AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

DIVERSITY VISA PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

JUNE 15, 2005

Serial No. 109–49

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://www.house.gov/judiciary

U.S. GOVERNMENT PRINTING OFFICE

21–780 PDF WASHINGTON : 2005

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 THE JUDICIARY

F. JAMES SENSENBRENNER, JR., Wisconsin, *Chairman*

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
BOB INGLIS, South Carolina
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
DARRELL ISSA, California
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SÁNCHEZ, California
CHRIS VAN HOLLEN, Maryland
DEBBIE WASSERMAN SCHULTZ, Florida

PHILIP G. KIKO, *Chief of Staff-General Counsel*
PERRY H. APELBAUM, *Minority Chief Counsel*

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

JOHN N. HOSTETTLER, Indiana, *Chairman*

STEVE KING, Iowa
LOUIE GOHMERT, Texas
LAMAR SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
JEFF FLAKE, Arizona
BOB INGLIS, South Carolina
DARRELL ISSA, California

SHEILA JACKSON LEE, Texas
HOWARD L. BERMAN, California
ZOE LOFGREN, California
LINDA T. SÁNCHEZ, California
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts

GEORGE FISHMAN, *Chief Counsel*
ART ARTHUR, *Counsel*
LUKE BELLOCCHI, *Full Committee Counsel*
CINDY BLACKSTON, *Professional Staff*
NOLAN RAPPAPORT, *Minority Counsel*

CONTENTS

JUNE 15, 2005

OPENING STATEMENT

	Page
The Honorable John N. Hostettler, a Representative in Congress from the State of Indiana, and Chairman, Subcommittee on Immigration, Border Security, and Claims	1
The Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia	2
The Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims	47

WITNESSES

The Honorable Bruce A. Morrison, Chairman, Morrison Public Affairs Group, former Member of Congress	
Oral Testimony	4
Prepared Statement	6
The Honorable Howard J. Krongard, Inspector General, U.S. Department of State and the Broadcasting Board of Governors	
Oral Testimony	8
Prepared Statement	10
Mr. Mark Krikorian, Executive Director, Center for Immigration Studies	
Oral Testimony	14
Prepared Statement	17
Ms. Rosemary Jenks, Director of Government Relations, NumbersUSA	
Oral Testimony	23
Prepared Statement	25

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Member, Subcommittee on Immigration, Border Security, and Claims	57
Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims	58

DIVERSITY VISA PROGRAM

WEDNESDAY, JUNE 15, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 4:04 p.m., in Room 2141, Rayburn House Office Building, the Honorable John Hostettler (Chairman of the Subcommittee) presiding.

Mr. HOSTETTLER. Good afternoon. Today the Subcommittee will examine the Diversity Visa or "DV" program. At this hearing, we will review the history of the program and its implementation.

The DV program, part of the Immigration Act of 1990, was designed to increase diversity in the U.S. immigrant population by providing visas to nationals of countries that have had low immigration rates to the United States. Applicants for the DV program participate in a lottery in which the winners are selected through a computer-generated random drawing. Annually, approximately 50,000 aliens enter under the program.

The program is not without its critics however. Some experts have argued that the program is susceptible to fraud and manipulation. For example, critics have asserted that it is common for aliens to file multiple applications for the lottery to improve their chances of winning. In reviewing the DV program in September 2003, the State Department Inspector General found that "identity fraud is endemic, and fraudulent documents are commonplace."

Such fraud would be necessary if aliens were to file multiple applications under various aliases to improve their chances in the lottery. If selected under an alias, the alien would have to obtain and use fake documents to support his visa application. In addition to, and in part because of, concerns about fraud in the DV program, critics have argued that the program poses a danger to our national security. As one expert who testified on this subject last year said: "The lottery is ideal for terrorists because it encourages immigration from those parts of the world where . . . fraud is common, documents are difficult to verify, and al-Qaeda is very active."

The lack of restrictions on admissions under the DV program has also been identified as a vulnerability that could be exploited by criminals and terrorists. It should be noted in this regard that almost 1,900 aliens from state sponsors of terrorism were selected in the DV 2005 lottery. From 1995 to 2003, 18 percent of Diversity Visa recipients were from countries of concern with respect to terrorism. Further, unlike other visa categories, aliens who enter the

United States under the DV program do not need familial or business ties to our country. Such relationships logically make it more likely that immigrants entering our country have a stake in our country's success as well as skills to contribute to our economy.

