. Advocates of the benefits of expanded trade and investment have been loath to stand up and argue for the benefits of their already huge engagement with China, for a variety of reasons. The strength of their message is undercut by China's continuing failure to deliver on some of its key WTO market-opening promises. One of America's enduring "culture wars" leaves US multinationals open to withering political assault if they point out the benefits to US corporations derived from their activities in China, even though China's contribution to corporations' global competitiveness merits recognition in the United States. Popular disenchantment with large corporations in the wake of repeated scandals drains any potential reservoir of sympathy for firms defending their decisions to operate in or import from China. Politically, the voice of the production worker whose job is in doubt *always* trumps the voice of the consumer whose household budget benefits from economically priced imports. Facing this maelstrom, American corporations engaged in China have so far tended to remain above the fray. Retailers whose existence depends heavily on the availability of Chinese products have been equally quiet.

Such reticence may stand them in good stead, but it may not. If we are to navigate the turbid waters of US-China relations over the next year, those with the most at stake in a growing bilateral trade and investment relationship will need to remind the key forces in US politics of the benefits that already flow from engagement with China. And they will need to work vigorously with the international business community, the US government, and the global trading system to ensure that China lives up to its key WTO commitments. Without that progress, the prospect of political conflict with China over trade policy will rise measurably.

Perhaps this just boils down to more shadow play. The United States, at the broad national-interest level, simply does not need a corrosive conflict with China over politically volatile but substantively shaky claims of Chinese currency manipulation. We have pressing global concerns and domestic difficulties, to which China is not a party or in which it is only marginally involved. China certainly doesn't need a major economic conflict with the United States as it struggles through unending domestic economic reorganization, banking problems, unemployment, and a whole host of familiar economic dilemmas. Perhaps, then, both sides will engage in a game of mutual accommodation aimed not so much at final resolution of incendiary domestic issues but rather at averting irreversible bilateral conflicts.

But the Coalition of the Raging exists, at least in the United States, as winter comes. Whether that coalition can force confrontation in the name of victory on its own powerfully felt agendas is the question of the season. 光

Testimony of

William S. Norman,
President and CEO,
The Travel Industry Association of America

Before The

House Committee on Small Business,

On

Lowering the Cost of Doing Business in the U.S.:
How to Keep our Companies Here

November 20, 2003

Chairman Manzullo, Ranking Member Velazquez, and Members of the Committee, I appreciate the opportunity to testify before you on how U.S. visa policy is impacting international travel to the United States. This is a matter of serious and continuing concern for small businesses in the U.S. travel industry, as well as cities and states that depend on international travel for their economic livelihood.

I am William S. Norman, President and CEO of the Travel Industry Association of America (TIA). 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. Our more than 2,000 member organizations represent every segment of the industry throughout the country. And the travel industry is predominantly comprised of small businesses.

The travel industry remains concerned about several federal policy decisions and programs that have either created actual barriers to inbound international travel or created a perception of barriers, that serve to discourage international visitors from traveling to the U.S.

We continue to urge the federal government to work to find ways both to protect the homeland and ensure the economic vitality of the U.S. travel industry. This is not an "either or" proposition. This nation should and must have both.

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 42 million international visitors generated $83.5 billion in expenditures, $12 billion in federal, state and local tax revenue, and accounted for one million jobs nationwide. International travel and tourism to the U.S. is a service export, and in 2002, the U.S. had a positive balance of trade of $5.5 billion.

The continuing decline in international visitation over the past two years, though, has drastically reduced the flow of tax revenue to all levels of government and reduced our international balance of trade. Since 2000, 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 2001, 2002, and projected 2003 arrivals figures:

2000 Ranking	Arrivals to U.S.	Change in 2001 from 2000	Change in 2002 from 2001	Change in 2003 from 2002 (Projected)	TOTAL Change from 2000 (Projected)
	Total Arrivals	-11.9%	-6.7%	-4.0%	-21.3%
1	Canada	-7.8%	-4.0%	-1.3%	-12.7%
2	Mexico	-7.4%	+0.5%	-1.4%	-6.4%
	Total Overseas	-15.9%	-12.4%	-7.0%	-31.8%
3	UK	-12.9%	-6.8%	+3.7%	-15.8%
4	Japan	-19.3%	-11.2%	-13.2%	-37.8%
5	Germany	-26.4%	-9.4%	-2.5%	-35.1%
6	Brazil	-25.2%	-26.5%	-20.1%	-56.1%

Note: Japan, Germany, 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.

Data Source: Dept. of Commerce, Office of Travel and Tourism Industries

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. While some of the causes are beyond the reach of individual country, actions by the U.S. government can either enhance or harm our nation's ability to attract increased international travel to the U.S. and create more jobs and economic opportunity for states and cities in every corner of our country.

Federal Policies Impacting Inbound International Travel

There are a number of federal policy decisions that have been made in recent years, or are currently being contemplated, that either create actual barriers to travel for prospective international visitors or lead to a perception of great difficulty for those intending to visit the U.S. for business or pleasure. Recent decisions on visa policy and new requirements for applicants, new rules concerning Visa Waiver traveler passports, and new entry-exit procedures

taken as a whole have led to confusion and serious concern on the part of the international traveling public and those businesses that sell travel to the U.S. These barriers and hassles, real or perceived, are captured well by the November 17 editorial in the Washington Post entitled "Visa Hassles," which I have attached to the end of my testimony.

Increased Interviews for Visa Applicants

As security has become a paramount concern in visa processing, it now takes longer to process non-immigrant visa applications at numerous consulates. The State Department is taking more time to review applications and requiring more documentation. In addition to these changes, as of August 1, 2003, U.S. embassies and consulates have been required to personally interview virtually all non-immigrant visa applicants.

The implementation of this rule has resulted in a longer, more frustrating visa application process. Mexico is our nation's second most important market for international visitation. At a recent TIA conference, representatives from the U.S. Commercial Service (Commerce Dept.) based in Mexico City complained that the visa application process currently takes up to two months at many posts in Mexico. Another example is at the U.S. Embassy in London, where at 8:00 am on November 12 a TIA staff member observed that the line for visa applicants was already two blocks long. And these were applicants who had waited up to six weeks for an appointment on that day.

While the travel industry supports more vigorous screening of visa applicants, we were disappointed to learn these new requirements would not be accompanied by any increases in personnel or additional facilities. In fact, the State Department fully admitted that increasing interview rates to approximately ninety percent would likely worsen delays in visa processing.

We appreciate the State Department's stated intention to shift resources to high-volume, visa-issuing posts abroad or add new consular positions to meet the dramatically expanded workload in some countries. However, we argued this past summer, and still believe, this policy should have been delayed until the State Department requested and received from Congress the requisite resources to avoid even greater delays in visa processing and issuance.

Longer waits for visas will only cause international visitors to choose other destinations for travel where the actual or perceived barriers are fewer, and where they believe their business is welcome. Other countries, such as Canada, that have visa free travel actively promote this point to draw international travelers who have been deterred by the current U.S. visa application process.

Additionally, TIA was dismayed the State Department did not conduct a thorough small business economic impact review of this interim rule before it was announced.

Increase in Visa Application Fee

The State Department charges all visa applicants a fee to process their visa application. The fee for non-immigrant B-1 and B-2 visas was raised in November of 2002 from $65 to $100 U.S. This fee is paid regardless of whether or not the visa application is approved.

In Congressional testimony before this committee and the Senate Committee on Foreign Relations, State Department officials mentioned the possibility of increasing the non-refundable fee it charges for non-immigrant visa applicants. While we acknowledge that the State Department has fixed costs related to adjudication of visa applications, increasing the fee again would only serve to further discourage legitimate international travel to the U.S. In Brazil, the increased application fee and other travel costs associated with in-person interviews are deterring many visitors and causing increasing numbers to choose Europe for their leisure travel.

Deadline for New Passports with Biometric Identifiers

The Enhanced Border Security and Visa Entry Reform Act of 2002 introduced a new security element to traveler documentation: biometric identifiers. A biometric identifier is a computerized recording of an individual's hand, face, eye, fingerprint, voice, etc., that is later used to verify their identity. Capturing a person's biometric and using it as part of the entry process will allow inspection officials to know the person before them is the same person to whom the passport or visa was issued. Biometrics are to be used in all U.S. issued visas by October 26, 2004. They are also to be used in all new passports issued by the 27 countries participating in the Visa Waiver Program beginning on October 26, 2004.

TIA supports the use of biometrics in travel documents. However, TIA has learned that the Visa Waiver Program countries will not be ready to issue these newer biometric passports until late 2005 at the earliest. As the biometric requirement is a condition of continuation in the Visa Waiver Program, missing the deadline would mean that all tourist and business travelers from those countries would have to obtain visas for entry into the U.S. This could potentially double or triple the number of B-1 and B-2 visas the State Department would have to issue to overseas visitors.

Forcing Visa Waiver Program travelers to get visas will deal a crippling blow to an already ailing travel industry. Approximately two-thirds of all overseas business and leisure travelers, or nearly 13.5 million visitors, enter the U.S. under the Visa Waiver Program. Overseas travel to our nation is already down 32% over the past three years. Additional losses will send even more workers from the travel and tourism industry to the unemployment line. According to a report from the General Accounting Office on the Visa Waver Pogram*, eliminating visa-free travel to the U.S. could cost our economy 475,000 jobs over a five-year period.

Changes Are Necessary

TIA recommends Congress and the Administration take the following three actions to improve our policies affecting international travel and to better facilitate these visitors:

* GAO-03-38 *Implications of Eliminating the Visa Waiver Program*, Nov. 2002

The State Department should revise the interim rule on interviews for visa applicants. State has raised the rate of applicants interviewed to 90% or more at all posts. TIA agrees with this new security measure in principle. However, State lacks the personnel or space to meet the demands of this new requirement. TIA urges the State Department to increase the interview rate only as new resources become available at visa issuing posts. Additionally, TIA urges Congress to appropriate increased funding to meet these new security requirements.

The State Department should not raise the visa application fee in 2004. Raising the fee again will make the U.S. that much less attractive when compared to competing international destinations that do not require visas. If necessary, Congress will have to appropriate additional funds to support visa processing.

Congress must immediately introduce and pass legislation that would postpone the deadline for use of biometrics in Visa Waiver Program passports by two years to October 26, 2006. This will provide much-needed time for our major allies and trading partners to implement this necessary security program without disrupting legitimate international visitation.

Our country needs and deserves better border security. But we must be honest with ourselves about how much time and how many resources these new initiatives require. If we wish to improve our security without damaging our economy, Congress and the Administration will need to revisit these new rules and deadlines.

Congress Funds International Tourism Promotion

Just last year Congress appropriated $50 million to promote the U.S. internationally as the premier visitor destination in the world. This U.S. promotion campaign is being led by the U.S. Department of Commerce, with advice and counsel from the U.S. Travel and Tourism Promotion Advisory Board, which is composed of leaders in the U.S. travel industry. The travel industry is grateful to Congress for recognizing the need to tell the world that we are not only open for business, but also eager to welcome international visitors to our cities and rural areas to experience our natural beauty, culture and exciting attractions.

But even before government and industry have decided how best to invest this $50 million to attract increased numbers of international visitors, there is great concern that all of these new visa, passport and entry procedures could potentially drown out any efforts to invite the world to "See America." Our overseas business partners who sell travel to the U.S. are worried this investment in promotion will do little to increase inbound international travel because of widespread negative perceptions. This money will not be well spent if, after all of the advertising and promotion, would-be travelers face real or perceived barriers that cause them not to travel to the U.S.

Conclusion

TIA and the U.S. travel industry strongly support efforts by the federal government to protect our homeland from attack by those who would seek to harm our citizens, residents, and international guests. We stand ready to work with Congress and the Administration on the creation of policies that prevent the entry of terrorists while truly facilitating the entry of tens of millions of legitimate business and leisure visitors who provide a great economic, social and political benefit for this country.

We greatly appreciate the continued leadership the House Small Business Committee has demonstrated on these issues. The hearing held by this Committee in June of 2002 was instrumental in highlighting the many deficiencies in the Immigration and Naturalization Services' proposed rule on B-1 and B-2 visa holders. And we appreciate the Chairman's attempt to make sure the indirect impact these visa rules have on small businesses will be documented and researched by agencies with the introduction of H.R. 2345.

Again, we must have enhanced U.S. national security as well as growth in travel and tourism and the overall U.S. economy. Protecting America and providing jobs must remain priorities for Congress and the Administration. These goals are not mutually exclusive, and we can and must have both.

Visa Hassles
Editorial
Washington Post
Monday, November 17, 2003; Page A24

AS IT HAPPENS, this is "International Education Week." In a statement marking this occasion, Secretary of State Colin L. Powell lauded foreign exchange programs. They promote "the free exchange of ideas," he said, and help find "joint solutions to problems." That may be -- but at the moment, the State Department's reputation abroad is one of an institution that prevents students and other visitors from coming to this country.

How fair is that picture? The number of visas issued for all visitors to the United States has dropped dramatically since 2001, from 6.9 million to 4.9 million. That mostly reflects a drop in the number of applicants. While overall student visa numbers have remained flat, the number of visas issued to students from the Middle East, Indonesia and Pakistan has dropped significantly. Anecdotal evidence of unreasonable refusals and delays for legitimate business and academic applicants -- well documented in Lee Hockstader's Nov. 11 Post story -- is also growing.

The financial costs to the country in lost tourist, business and academic revenue are high. The cost to America's reputation abroad is even higher. Would-be visitors are now put off by elaborate questionnaires, cursory interviews and a $100 application fee that isn't refunded in case of refusal, which happens in about a quarter of cases. It's hardly the best way to encourage positive views of this country abroad, particularly in the Arab world, where changes have been most dramatic. State Department officials worry whether America is still perceived to be a place that welcomes foreign visitors.

Others argue, not illegitimately, that the consular service is only following orders from Congress. Since September 2001 -- when visa procedures were bitterly criticized by Congress, the press and internal watchdogs -- consular procedures have changed dramatically. The consular service has nearly doubled the number of FBI background checks it conducts, even as the number of applicants has fallen, and instituted a time-consuming interview process as well. Fingerprints and photographs are next. Because Congress has long required the State Department to fund its visa service, spokesmen say the drop in the number of visitors has also forced the consular service to raise visa prices.

What is needed, then, is a deeper, national change in attitudes to foreign visitors: The State and Homeland Security departments, Congress and the White House need to make clear their support for the Fulbright programs, academic exchanges and business meetings that have such a huge impact on foreigners' views of America. When new Fulbright programs for Iraq and Afghanistan were announced, for example, there was enormous enthusiasm and many applicants.

What is also needed is a more reasonable means of distinguishing legitimate visitors from terrorists. The immigration service could, for example, be much stricter about which institutions

qualify to enroll foreign students -- leaving out flight schools, for example -- which would make it easier to rely on those institutions' judgment about who should receive a student or academic visitor's visa. Congress could insist that the State Department refund application money to those who are turned down and, better still, eliminate visa requirements for visitors from more countries that aren't security threats.

Embassies abroad should also look more closely at the atmosphere of their consular offices, which are often crowded, unpleasant places. It would help if more consular officers remembered that the visa service is often the first contact, and sometimes the only contact, that many foreigners have with the United States.

Testimony of Randel K. Johnson,

Vice President for Labor, Immigration & Employee Benefits

U.S. Chamber of Commerce

Before the

House Committee on Small Business

"Lowering the Cost of Doing Business in the United States:

How to Keep Our Companies Here"

November 20, 2003

9:30 A.M.

Chairman Manzullo, Members of the Committee, I would like to thank you for the opportunity to testify today on the issue of the current and projected problem of delayed entry for foreign nationals traveling to the United States for legitimate business purposes, with a particular focus on visa issuance problems. I am Randel K. Johnson, Vice President for Labor, Immigration and Employee Benefits at the U.S. Chamber of Commerce. While my biographical information is attached to my written testimony, let me note that I represent the Chamber on the Data Management Improvement Act (DMIA) Task Force, which was established by Congress to study and recommend suggestions on how to implement an entry-exit process at our nation's borders, I chair the Americans for Better Borders Coalition which works on issues relating to the secure and efficient processing of legitimate travel and trade, and am a member of the Board of Directors of the National Immigration Forum.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses of every size and in every business sector. The Chamber's membership also includes 95 American Chambers of Commerce abroad (AMCHAMs) located in 83 countries, which represent American companies and individuals doing business overseas as well as foreign companies with significant business interests in the United States. Because of their role at the crossroads of international business, we believe the AMCHAMs are excellent barometers of the strength of our international relationships.

We are all aware of the new environment in which not only business, but all of us must live. The need for security to protect us from another horror such as September 11 is very real. The U.S. Chamber has pledged its support for the broad ranging efforts to secure our homeland, was involved in the shaping of the legislation which created the

Department of Homeland Security, and "key voted" in support of the legislation in both the House and the Senate.