For whatever reason, at least two aliens who have immigrated under the DV program have been tied to terrorism in the recent past. Hesham Hedayet, who killed two in an attack at LAX on July 4, 2002, got his green card under the program. In an asylum application that he had filed earlier, he had claimed that he had been accused of being a terrorist, a claim that the former INS never investigated.

Similarly, a Pakistani national who pleaded guilty in August of 2002 to conspiracy to use arson or explosives to destroy electrical power stations in Florida entered under the DV program. Critics have further complained that the DV program unfairly moves lottery winners ahead of some family and employer-sponsored immigrants. Family fourth preference applicants from the Philippines must wait more than 22 years for a visa, for example, while DV winners can enter right away.

Finally, critics have questioned both the goals of the program and whether the program even accomplishes its goals. Last year, former INS Associate Commissioner Jan Ting testified that "the lottery is unfair and expressly discriminatory on the basis of ethnicity, and implicitly, race" and that it "does not serve and is inconsistent with the priorities and best interests of the United States as otherwise expressed in our immigration laws."

We will explore these issues with our witnesses today. I turn to the gentleman from Virginia, Mr. Goodlatte, for purposes of an opening statement.

Mr. GOODLATTE. Thank you, Mr. Chairman. I appreciate you holding this oversight hearing on the Diversity Visa program which is better known as the Visa Lottery Program. I want to thank you again but also point out that I have introduced legislation which the gentleman from Texas, Mr. Smith, has co-sponsored. It has now more than 30 co-sponsors. It is bipartisan. I am pleased that it has several Democratic co-sponsors, including Congresswoman Stephanie Herseth of South Dakota, who has agreed to be the lead Democratic co-sponsor. We are hopeful that this oversight hearing will lead to action being taken on this program, which I think is a security risk—it is discriminatory. It is unfair to many immigrants who follow the lengthy process based on either having a family relationship or based upon having an offer of employment, a job skill that is needed in the United States. All of that is thrown aside by this program where millions of people submit their names. It is put into a computer with a very skimpy amount of information, and then 50,000 lucky people have their names drawn each year.

We have given hundreds of thousands of these visas away. The State Department's Inspector General has identified this program as a national security risk. We have seen instances where people who have entered this country under the Visa Lottery Program have committed terrorist acts, for example at the El Al ticket counter in Los Angeles a few years ago, resulting in the deaths of two people on that occasion.

So it is my hope that we will hear today about this program and whether or not there is any justification for a program that ignores the fact that people from more than a dozen countries are not permitted to participate in this program. They are the folks who are on the longest waiting list, people from Mexico for example, China, India, the Philippines, other countries around the world, excluded from the program because they do not meet the criteria and are facing even longer waiting periods as a result of that, and then watch somebody come into the country with no particular job skills, no particular family reunification issue, nothing other than putting their name into a computer, having it drawn out and skipping ahead of people who have specific job skills to offer this country, skipping ahead of people who have very close family relationships, for example, people who are permanent residents of the United States and petitioning for their spouse or their children to be able to join them. All of them are discriminated against under this program and cannot enter the country in the rapid fashion that those who participate in this Visa Lottery Program do. It has become a cottage industry for fraudulent opportunists. It is simply based on pure luck and, as I indicated earlier, threatens the national security of the country.

I have a lengthy opening statement which I will not share with you in detail but rather simply ask be made a part of the record. And I yield back the balance of my time.

Mr. HOSTETTLER. Without objection, all Members' opening statements will be made a part of the record.

At this time, I will introduce the panel.

Bruce Morrison is chairman of the Morrison Public Affairs Group which he founded in 2001. He advises on financial services, housing finance, privacy and immigration issues. From 1983 to 1991, Mr. Morrison represented the Third District of Connecticut in the House of Representatives. While in Congress, he served on the Committee on the Judiciary where he chaired this Subcommittee, the Subcommittee on Immigration.

After leaving Congress, Mr. Morrison served from 1992 to 1997 on the U.S. Commission on Immigration Reform. Mr. Morrison is a graduate of Yale Law School and holds a Bachelors degree in chemistry from MIT and a Master's degree in organic chemistry from the University of Illinois.

Howard Krongard serves as the Inspector General for the Department of State and the Broadcasting Board of Governors. In this position, he acts as an independent reviewer and evaluator of the State Department's operations and activities domestically and abroad in 163 countries. From 1996 to 2005, he was of counsel to Freshfields Bruckhaus Deringer, an international law firm, and, before that worked for several legal and financial firms. Mr. Krongard graduated from Princeton University, where he majored in history and served as class president. He also graduated with honors from Harvard Law School.