Two of the provisions that we worked on included one that created a special office which was charged to reach out to the private sector, a particularly important function as the Department got up and running, and another that made clear that part of the Department's mission is to include consideration of America's economic security as the Department strives to also protect our national security. These provisions, along with those in Title IV of the implementing legislation relating to borders and transportation which reflect the need, consistent with national security, to "ensure the speedy, orderly, and efficient flow of lawful traffic and commerce," I believe went a long way in addressing concerns that the new Department would pursue a "fortress America" without weighing the negative economic impact on the country as a whole, which could result from significant increases in barriers and delays at our borders. As Chamber President and CEO Tom Donohue has said, we need to ensure "that in the pursuit of security we don't lose our mobility and our economic freedom. Mobility and security must go hand-in-hand. Sacrifice one for the other and we'll pay a horrific price."

And, indeed, the decision makers at the Department of Homeland Security, the State Department and the White House, certainly have repeatedly reassured those on the outside that the government will continue to search for ways to both improve security and to expedite, or at least not significantly hinder, legitimate international commerce, travel and immigration.

However, I believe there is serious concern among those of us in the private sector, the traveling public and local communities, that these words are not matching the new policies, present and pending. There is a sense that the concerns of the business community are not given the weight that they deserve. With the constantly tightening policy responses and fast approaching deadlines for still greater changes, such as increased referrals for security checks, requirements for in-person visa interviews, upcoming deadlines in the next year for Machine Readable Passports and biometrics for Visa Waiver visitors, the December 31 deadline for the US VISIT system at air and seaports, which includes fingerprinting more than 10 million visitors annually from countries around the world, and full implementation of US VISIT at the 50 busiest land borders in 2004 and the remaining land ports in 2005[1], this concern has reached a new urgency. Indeed, there is a growing perception abroad, that, in spite of the rhetoric, America *is* turning into a fortress. And this perception is hurting American businesses.

For example, we have recently met with representatives from the Laredo and McAllen, Texas Chambers of Commerce, and I have visited with various other stakeholders in the border communities as part of my work on the DMIA Task Force. There is a very strong feeling that the local communities and businesses have made their serious concerns about entry/exit procedures known to various people in the government (and us) but really were wondering: "Is anybody listening?" or were they being ignored

[1] For a useful overview of various deadlines, see GAO Report 03-563, "Homeland Security Needs to Improve Entry Exit System Expenditure Planning," pages 48-50.

because it is "easy to ignore border communities." Now that the deadlines for actually putting into place the entry/exit system are fast approaching, this concern is becoming extremely urgent, although recent official descriptions of how the US VISIT system will be implemented does indicate that the Department of Homeland Security is at least hearing our concerns. The same feeling has been evidenced on the northern border, particularly in the Buffalo and Detroit areas. There is a sense that those within the government may not be carefully evaluating the degree to which their decisions will actually advance security, much less understanding that their decisions will impact, not just dollars and cents, but a way of life, jobs, the environment, and the fabric and future of a community. It may be a communication issue, but the perception is there, and it's a *serious* communication issue.

The urgency is even greater on the visa front. Our American Chambers of Commerce in places like China and South Korea report they are actually losing business to European and other competitors because of the difficulties in obtaining visas for their customers and clients. Impending changes to the Visa Waiver program will disproportionately affect key American allies such as the United Kingdom and Japan, both of whose governments have recently stated that, in spite of their best efforts, they will not be able to meet the biometric deadline by 2004. In fact, one can legitimately wonder if the United States will be able to issue biometric passports by next year's deadline. We would strongly urge that Congress reconsider that deadline, and allow the State Department and Department of Homeland Security to waive the deadline in appropriate circumstances, similar to the waiver recently used to delay the machine readable requirement for several countries. This is an issue of the highest importance for U.S. companies doing business in the 27 countries in the Visa Waiver program.

None of this is to discourage efforts within the government agencies to deal with the very difficult questions of how to ensure that the next terrorist cannot penetrate our border protections—whether at the consulates overseas or at the ports of entry. And in the end, it is the quintessential job of government to protect its citizens. But I think we can all acknowledge that sometimes those within government, and I spent over half of my career within government, can isolate themselves from the real impact of their decisions, and accept that impact as a necessary cost (to them) of reaching a goal. That Congress, in some cases, imposes perhaps unrealistic deadlines on these same agencies, needless to say, makes this rationale all the easier.

Of course the business community, and others in this environment, hesitate to be critical because we will likely be accused by some of not being sensitive enough to national security. So I think the fact that we are here today and openly discussing these problems in and of itself is an indication of how important we feel about these issues. But let me be clear—we are not just here to complain. That will ultimately get us nowhere. We present our complaints only to illustrate the need for solutions. We are willing to work together with the agencies to advance solutions, and have offered to do so.

It is in that spirit that I come before you to share with you the concerns raised by the business community, by Chamber members, with the changes to visa and border policies implemented over the last year.

America's trade relationships, our diplomatic relationships, our cultural relationships and our academic relationships with the rest of the world depend a great deal on the ability of people to travel to the United States.

- U.S. companies exporting their goods and services abroad depend on the ability of customers and potential customers to visit, inspect the products and services they are purchasing and "seal the deal."

- Multinational businesses depend on the ability to bring key personnel to the U.S. from overseas to facilitate management, executive decisions, research and development teaming, training and integration of far-flung subsidiaries and affiliates.

- Our entertainment industry relies on talent from around the world, and our arts and cultural communities give the U.S. public exposure to some of the finest in international arts and entertainment.

- Our world-class medical facilities are the envy of the world, and depend not only on international collaboration for many medical breakthroughs but also on patients from around the world who flock to our facilities to receive the best in medical care.

- Our educational institutions not only are crucibles of learning, but also create the diverse and international community of students, teachers and researchers that continues to make the United States the leader in innovation and the location of choice for international scholars.

- Our hospitality and travel industries generate over 18 million jobs for Americans to support millions of international business and leisure travelers annually.

- Employers in the United States count on their ability to hire from overseas when necessary to meet desperate workforce needs for specific skills, abilities or due to shortages of available U.S. workers.

The ability of any of these transactions to happen depends on the timeliness, predictability and efficiency of our visa and immigration system. Unfortunately, these qualities have been sorely lacking. Specifically, the changes to the visa system over the last year have strained many of our business and international relationships, and have created problems and costs for our economy.

Let me reiterate that we understand the concern for security, and the Chamber fully supports efforts to improve our screening of persons who wish to come to this country. However, as stated above, we must look for those processes that can achieve that objective without sacrificing the efficiency of our system. Our largest concern is that these new policies seem to have been put in place with very little, if any, consideration of the need for coordination and communication with the private sector, or the real resource needs to efficiently carry out these changes. Finally, while State Department officials have acknowledged that there are adverse impacts to the private sector, they have offered little in the way of options for improving the situation. As the State Department cable to consular posts on visa interviews indicated, the Department "expects and accepts ... processing backlogs for the indefinite future." Members of the Committee, is it acceptable for a government agency to accept delays and backlogs as the normal course of business? We should continue to search for solutions—and more resources may, in fact, be necessary.

We are aware that the State Department has tried to downplay the impacts of these changes, stating that their data does not show significant problems. Members of the Committee, I will shortly share with you some of the problems that have been brought to our attention as a result of these various changes, but first I must say that the statistics provided by the State Department must be put in context. We are told that only 2% of all visa applications are referred for clearance. However, 2% of an annual 8 million visa applications is still 160,000 cases! And of course these cases are not equally distributed around the world. I am sure that a breakdown of these referrals would show a disproportionate number arising from China and other Asian countries. To borrow a phrase from the labor area, what we are clearly seeing is a "disparate impact." And it is those countries that have seen the greatest change in policies that, of course, are having the most difficulty. The State Department continues to state that they don't see a great increase in average waits for visas, but tell that to British citizens who went from filing their applications by mail to waiting six to eight weeks for a visa appointment, or Korea where the wait has grown from two days to two months.[2] One cannot realistically measure wait times simply from the time of submission of the formal application.

The State Department should acknowledge publicly what their own consular posts are telling the business and traveling community in too many places around the world—"you must wait longer." And business delays do have an impact on costs and the ability to rationally plan for the future. Finally, I would point out what every association representative here and your own constituent services assistants could tell you—by the

---

[2] The views of practitioners in the area is also instructive on this point. See "Consular Processing—New Restrictive Security Measures Change the Playing Field, A 2003 Update," The Visa Processing Guide, 2003-04 Edition ("Although some of the security measures were expected, visa applicants are faced with an entirely new visa framework, often encountering completely unpredictable surprises that can cause unexpected and lengthy delays in visa issuance. The inevitable problems associated with a major restructuring are compounded by a new restrictive attitude on the part of DOS and BCIS." Id, page 3.) For a useful overview of the many hoops and hurdles involved in visa issuance, see this article and "Strategic Lawyering at Consular Posts in the Aftermath of 9/11," 2003-04 Immigration & Nationality Law Handbook—Volume 1.

time we hear about an issue, it has gone beyond just a normal delay. Chamber members do not call us until they have exhausted their own (often significant) resources.

The U.S. Chamber began hearing about this issue from its members more than a year ago. It began with requests for assistance in specific visa cases that seem to have been delayed or "fallen into a black hole" at an embassy or consular office. While the Chamber gets these requests occasionally (but rarely intervenes in individual cases) the increase in the number of requests was notable. Soon the requests on specific cases became a general concern that too many cases seemed to be falling into this "black hole," and a pattern was forming.

By last summer we were made aware of significant delays and problems processing visas in several Asian countries, most notably China, Vietnam, Malaysia, and Taiwan. (Later Russia was added to this list.) Many of these problems were caused by the increasing use of "Security Advisory Opinions" or SAOs under the so-called "Visa Mantis" programs relating to technology transfers. It seemed that not only were cases being referred for SAOs that never had been in the past, but that the clearances themselves were taking months, severely straining business relationships and jeopardizing the ability of U.S. companies to export their products.

One such company in the industrial automation industry (who asked that its name not be used because it is fearful its foreign competitors will use the information to their advantage) had three sales engineers from China who were subjected to the Mantis screenings. While not a significant number in and of themselves, these three happened to be personnel critical to their operations. One of the engineers was working on industrial machinery for a mass transportation project in a major Chinese city. Because the Embassy decided this fell under the "URBAN PLANNING" technology field, the case was sent for an SAO. Because the engineer could not attend necessary training in the U.S., the project was set back a full year. Two other employees, a software sales engineer and the head of the company's automation research and development center, were also delayed. The employer was not able to determine which "critical fields" necessitated the SAOs in these cases, and therefore was not able to provide any additional explanation or help to the consular officer in determining whether or not an SAO might have even been required, much less help the agencies involved determine whether to grant the clearance.[3]

The State Department, FBI and others have acknowledged a glut of clearances last summer that they claim to have eliminated. It should be noted that the numbers of "lost" cases seems to be lower, and there is improvement. However, in recent Senate testimony, FBI says that its "benchmark" is completion of 80 to 90 percent of cases within 30 days. And they do state that Mantis checks take a longer than average time

[3] We understand that the Technology Alert List has recently been revised and Urban Planning as well as construction has been removed. However, we also understand that other areas on the list have been broadened, and many consular officers still have difficulty discerning the actual technologies to be protected. The State Department's policy of sending cases for opinions where there is "any doubt" about whether the list even applies has generated thousands of new clearance cases.

because of the predominance of similar Asian names. Bear in mind, that this is 30 days AFTER they receive the case from a consular post. Of course it may have taken the individual 30 days to get the appointment to SUBMIT the application to the consular post in the first place, so we are now talking two months. In business, this is an extraordinary length of time, especially when our competitors are issuing visas to these same foreign customers in a matter of days or two weeks. No wonder foreign customers are still apprehensive about doing business with American companies.

Other countries have had difficulty dealing with the additional delays due to the increased security checks under the so-called "Visa Condor" program. For example, a petroleum engineering company based in Texas has had difficulty in obtaining visas for project managers from its client, the Saudi national oil company, Saudi ARAMCO. ARAMCO has told them that they are going to start looking at contractors in the United Kingdom and other countries, potentially costing this U.S. company millions in revenue, and jeopardizing over 2,000 U.S. jobs.

The American Business Council of the Gulf Countries, the organization of AMCHAMs in the Gulf states, has discussed the unintended consequences of the current visa policies in those nations. American companies are facing skepticism by their Gulf partners in doing business, feeling "unwelcome" in the United States and concerned that what they see as visa "restrictions" will hamper their ability to oversee investments or partnerships in the United States. The American Chamber of Commerce in Malaysia reports a similar feeling among Malaysians, who are increasingly turning to the United Kingdom or Australia for business partnerships, study abroad and other activities.

The level of concern over these delays is evidenced by the more than 80 organizations that joined a letter to Secretary of State Colin Powell and Secretary of Homeland Security Tom Ridge in January 2003, including the American Chambers of Commerce in China, Vietnam, Hong Kong, India, Japan, Shanghai, Singapore, and Malaysia among others.

Since last year, the State Department has also phased out programs sponsored by many AMCHAMs to file visa applications on behalf of their members. Many AMCHAM member companies relied on these filing programs to expedite visa issuance for their employees and business customers. It should be noted that these programs NEVER involved any type of preadjudication or prescreening of the cases. The AMCHAM assisted companies with compiling the necessary documentation and filing cases through its agreement with the consular post. The discontinuation of these programs, combined with the increase in person-to-person visa interviews already implemented in many locations and to be fully implemented on August 1, has resulted in even more delays for visa applicants (in many countries the wait time for a visa appointment can be months), and has created significant issues for many businesses. We understand that the State Department has recently approved reinstatement of some of these programs, such as for the AMCHAM in South Korea and a limited program for the AMCHAM in China.

Potential foreign visitors to the United States now face a dizzying obstacle course of rules, procedures and fees to even attempt to travel.

First, in many countries, the consulates rely on contractors to operate toll phone numbers to schedule appointments for visa applicants. In many cases, the cost of these calls can quickly add up to $30 or more, a significant sum in lesser-developed countries.[4] The Swiss-American Chamber of Commerce recently wrote to the Department of State stating that visa applicants calling the toll line to set up appointments often spend over 30 minutes on the phone (at $1.50/minute) and the wait time for an appointment in Bern is currently 8 weeks and growing. This is *before* any additional workload due to the required biometric collection to be instituted next year. In the words of the Chamber, this situation "adversely affects the image and reputation of the United States." The Swiss Embassy in Washington received a copy of this letter and also forwarded it to the State Department to express its concern.

Of course once the applicant has an appointment, often he or she must travel significant distances to the nearest U.S. consulate. In South Africa, the new interview requirements will often require a domestic trip of several hours travel time or a flight just to obtain the visa, even before traveling to the United States, adding additional cost and time out of the office. A similar situation exists in Brazil, a country the size of the continental U.S., with only four visa issuing posts. Imagine having to travel from Omaha to Chicago just to apply for a visa for an upcoming business trip. Finally, once at the consulate, the applicant must pay additional fees: a non-refundable application fee of $100 and additional visa issuance fees that vary by country but may also be up to another $100. The applicant may now be required to provide the U.S. Government with fingerprints and detailed documentation of every aspect of his or her life, work and study. If the application requires an additional security check, the applicant may not know for weeks whether he or she will ultimately be rewarded with a visa. Of course, if lucky enough to receive a visa, the visitor will then be required to again submit to fingerprinting at the airport upon arrival, under the new US VISIT system.

All of this just for the privilege of buying American products. And this is how foreign businesspersons and travelers encounter the United States. As stated above, this growing perception of an unwelcoming country is having a negative effect on U.S. businesses.

Korea is the sixth largest U.S. export market, second only to Japan in Asia, and the U.S. Consulate in Seoul is the largest nonimmigrant visa issuing post in the world and is among the top five origin countries for U.S. visitors last year. In testimony last month in the Senate, William Oberlin, President of the American Chamber of Commerce in Korea, stated that the new visa interview requirement has led to an immediate increase to

[4] In the Czech Republic, where visa applicants must call a toll number to arrange an appointment at the consulate, and where those callers are often put on hold and given visa interview dates long after the expected date of departure (even when the caller has called weeks in advance of the trip), one airline company estimated a loss of over $100,000 over the summer, due to cancelled travel plans.

a 60-day wait for visa interviews, and this is during the September/October period of lowest travel. Projections show potential for increasing delays as the travel season returns.

I have attached to this testimony some other case examples from companies and organizations that have been impacted by visa changes that we have gathered over the last six months. We do not have statistics; that is the responsibility of the State Department, but these anecdotes demonstrate that whether or not significant *numbers* of cases are affected, in many cases it is key personnel[5], often essential for the operation of a company that experiences delays. But perhaps most importantly, the *perception* of widespread delays is enough to jeopardize trade and business relationships.