Mark Krikorian is the executive director of the Center for Immigration Studies, a research organization in Washington, D.C., that examines the impact of immigration on the United States.

Mr. Krikorian, who frequently testifies before Congress, has published articles in the Washington Post, the New York Times and

the National Review, among other publications. Mr. Krikorian hold a Master's degree from the Fletcher School of Law and Diplomacy, and a bachelor's degree from Georgetown University.

Rosemary Jenks is the director of government relations for NumbersUSA. She has been active in immigration since 1990, acting as an independent immigration consultant and as director of policy analysis at the Center For Immigration Studies. Ms. Jenks, who has testified before the House and Senate Immigration Subcommittees, has written several articles and journals and co-authored two books. Ms. Jenks received her J.D. From Harvard Law School and B.A. in political science from The Colorado College.

I want to thank all of the witnesses for once again being here today. You will notice we have a series of lights. And without objection, your full opening statement will be made part of the record. If you could summarize within the 5-minute time period we would be much appreciative.

Mr. Morrison, you are recognized for 5 minutes.

TESTIMONY OF THE HONORABLE BRUCE A. MORRISON, CHAIRMAN, MORRISON PUBLIC AFFAIRS GROUP, FORMER MEMBER OF CONGRESS

Mr. MORRISON. Mr. Chairman and Members of the Subcommittee, it is a pleasure to be here, and I thank you for the opportunity to testify. I look forward to answering questions about the origin of this program, if Members have them, having been involved in its specific creation.

I would also like to note at the outset that it is important to look at this program as a piece of a much larger immigration enterprise. Some of the comments that have been made in opening statements would suggest that this program is supposed to carry within it all of the other goals of our immigration system, and it is obviously just one piece; and at that, in numerical terms, a small piece of the overall enterprise. So I look at it more in terms of what it is supposed to accomplish.

The idea of self-selected immigration is an old idea in American immigration. And in fact, for most of our history, immigrants came on a self-selected basis. And it was only in more recent times that sponsorship became the driving force for who would come. And even when sponsorship was given its central role in the 1965 act, the nonpreference category was created with the expectation that there would be significant numbers who would continue to come on a self-selected basis.

Unfortunately or otherwise, just one of the consequences of the large numbers of people who began to come under the 1965 act, the nonpreference category was soon unavailable and then eliminated. In the 1980's, various attempts were made to reinstate some kind of a program that looked to other sources rather than those who were sponsored by family or employers. And it ultimately gave rise to the diversity program as part of the 1990 act. Of course, that act did not just enact this program. It did significant things with respect to family immigration and with respect to employment-sponsored immigration. It was a piece of a whole, and it ought to be looked at that way.

Obviously, if you are concerned about immigration, you think we have too many immigrants coming, you do not like our immigration system, Diversity Visas would be on the list of things that you might want to eliminate. On the other hand, if you think our immigration system on the whole, while it needs fixing in various ways, is a statement of success by the country, the number of people who aspire to come here and contribute to our success as a country and who in fact do contribute, then you would have a different reaction, I think, to this program.

The question ultimately is, has this program worked? And I think within the terms of its creation, the answer is yes. It was not intended to create diversity in the immigrant stream as a whole. It could not have possibly done so at the 50,000 number. It was intended to add another channel which would be opened to those who would not get to come, those countries which would not get to send immigrants under the family and employment programs because of the nature of how they work. And looked at in that way, the people who are coming to our country from different quarters of the world because of the Diversity Visa lottery, has demonstrated it is a different mix. And some of those things, I think, are important to focus on.

For most of our history, Africans were not able to immigrate to the United States. They came as slaves, or they hardly came at all. This program has opened the door to African immigration. I think that is a very good contribution to our country and to an understanding in our own population that the doors of this country are open to people everywhere in the world as long as they follow the rules and as long as there are numbers available. This is a legal immigration program. It is not a program of illegal immigration. It ought to be judged in those terms.

Another major source of people coming under this program now is Eastern Europe. Congress passed laws in the 1970s insisting that the countries of Eastern Europe and the Soviet Union let people migrate. And people were not allowed to migrate to the United States, and special programs had to be created at that time to allow people to come. This program has opened the doors to countries from the former Soviet Union. And many of the immigrants are coming from there. Once again, a statement that we meant it when we said those people should be able to migrate.

There is no question that the IG has identified weaknesses in the program, and I think has made certain recommendations that ought to be considered for improving the program. But improving the program is different from abolishing it.