My testimony has focused on the impacts to the business community. However, as I stated at the beginning, these delays are adversely impacting the education, arts and entertainment, travel and tourism, and medical communities as well.

We have met many times with the State Department, and sent several letters to make our concerns known. However, the response we have received has been less than, well, what we had hoped for. While the Department continues to claim that these changes are required by national security, it is difficult to understand how helpful, for example, an interview of a few minutes by an overloaded consular staff can be to security. Again, perhaps it is a matter of better communicating, but communication is a two-way street.

Finally, I would note, that while the GAO report on strengthening the visa process as an antiterrorism tool in October 2002 did recommend that the State Department create a more comprehensive set of guidelines and standards with regard to such things as visa interviews, it also specifically stated that such standards be "risk-based." The virtual blanket approach for person-to-person interviews offered by the State Department in its May cable to posts would not appear to meet the risk-based recommendation.

Further, we are extremely dismayed at the lack of involvement of the affected stakeholders in the process of making decisions regarding these changes. We have suggested to the State Department that they allow businesses to assist them in their duties by providing additional information necessary to process clearances, and suggestions for phasing in interview requirements and others. To date, the State Department has followed up on few, if any, of these suggestions.

Perhaps most importantly, these changes have been happening at a rapid pace, leaving businesses no time to make adequate adjustments to accommodate the changes. Further, knowing that additional changes are forthcoming in the next year, it appears that

[5] For example, CNET Networks, Inc., the well-known tech Internet company, recently sent its Controller to Ireland to renew his visa. He arrived shortly after the Embassy in Dublin changed its visa policy from same-day issuance to an appointment system. Because the first appointment was not available for three weeks, the Controller missed the quarterly closing of the corporate books, an important milestone in this age of corporate responsibility.

no one at the State Department or at the Department of Homeland Security is attempting to manage the slew of changes or mitigate the impacts on the traveling public. As a member of the DMIA Task Force, I am acutely aware of the potential impacts of the proposed US VISIT system to the entry and exit of legitimate travelers to the U.S., and yet there has, until very recently, been little consideration, from what we can tell, of the combination of the visa and the US VISIT deadlines on the traveling public.

The State and Homeland Security Departments need an aggressive and proactive outreach and communications campaign (perhaps working with the Department of Commerce) to counteract the increasingly negative image the United States is gaining among international business and travelers. U.S. companies are losing export opportunities to other nations because of the visa restrictions, tourism and trade shows that promote U.S. exports are losing to other destinations with easier visa policies, and American medical and higher educational institutions are losing some of their "luster" to foreign students, researchers and patients. In short, it appears that the U.S. is losing its competitive advantage in many areas because of its visa policies. This will ultimately impact our economic growth, and our global war on terrorism can only be funded through a sound economy.

We believe that four key principles are necessary to ensure that we accomplish the dual goals of security and efficiency in our visa system:

First, the agencies must have adequate resources to deal with the new mandates imposed on them. Consular posts are understaffed, lack facilities and technical resources, and are ill equipped to handle the increased workload required of them. Consular officers are making Herculean efforts to attempt to manage these increasing burdens, but are already feeling the strain. Increasing delays are the inevitable result. The point I wish to emphasize here is this: we have a non-immigrant visa process, covering many types of travel to the United States under various visa categories that we want to encourage, established by the Congress for sound policy reasons, and at some point significant delays will, as a practical matter, defeat those very same policy reasons. We need to provide adequate resources to prevent this from happening. While we are not experts in State Department budgets, we would encourage Congress and the State Department to engage in a serious and realistic dialogue as to the resource needs. Maintenance of both security and a viable visa processing system simply can't be achieved "on the cheap."

Secondly, as recommended by the GAO, the State Department, and now the Department of Homeland Security, which has assumed policy authority over visa issuance, should actively pursue a risk-management approach regarding the millions of visa applicants each year. We must acknowledge that the vast majority of visa applicants are not security risks, nor are they likely immigration risks either. The Government must make an effort to quickly identify those who are "low-risk" travelers and speed their applications, while focusing scarce resources on those who are more likely to be a problem. This strategy is already in place at our land borders with the NEXUS and SENTRI programs for pre-cleared travelers. It is only through such a targeted approach that we can hope to regain efficiency in the visa system.

Third, as the Transportation Security Administration learned early in its life during its interaction with our nation's airports and airlines, it makes sense to engage your stakeholders early and gain their expertise, input and cooperation before moving forward with major changes. We believe that the business community and other private-sector representatives can be an invaluable asset to the State Department and the Department of Homeland Security both in developing "win-win" solutions to the security needs of our country, but also in accurately assessing the potential impacts of changes, and assisting in communicating these changes to the traveling public. We would urge the creation of a private sector advisory committee on visa issues, or a similar body, to provide this necessary input before future changes are implemented.

Finally, we are aware that many of these changes are being prompted by Congressional mandates, with tight deadlines. We believe that Congress must take a realistic look at what it hopes to accomplish in such a short time, and the costs, to the taxpayers, to our economy and our foreign relations of moving forward without adequately gauging the impacts. While deadlines may impart the seriousness of the imperative, deadlines that cannot be met provide a false sense of security.

More resources, better communication, pilot projects, time studies and consultation before implementation or public announcements presented as a *fait accompli*, are all necessary to a successful effort. While in the end only the government can determine the best method to protect the country, surely there is room for public debate as to whether, e.g., a two or three minute interview will uncover a possible terrorist, and if the answer to that is no, whether it is rational to require them of nine million visa applicants a year with the current level of resources available.

The Chamber looks forward to working with the State Department, the Department of Homeland Security and other agencies to address these issues, working toward solutions that meet the needs of our economy and our security.

Thank you and I am pleased to take your questions.

Problems Encountered by Businesses in Obtaining Visas for Foreign Nationals: A Sampling

The following are some examples provided to the U.S. Chamber of Commerce from its members and overseas affiliates of cases of visa delays and denials, and their impacts on business operations. These cases are provided as examples only, but are representative of the issues faced by businesses operating in international markets daily. [1]

Ingersoll-Rand Company

Ingersoll-Rand Company (I-R), with worldwide corporate headquarters located in Woodcliff Lake, New Jersey, is engaged primarily in the design, engineering, and manufacturing of a diversified line of industrial components and machinery. I-R operates manufacturing plants in over 21 countries around the world, markets through a world-wide distribution network, and employs approximately 55,000 persons—30,000 in the United States. Annual net sales of I-R products are in excess of $9 billion.

IR Dresser-Rand, a subsidiary of I-R, is a world leader in energy conversion technology and manufactures centrifugal and reciprocating compressors, gas and steam turbines and customized control systems. This company is having difficulty getting customers to the United States to visit its manufacturing operations, witness final product testing and receive operating instruction on products that can range anywhere from $250,000 to $2.5 million. Most of IR Dresser-Rand's sales are exports to the international oil industry.

Currently (as of November 20, 2003), IR Dresser-Rand is trying to obtain business visas in Malaysia so that the Director of Operations and the Engineering Manager for their customer, a Malaysian oil company, can visit the IR Dresser-Rand manufacturing operations in Houston. There, this company representative will witness the "Factory Acceptance Test" for a $382,000 compressor controls system so it can be shipped to Malaysia. This final product testing is part of the contractual agreement. The testing is scheduled for December 1 through 5 and the company has had to engage private counsel to expedite the visa appointments and issuance of the visas so that the company can ship the product before the end of the year (for 2003 earnings).

It took 10 weeks to get visas issued for a Chinese inspection team from a Chinese energy company to visit the IR Dresser-Rand Olean manufacturing plant to witness the final inspection on a $2.4 million centrifugal compressor system. Through legal counsel, the company managed to get the visa interviews moved up, but then the consulate held the visa applications for over two weeks before sending them to the Department of State for a Security Advisory Opinion (SAO). It took another 2 to 3 weeks before the clearances

[1] Note, while some companies have granted permission for their names to be used, many more are concerned about negative repercussions from public disclosure of what are deemed sensitive personnel or trade issues. Where appropriate, we have used anonymous examples, but some companies were concerned about even that.

were returned to the consulate in Chengdu to issue the visas. This product took about 6 months to manufacture and could not be shipped until this inspection took place.

One of IR Dresser-Rand's customers in Argentina finally waived the product inspection because they could not get visas issued to get a product they critically needed shipped to them. This is not good for customer relationships, and in the future they may take their business to a competitor abroad where it will not be so difficult to obtain visas to inspect products before being released for delivery.