One last thing I would say is that the statement that this program is likely to be the source of a terrorist threat seems to me to be falling into the trap of seeing terrorists everywhere. The fact is that our 9/11 hijackers all got here using nonimmigrant entry opportunities. We have so much more important work to do in protecting the country by doing the job of screening people properly, of using intelligence information effectively, trying to manipulate a lottery seems to me to be a very low priority exercise for terrorists. They have much more direct ways to threaten us. That is where we ought to be focusing the terrorist concern.

If you do not like the program for all kinds of reasons, because of numbers, because of who it is, because of where it comes from, because you think everybody ought to be sponsored, I think those are legitimate debates. I think the introduction of terrorism into the debate kind of deflects the matter away from what ought to be focused upon.

[The prepared statement of Mr. Morrison follows:]

PREPARED STATEMENT OF BRUCE A. MORRISON

Chairman Hostettler, Congresswoman Jackson Lee, and Members of the Subcommittee:

Thank you for the opportunity to testify regarding the diversity visa program. As you know, I served as a Member of Congress from the Third District of Connecticut from the 98th Congress through the 101st (1983–91). Throughout my tenure in the House, I served on the Committee on the Judiciary. From 1989 to 1991, I was Chairman of this Subcommittee.

As the author of the House bill that became the Immigration Act of 1990, I was present at the creation of the diversity visa program. In my opinion, the Program has served the purposes for which it was created: providing a counterbalance to the concentration of source countries for immigrants that results from family and employment-based immigration; and creating an avenue for legal immigration from abroad for those without pre-existing family or employment relationships in the United States.

CONTEXT OF THE PROGRAM

For almost 50 years prior to 1965, U.S. immigration was governed by a set of country quotas that discriminated against source countries that had contributed relatively fewer natives to the U.S. population recorded in the 1910 census. The Immigration Act of 1965 sought to reform this situation through equal national quotas, family reunification principles, employment sponsorship, and a non-preference category for those lacking a family or employer sponsor. Like many major legislative initiatives, not all the consequences of the Act were anticipated.

Among these consequences were:

- Elimination of the non-preference category, due to over-subscription of higher preferences.
- Growing backlogs in both family and employment preference categories, due to inadequate numbers of available visas to meet the demand.
- Increasing concentration of source countries driven by family relationships, demographic trends, geography, refugee flows, and past migration patterns.

The Immigration Act of 1990 sought to address these issues in a variety of ways. For instance:

- Family visa availability was increased, especially for spouses and minor children of lawful permanent residents (LPRs).
- Employment visa availability was increased, especially for higher skilled workers.
- Transitional and permanent diversity visa programs were created to augment the entering population with self-sponsored immigrants drawn from countries with relatively lower participation in the family- and employment-sponsored programs.

Demand to immigrate still outstrips the supply of visas, a continuing testament to the lure of the American Dream, but the intended priorities of the 1990 Act have shaped the immigration of the past 15 years.

THE DIVERSITY VISA—WHY HAVE IT?

Those who do not much like immigration will certainly not like the diversity visa program. It is grounded in the belief that immigration has contributed to the strength of the United States. It seeks to address some inherent weaknesses in relying solely on sponsorship of families and employers to provide our new immigrants.

* Sponsored immigration inherently leads to concentrations of nationalities among new immigrants mirroring those who have come most recently.

- The pre-1965 *de jure* discrimination in favor of the nationalities of longest presence in the country has been replaced with a *de facto* discrimination in favor of the nationalities most recently arrived.
- Both source countries from an earlier era—especially Europe—and for which there never was an era of free immigration—especially Africa—are beneficiaries of the diversity category.
- Most employment-based, and many family-sponsored, immigrants are already in the country. The diversity program opens the door to those abroad to find a legal channel to immigrate.
- The bulk of immigrant flows will always come from those places of close proximity, long immigrant history, or large population. However, the principle that all nationalities are welcome, subject to available numbers reflecting overall legislated limits, is at the heart of the definition of America. We are a nation defined by allegiance to democracy, human rights and equal opportunity, rather than a particular race, ethnicity, or religion.
- The broader the mix of nationalities that comes to define America, the better equipped America becomes to understand and relate to the diversity of the world abroad. There is no better antidote to the challenges of globalization than to attract the "self-selected strivers" from every corner of the globe.

In sum, the diversity visa is a pro-immigration program that underscores the reasons to support immigration—in manageable and managed numbers. It balances the limitations of a structure based only on family ties and established employment.