At the Shanghai Consulate an engineer at the Ingersoll-Rand Superay Tools joint venture in Jiangsu was denied a visa by the consular officer because he did not personally know the engineering manager at the U.S. Productivity Solutions manufacturing facility who issued the letter of invitation. The two business units have a relationship and it is not unusual for collaborators to have not met personally. The company subsequently has issued letters of invitation for that Chinese joint venture from one of the engineering managers who has visited the plant in China, but this is not always possible.

The company also has had a number of denials for supposed "immigrant intent" for engineers from its various I-R India operations, who could clearly demonstrate significant and long-term ties to India including long-term employment with the company abroad. These employees have advised the company that they had a 30 second interview and the consular official in one instance refused to even read the company letter marked "Business Critical" before denying the visa. Many of these employees are involved in product development or start up of products to be manufactured at the I-R India plants and needed to come to the U.S. to confer with I-R's U.S. engineering teams. The denials have further delayed the projects and the start of manufacturing products for the Asia Pacific market. This has an impact on the cost of product development and affects the operating costs of the business.

In China, the company had two engineers scheduled to attend the AAPEX International Tool Expo the first week of November and then visit the I-R Productivity Solutions manufacturing plant in Annandale, New Jersey to confer on engineering specifications for new product line that is scheduled for manufacture in China in January 2004. When they tried to get visa appointments at the beginning of October, they were given a November 25 appointment. Only through use of legal counsel was the company able to get these appointments moved up and visas issued in time, costing the company additional thousands of dollars in legal fees.

Recently, elimination of the use of travel agents in London and personal interview requirements have resulted in increased processing times for international managers and executives for British nationals. London visa processing through American Express for British nationals previously took 5 to 7 business days. It now takes about 6 weeks to get the interview scheduled [first week of June they were scheduling appointments for last week of July] and applicants must travel to London for the interview and wait for passports with visas to be returned. One of I-R's business units is in the process of transitioning manufacturing from a U.K. plant to the U.S. operations and its key

managers, who have the product expertise, are required to lead this transition. The applicants have worked for I-R in the U.K. for 8 to 15 years. The delay has resulted in lost revenues—a loss of 2 months in the transition.

A Korean business manager for I-R Asia missed a critical Migration Team Analysis Meeting for I-R Productivity Solutions because of the delay in obtaining a new B-1 visa at the U.S. Consulate in Seoul (she previously received a B-1 visa and was renewing). The Asian international business is being rolled into the Ingersoll-Rand International Shared Service model for its global export business. She was scheduled not only to represent I-R Korea at the meeting but is responsible for migration team initiatives for other Asia Pacific countries as well. The delay has not only cost productivity in Korea but in the rest of I-R's Asia Pacific operations scheduled to move to this more efficient business model.

CNET Networks, Inc.

CNET Networks, Inc. (CNET), is the global source of information and commerce services for the technology industry. As a top 10 Internet company with established Web sites in 20 countries and content in 18 languages, CNET connects buyers, sellers and suppliers throughout the IT supply chain with award-winning content via the Web, wireless devices, television, radio and print.

CNET sent its Controller to Ireland on business and while there he was to renew his H-1B, which had been extended in March 2003. He tried to renew the H-1 using the old same day process and was told on June 23 that the earliest appointment he could receive was July 11. This delay has caused him to miss the quarterly closing of the CNET books.

U.S. Oil Company

A U.S.-based oil and engineering company that employs 2,200 people, 2,000 in Texas, provides engineering and project management services for the petrochemical industries, particularly production facilities for oil and gas, refining, chemicals and pipelines. Because of projected declines in the U.S. oil industry in the next years, the company has been aggressively pursuing international markets for new business in order to avoid significant staff reductions in the U.S. Much of this new business is targeted to come from the Middle East, and they have made substantial investments in sales activity in that region to achieve this objective.

Recently, however, customers in the Middle East, particularly representatives of Saudi Arabian companies such as Aramco, are experiencing long delays in the processing of business visas to the U.S. These visas are required for their technical project teams to move to engineering contractors' offices as Owner's Representatives during the execution of their large petrochemical projects. These clients have a strong preference for awarding these contracts to U.S.-based firms, but because of the visa problems experienced since 9/11, they have been steering their business to European firms,

jeopardizing not only the company's business in the Middle East, but the company's ongoing effort to create international markets for its services.

New U.S. Business Investment

A transfer employee application for an Executive Vice President for an insurance company from the U.K. was approved by the Bureau of Citizenship and Immigration Services in March 2003, but the Embassy in London could not schedule him for an appointment for visa issuance until the beginning of August, delaying the new office opening in the U.S. and disrupting the business plan for the company, including the hiring of U.S. workers.

Universal Genesis

The Chairman and CEO for Universal Genesis and its operational subsidiaries, including London-based Universal Genesis International, Ltd., Universal Genesis Ltd., UG Risk Services, Inc. and Enhance One, LLC, is required to travel frequently to oversee operations in the United States and many other countries. Universal Genesis and its subsidiaries provide financial project management and risk management services to governments, energy groups, industrial and banking groups, major international transportation, distribution and logistics operators, high wealth individuals, technology groups and other similarly multi-faceted entities. Its portfolio of economic development activities has included industry-specific development for two major governments, large-scale economic and financial infrastructure development and multi-national project development and linkage, creating economic activity growth and advancement.

This CEO has been unable to travel to the United States to oversee international operations because, although a British citizen since childhood, this Iranian-born man must not only undergo security screening at the Consulate for his visa, but also register with the National Security Entry Exit System (NSEERS). The long registration delays and the delays to screen him at the Embassy for re-issuance of his L-1 visa have effectively grounded this CEO in the U.S.

U.S. Industrial Automation Company

A leading U.S.-based industrial automation company with customers in more than 80 countries had three sales engineers from China who were subjected to the Mantis screenings. While not a significant number in and of themselves, these three happened to be critical personnel to their operations. One of the engineers was working on industrial machinery for a mass transportation project in a major Chinese city. We think because the Embassy decided this fell under the "URBAN PLANNING" technology field, the case was sent for an Advisory Opinion. Because the engineer could not attend necessary training in the U.S., the project was set back a full year. Two other employees, a software sales engineer and the head of the company's automation research and development center were also delayed. The employer was not able to determine which "critical fields" necessitated the AO's in these cases, and therefore was not able to

provide any additional explanation or help to the consular officer in determining whether or not an AO might have even been required, much less help the agencies involved determine whether or not to grant the clearance.

U.S. Industrial Chemical, Equipment and Electronics Manufacturer

A major U.S. industrial chemical, equipment and electronics manufacturer has a collaborative research partnership with a prestigious Russian institute. The key scientist for this partnership waited over six months for a visa to visit the United States, after many previous visits over the last ten years. The visa, although finally issued, was issued for a very short period, with no explanation or appeal. This has threatened the continuation of this long-standing research agreement.

BAX Global/Expolanka Freight Limited

An international logistics management company has waited over ten months for renewal of an international manager visa in Sri Lanka for security checks, losing approximately $75,000 to $100,000 per month in revenues.

U.S. Company in Latin America Cannot Bring Executives for Training

A U.S. Company with operations in Colombia identified a young manager they wished to train to oversee their operations in Colombia, but was denied a visa for "immigrant intent," even though the company was willing to vouch for her return. This was the second time that this company had a new executive-in-training denied, and it is seriously hampering the expansion of their operations in that country. According to the American Chamber of Commerce in Colombia, approximately 75% of visa applications are initially denied.

American Computer Manufacturer

A senior executive in Japan for a major American computer manufacturer is a British Citizen. Because of proposed changes to passport requirements for visa waiver countries, this individual must obtain a U.S. visa for future business trips, but the U.S. consulate will only process "third-country national" applications on one day each week, meaning a 10 week wait for an appointment.

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

RANDEL K. JOHNSON
VICE PRESIDENT
LABOR, IMMIGRATION & EMPLOYEE BENEFITS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5448 • 202/463-3194 FAX

November 25, 2003

The Honorable Donald Manzullo
Chairman, Committee on Small Business
United States House of Representatives
2361Rayburn House Office Building
Washington, DC 20515-6315

Dear Chairman Manzullo:

Recently I had the pleasure to testify on behalf of the U.S. Chamber of Commerce before your committee in a hearing entitled "Lowering the Cost of Doing Business in the United States: How to Keep our Companies Here," held on November 20, 2003. Unfortunately, the testimony that we submitted to your staff contained two minor mistakes (described below). I have enclosed a corrected version of the testimony and hope that you will accept it for inclusion in the hearing record.