THE DIVERSITY VISA—HAS IT WORKED?

The diversity visa program has done what it set out to do, and most of the objections to the existence of the program could as easily be leveled at other aspects of our immigrant and nonimmigrant admissions.

- One need only glance at the chart on page 3 of the CRS Report (Immigration: Diversity Visa Lottery, Updated April 26, 2004) to see the contrast between source regions for diversity immigrants and those arriving through family or employer sponsorship.
- This program has marked the first time in our history that Africans have been able to immigrate by choice in significant numbers.
- During the Cold War, we berated the Warsaw Pact countries for denying emigration rights to their citizens. The diversity visa has actually allowed immigration from this region to resume.
- The need to administer the program has actually given rise to significant innovations in visa processing, such as the National Visa Center's consolidation of immigrant file processing and fee collections, and the application of facial recognition screening, that have benefited the immigration and security system as a whole.
- When there are far easier means to acquire immigrant and nonimmigrant visas, or to enter with no visa at all, it is absurd to think that a lottery would be the vehicle of choice for terrorists. Security is important and attention should be focused on where the greater risks actually occur.
- Illegal immigration is certainly a problem, but this one program does not significantly affect it. Opening legal doors for those not in the country rewards those who use legal channels. It is the ease of unauthorized employment that is at the heart of our illegal immigration problem.
- Fraud is a potential problem in all programs that provide significant benefits. The remedy is to take steps to reduce the fraud, not eliminate the program.

Overall, the diversity visa program has provided benefits to the country in keeping with the principles that supported its creation. The focus should be on eliminating the weaknesses.

THE DIVERSITY VISA—CAN IT BE IMPROVED?

The real debate here is one of values—do we believe that the nation benefits when we show the whole world a path to join our two-century long project of building a nation based on democratic principles? Of course, the invitation is limited by our capacity to add people, by our need to protect our security, and by the necessity to select those who can contribute to our national well being. But all these goals can be pursued better with the diversity visa than without.

- Terrorists come from many places and carry many passports, not all legitimate. While little will be lost by excluding natives of the "state sponsors of terrorism" list, barring them will gain us little in the way of protection. It is the effective screening of individual applicants for all visas that needs attention.
- While it seems unlikely that the lottery seduces illegal immigrants to remain in the U.S., especially after the expiration of Sec. 245(i) of the INA, a simple remedy would be to eliminate the right to adjust status on the basis of a diversity visa. This would require processing abroad, which would eliminate those with significant periods of unauthorized presence from eligibility. Further, it would be consistent with the emphasis on using the diversity visa to attract immigrants from abroad, rather than those already in the U.S.
- New technology appears to address the multiple application abuse, and broader sanctions, including permanent exclusion form the program and application of the misrepresentation inadmissibility standard, are within the power of the State Department to implement.
- There is a basis for enhancing the skill requirements for eligibility and to provide standards for meeting them.
- It is hard to get exercised about uncovered costs of under $1 million annually. While collection of a small application fee might have some advantages, it hardly seems worth the administrative burden. A small increase in the fee for successful applicants seems much more viable.
- Additional steps to fight document and credential fraud are certainly worth considering.

Thank you, Mr. Chairman. I am happy to answer your questions and those of other Subcommittee members at the appropriate time.

Mr. HOSTETTLER. Thank you Mr. Morrison.

Mr. Krongard.

TESTIMONY OF THE HONORABLE HOWARD J. KRONGARD, INSPECTOR GENERAL, U.S. DEPARTMENT OF STATE AND THE BROADCASTING BOARD OF GOVERNORS

Mr. KRONGARD. Thank you, Chairman Hostettler and Members of the Committee. I appreciate the opportunity to testify today regarding the Office of the Inspector General's work on the State Department's Diversity Visa program which is administered by the Bureau of Consular Affairs, which I will refer to for simplicity as CA.

As you likely know, the Senate just recently confirmed me, and I am recently new as the Inspector General. But I have been briefed on the OIG's work that resulted in our September 2003 report entitled, *Diversity Visa Program*, and on the testimony given here on the subject in April 2004 by then-Deputy Inspector General, Ambassador Anne Patterson.

Although OIG has not conducted another comprehensive review focused on the DV program, OIG monitors consular activities as part of tracking compliance with our report, conducting routine post inspections, and maintaining an ongoing dialogue with CA regarding DV issues.