The first mistake is located in the final paragraph on page seven of the testimony. In the sentence beginning, "The discontinuation of these programs…" we have added the word "comprehensive" to more fully describe the "person-to-person visa interviews" that are mentioned. Also, we have eliminated the phrase "already implemented in many locations and to be fully" in the same sentence, since the increase in comprehensive interviews had already taken place on August 1 of this year. The second mistake is located on page four of the attachment in the second paragraph describing the company Universal Genesis. Since the CEO in this example is effectively grounded in the United States due to the various delays that are described, we have corrected the opening sentence to read, "This CEO has been unable to travel from the United States…" rather than the mistaken version that stated "to the United States." Furthermore, in an effort to better clarify this CEO's situation, we have added the phrase "each time he departs and returns to the United States" at the end of that sentence.

I regret that these mistakes were not eliminated prior to the hearing on November 20, and, once again, I hope that you will include the corrected version that I have enclosed in the hearing record. Thank you again for holding a hearing before your committee on this important issue.

Sincerely,

Randel K. Johnson

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

November 20, 2003

Washington, D.C.

Mr. Chairman and distinguished Members of the Subcommittee, I am Palma R. Yanni, President 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 update the subcommittee on the ever-burgeoning backlog in the visa process. Since I last talked to this subcommittee in June, the situation has further deteriorated. Name the category of visa and I can describe to you severe delays or other situations that hamstring or defeat the purpose of having that visa in the first place. Many of these situations have a disproportionate impact on small business.

As I indicated in June, 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. The delays in that visa issuance process alone can be monumental. But, in many cases, visas for individuals critical to a small business cannot be issued until the Department of Homeland Security's Citizenship and Immigration Services (USCIS) arm, which used to be the Immigration and Naturalization Service (INS), has approved an underlying petition.

Petitions at USCIS

Visa problems for key employees and consultants of small businesses begin long before the individual applies for a visa at a U.S. consulate, and continue after they arrive in the United States. Usually, these problems are centered at the USCIS. While that agency has yet to release actual figures, despite numerous requests, conversations with USCIS employees and the experiences of AILA members indicate a marked increase over the past two years in the number of cases denied or subjected to lengthy demands for additional documentation not required by the regulations. There is good reason to believe that some 20 to 25 percent of employment-based cases, a large number of which are meritorious and would have been readily approved not long ago, are subjected to these documentation demands or are denied. And, our members' experiences tell us that most of these cases are for employers that would be classified as small businesses.

These demands can run many pages in length, and may ask for dozens of separate pieces of often difficult-to-obtain documentation not required by regulation. We have seen

requests for incorporation documents, copies of wire transfers, confidential contracts, several years' worth of bank statements, payroll records and resumes for employees not related to the petition, and pages of other such documentation. These kinds of requests are considered almost inevitable for small businesses. Very often, these requests and denials are for people seeking extensions of existing visa status, where petitions were previously approved under the same facts.

The delays engendered by these documentation requests exacerbate already serious backlogs and delays in processing. For example, during the summer, regular processing of H-1Bs was running as long as eight months—in those increasingly rare cases in which additional documentation was not requested. If documentation was requested, several months could be added to the processing time.

As this subcommittee's own website reflects, small businesses represent more than 99 percent of all employers and produce two-thirds to three-quarters of all the net new jobs. The people who join these employers from abroad usually are sought because they bring a unique expertise in markets or technology to help these businesses expand and ultimately fuel growth in jobs for American workers. Unfortunately, the USCIS does not appear to recognize the crucial role small businesses play in the U.S. economy, and places extremely high burdens on small businesses.

As you may know, H-1B visas are limited to 65,000 per year. Visa numbers are distributed in the order in which the USCIS petitions are approved. Because small businesses tend to receive more requests for additional documentation than do larger companies, small business petitions that are filed at the same time as those by larger businesses will take several months longer to be approved (if they are approved at all). Thus, larger businesses have a better chance of receiving one of the limited H-1B visa numbers before they run out.

The disproportionate pain felt by small businesses may increase under a proposal under development at the USCIS. The USCIS is putting the finishing touches on a "pre-certification" program, by which qualifying companies—which by the terms of the program would exclude small businesses—may obtain a blanket certification that listed job positions within the company meet H-1B requirements. Then, when a candidate is identified, the company can use this pre-certification to ensure that it does not receive a demand for additional documentation on that issue (which happens to be the issue for which most such demands are sent by USCIS). The result is that large companies—the only ones allowed to participate in the program—are placed in an even better position to use the limited numbers of H-1Bs, and small businesses, which will continue to receive these demands, will most likely to lose out in this "race" for H-1B numbers.

The problems faced by small businesses in this process have very real-world consequences. Hospitals and nursing homes struggle without needed health care workers. Projects are delayed or cancelled because needed scientists or business experts cannot obtain approval on a timely basis, or at all. Dreams by U.S. companies of reaching foreign markets are abandoned because they cannot obtain the needed

knowledge of those markets. Foreign companies wishing to open or expand job-creating operations in the United States must abandon those plans because USCIS has decided that a small company cannot "need" a manager or executive. Small businesses, the drivers of the American economy, are being hurt by a "culture of no" permeating the USCIS.

Delays at the Consulates

The USCIS is not the only source of problems. Severe delays continue to hamper the visa issuance process, with serious consequences for businesses, families, schools and others in the United States. The State Department saw a 15% decrease in the number of non-immigrant (i.e., not permanent) visa applications from 2002 to 2003. People simply do not want to come to the United States, in large part due to the delays and roadblocks that are now a routine part of the visa process. The negative impact on the sectors of our economy, including small business, that deal with tourism is significant.

The negative impacts are visible elsewhere. For instance, the American Institute of Physics indicates that schools offering graduate physics programs have experienced a decline of 7% since 2002 in the number of students from abroad. This is a worsened situation from the year immediately following 9/11, when foreign student enrollment declined 3%. These programs had suffered significantly declining enrollments of U.S. students since 1970, but were saved by an increase in enrollment by students from abroad, to the point that 55% of graduated-level students enrolled in U.S. physical science programs in 2000-2001 were from abroad. Thus, this decline in foreign student enrollment is of major significance. The Institute attributes this decline largely to problems in obtaining visas.

As both the American Institute of Physics and the National Academies of Science not, these students and international scholars are essential to continue the United States' advances in scientific research and technological development. And a large percentage of developing technologies has come from small businesses. To quote from a National Academies of Science position paper that I have attached to my testimony:

> Scientific and engineering research has become a truly global enterprise. International conferences, collaborative research projects, and the shared use of large experimental facilities are essential for progress at the frontiers of these areas. If we allow visa restrictions to stop international collaborations at our experimental facilities, then these facilities will cease to attract international support. Moreover, our scientists and engineers will no longer enjoy reciprocal access to important facilities abroad. And if we continue to exclude foreign researchers from conferences held in the United States, then those meetings may cease to take place in this country in the future, depriving many American scientists of the opportunity to participate in them.
>
> In short, the U.S. scientific, engineering, and health communities cannot hope to

maintain their present position of international leadership if they become isolated from the rest of the world.

Security checks account for some of the more dramatic delays in visa issuance, as 4-month waits while the State Department seeks a reply from other agencies on security inquiries have become routine, and much lengthier waits are no longer surprising. Few would argue that security scrutiny is unnecessary. But the lack of attention to, and reasonable speed in completing, these checks is incomprehensible.

Most security checks 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 if a "hit" occurs, fingerprints must be taken and FBI clearance obtained. While some clearances come back quickly—the FBI has proven that it can turn around a check in a matter of hours—others inexplicably take weeks or months for response.

In addition, there is an array of checks triggered by a person's nationality, line of work or study, or other unknown factors. These clearances by other, often unidentified, agencies, can take many months to be acted on.

Add to the security checks the fact that the State Department now interviews, with just a handful of exceptions, all nonimmigrant visa applicants. No new personnel or facilities were added to accomplish these interviews. The result has been backups in visa processing, or elevation of form over substance. Imagine the amazement of the Australian businessman who traveled many miles, at great expense, to attend an "interview" in Sydney to obtain his intracompany transferee visa, only to spend all of 30 seconds at a window while an officer, who never even looked at him, much less ask him any questions, stamped his passport and sent him on his way. In truth, there was no need for the consular officer to do more than he did in this case—this applicant was clearly eligible for his visa and clearly no danger to the U.S. But why did we subject this applicant and this officer to this process in the first place?

Since the State Department has no system for pre-clearing visa applicants, the checks that I mentioned previously will not even begin until the visa interview has been held. Thus, for the many people subjected to these checks, we must measure the wait at the visa stage alone (AFTER their many-months wait at USCIS) in months and even years. Few small business can wait that long for a needed employee.

Examples

A few cases will illustrate the range of the problem:

- An engineer, who had worked in the U.S. for 4 years under L-1 status prior to his most recent visa application, applied in Jakarta in early 2002 to renew his L-1 visa stamp. The visa still has not been issued, with no explanation as to the reason, other than that "another agency is conducting the check" and "the visa office is

very busy." After much trouble and expense to keep his projects going without him, the company finally had to transfer the engineer to an overseas office, and move projects abroad to complete them.

- A telecommunications engineer waited over a year for an H-1B visa in Saudi Arabia. Despite numerous inquiries by the company, the consular post never replied, and inquiries to Washington, DC were met with replies that the clearances had not been completed. The company and the engineer have given up.

- A businessman coming to the U.S. to act as President of a subsidiary of a British company applied for his visa in London more than a month ago. He has a very common name, and so a name check in the security database resulted in a "hit". His fingerprints were taken, and he still awaits FBI clearance of this fingerprint check. There is no indication of when the visa will be issued. In the meantime, the U.S. subsidiary is without a leader.

- A Panamanian couple in their mid-seventies, who have visited their adult daughter in the U.S. every year for the past 15 years, needed to renew their visitor visas. Apparently because they were born in Morocco, they were subjected to additional security checks, and have been waiting for several months for their visas. They missed out on spending the Jewish High holy days with their daughter because of the delay in their visas.

- A German professor who had visited the Institute for Surface and Interface Science at the University of California, Irvine, for roughly twenty five years will not come this year due to the difficulties he had obtaining a visa.

Delays at both the USCIS and the consulate mean that companies can wait over a year to obtain a simple H-1B visa (not long ago considered a two-month process). With no additional resources appropriated for the visa issuance process, with what appears to be declining resources devoted to USCIS processing, and with a "culture of no" permeating the process, obtaining a visa to the United States is increasingly looking hopeless.

These delays, combined with denials that result from the "culture of no" and uncertainty whether a visa will be issued, are having a chilling effect on many sectors of the economy, but most acutely on small businesses. The situation has become an emergency, and must be addressed at once, or business growth will be something for other countries to enjoy, leaving the United States behind.

28ts3008

Appendix

Current Visa Restrictions Interfere with U.S. Science and Engineering Contributions to Important National Needs

Statement from
Bruce Alberts, President, National Academy of Sciences,
Wm. A. Wulf, President, National Academy of Engineering,
and Harvey Fineberg, President, Institute of Medicine

Dec. 13, 2002 *(Revised June 13, 2003)*

To make our nation safer, it is extremely important that our visa policy not only keep out foreigners who intend to do us harm, but also facilitate the acceptance of those who bring us considerable benefit. The professional visits of foreign scientists and engineers and the training of highly qualified foreign students are important for maintaining the vitality and quality of the U.S. research enterprise. This research, in turn, underlies national security and the health and welfare of both our economy and society. But recent efforts by our government to constrain the flow of international visitors in the name of national security are having serious unintended consequences for American science, engineering, and medicine. The evidence we have collected from the U.S. scientific community reveals that ongoing research collaborations have been hampered; that outstanding young scientists, engineers, and health researchers have been prevented from or delayed in entering this country; that important international conferences have been canceled or negatively impacted; and that such conferences will be moved out of the United States in the future if the situation is not corrected. Prompt action is needed.

Under current rules, consular officials send many visa applications back to the United States for sequential security clearances by several agencies, leading to long delays and backlogs. In addition, consular officials in some countries are denying visas by telling applicants -- even high-ranking officials from major research institutions -- that there is fear that they may try to remain in the United States. Consular officers who grant a visa to someone who later commits a terrorist act in the United States may be subjected to department review and serious disciplinary action. Unfortunately, there are currently no offsetting incentives for consular officers to serve the national interest by facilitating scientific exchanges.

The list of those who have been prevented from entering the United States includes scholars asked to speak at major conferences, distinguished professors invited to teach at our universities, and even foreign associates of our Academies. It includes research collaborators for U.S. laboratories whose absence not only halts projects, but also compromises commitments made in long-standing international cooperative agreements. It includes scientists from countries such as Iran and Pakistan whose exclusion from this country blocks our efforts to build allied educational and scientific institutions in those parts of the world. Perhaps most seriously, the list also includes large numbers of outstanding young graduate and postdoctoral students who contribute in many ways to the U.S. research enterprise and our economy.

In order to correct these problems as rapidly as possible, we pledge the help of the U.S.

scientific community and urgently call upon the U.S. government to implement an effective and timely visa screening procedure for foreign scientists, engineers, and medical researchers, one that is consistent with the twin goals of maintaining the health of science and technology in the United States and protecting our nation's security. We ask the Department of State and its consular officials to recognize that, in addition to their paramount responsibility to deny visas to potential terrorists, the long-term security of the United States depends on admitting scholars who benefit our nation.

Possible mechanisms for streamlining the process without compromising security might include:

· Reinstating a procedure of pre-security clearance for scientists and engineers with the proper credentials;
· Instituting a special visa category for established scientists, engineers, and health researchers; and
· Involving the U.S. scientific and technical community in determining areas of particular security concern.

The U.S. research community can assist consular officials by providing appropriate documentation for those foreign citizens who are engaged in collaborations with our scientists and engineers.

An approach that welcomes qualified foreign scientists, engineers, health professionals, and students serves three general purposes in support of national goals. We outline these briefly below.

Harnessing international cooperation for counterterrorism. The National Academies have been working with foreign scientists and engineers on several efforts directly related to combating terrorism. Last September visa restrictions came within one day of forcing the cancellation of an important meeting in Washington of our Committee on U.S.-Russian Cooperation on Nuclear Non-Proliferation. This committee's responsibilities include assuring that nuclear weapons-grade materials are under control and out of the hands of terrorists. It required intervention at the highest levels of the State Department to gain the needed visas. Similar collaborations are under way in many other venues, and these require that we welcome qualified foreigners to our nation without restrictions or delays.

Building stronger allies through scientific and technological cooperation. It is clearly in our national interest to help developing countries fight diseases such as AIDS, improve their agricultural production, establish new industries, and generally raise their standard of living. There is no better way to provide that help than to train young people from such countries to become broadly competent in relevant fields of science and technology. Yet our new visa restrictions are making this more difficult. For example, several hundred outstanding young Pakistanis, carefully selected by their government as potential leaders of universities there and accepted for graduate training in U.S. universities, experienced a 90 percent denial rate in applying for U.S. visas.

Maintaining U.S. global leadership in science and technology. Throughout our history, this

nation has benefited enormously from an influx of foreign-born scientists and engineers whose talents and energy have driven many of our advances in scientific research and technological development. Over half a century ago, Albert Einstein, Enrico Fermi, and many others from Western Europe laid the foundations for our global leadership in modern science. More recently, immigrants from other parts of the world -- most notably China, India, and Southeast Asia -- have joined our research institutions and are now the leaders of universities and technology-based industries. Many others have returned to take leadership positions in their home countries, and now are among the best ambassadors that our country has abroad.

Approximately half of the graduate students currently enrolled in the physical sciences and engineering at U.S. universities come from other nations. These foreign students are essential for much of the federally funded research carried out at academic laboratories.

Scientific and engineering research has become a truly global enterprise. International conferences, collaborative research projects, and the shared use of large experimental facilities are essential for progress at the frontiers of these areas. If we allow visa restrictions to stop international collaborations at our experimental facilities, then these facilities will cease to attract international support. Moreover, our scientists and engineers will no longer enjoy reciprocal access to important facilities abroad. And if we continue to exclude foreign researchers from conferences held in the United States, then those meetings may cease to take place in this country in the future, depriving many American scientists of the opportunity to participate in them.

In short, the U.S. scientific, engineering, and health communities cannot hope to maintain their present position of international leadership if they become isolated from the rest of the world. We seek the help of the U.S. government in implementing effective and timely screening systems for issuing visas to qualified foreign scientists and students who bring great benefit to our country. We view this as an urgent matter, one that must be promptly addressed if the United States is to meet both its national security and economic development goals.

Bruce Alberts
President
National Academy of Sciences

Wm. A. Wulf
President
National Academy of Engineering

Harvey Fineberg
President
Institute of Medicine

○