When our people are present at DV posts, the inspectors observe and inquire about revisions in the program's implementation. For example, one of our consular inspectors just recently visited the Kentucky Consular Center where DV applications are processed in conjunction with a broader inspection of CA. It was actually focused on the executive office of CA. Our 2003 report made eight recommendations, and all of those and our understanding of CA's responses are addressed in my statement for the record at more

depth. Suffice it to say that OIG considers seven of the eight recommendations as closed or in the process of closure, and the one that is open related to multiple filings.

I should also point out that OIG's field work for the September 2003 work was conducted when the DV program was paper-based and applications were processed by hand. In November 2003, CA introduced an electronic filing process for the DV program, which is better known as the EDV program, requiring electronic application to be sent through the Internet. This permits computer screening of all principal applicants, spouses and children for violations of DV application rules. Therefore, the recommendations in the report were based on technologies and statistics that have been substantially modified, well before the introduction of program tools, such as computer data mining to detect duplicate entries, improved facial recognition technology, the use of electronic DV applications filed exclusively via the EDV program, and the recent increase in the DV fee, which is levied on winners at a level that we believe covers the full cost of the program.

Now with respect to the multiple applications, our review identified a significant number of duplicate applications in the DV program based on a completely paper process at that time. Currently, the penalty for duplicate entry is disqualification for the year that the duplicate submission is detected. It does not disqualify someone for future years. OIG recommended that CA propose changes to the Immigration and Nationality Act to bar permanently from future DV lotteries all adults identified as filing multiple applications. Under section 212(a)(6)(C) of the Immigration and Nationality Act, persons are ineligible for a visa based on fraud or willful material misrepresentations.

CA raised several concerns and amongst others were with the fairness and enforceability of the recommendation because it is difficult to prove that duplicate applications were either willful misrepresentations rather than inadvertent or were actually made by the applicant rather than by someone else to discredit or penalize the applicant. This recommendation remains open between OIG and CA. OIG flagged this recommendation again in a more recent review concerning the Consular Fraud Prevention Program, and we will continue to review the recommendation in light of improvements, new technologies and also any actions that the Congress may take.

Let me conclude on the fee issue. We think the fee issue is taken care of. So let me not address that and go to some conclusions. During the recent visit to the Kentucky Consular Center, our consular inspector determined that, with the electronic filing of DV applications now in its second year, all DV enrollment applications are checked for duplicates using anti-fraud technology. Duplicates found at this step are disqualified. Winning entries selected from the remaining applications are then checked for duplicate enrollment using facial recognition technology and biographical data comparison.

However, the potential for fraud does not end with identifying duplicates. The Kentucky Consular Center flags fraud indicators for adjudicating officers to address when winning applications are further processed in the field. Although EDV has not stopped dupli-

cate filing, it has made identifying duplicate applications easier and helped the adjudicating officers have more effective interviews. As a result, CA is able to identify an increasing number of duplicates. OIG believes that continued advances in technology will increase detection of duplicates but will not stop them.

In closing, OIG believes that the process of complying with the recommendations of our 2003 report, CA has strengthened the program. We will continue to monitor the program as we inspect their management of consular operations and individual posts abroad to oversee and assist the State Department in improving border security and program management.

Thank you, sir, and I welcome at the appropriate time any questions you may have.

[The prepared statement of Mr. Krongard follows:]

PREPARED STATEMENT OF HOWARD J. KRONGARD

Chairman Hostettler, Representative Jackson Lee, and Members of the Subcommittee:

I appreciate the opportunity to testify today regarding the Office of Inspector General's (OIG) work on the State Department's Diversity Visa program, which is administered by the Bureau of Consular Affairs (CA). As you likely know, the Senate confirmed me last month as the new Inspector General (IG). Although OIG has been without a permanent IG for the past two years, OIG has been a valuable contributor in reducing fraud in visa and passport applications and strengthening the nation's border security.

I have been briefed on OIG's work that resulted in a September 2003 report entitled *Diversity Visa Program* (ISP-CA-03-52). I also have been briefed on the testimony delivered on this subject in April 2004 by Ambassador Anne Patterson, who was OIG's Deputy Inspector General at the time, and on actions taken by CA to address OIG's recommendations.

In her testimony, Ambassador Patterson stated that OIG would examine how vulnerabilities in the program will be fully addressed. Although OIG has not conducted another comprehensive review focused on the Diversity Visa program, OIG monitors consular activities as part of tracking compliance with our report, conducting routine post inspections, and maintaining an ongoing dialogue with CA concerning Diversity Visa issues. When present at Diversity Visa posts, OIG observes and inquires about revisions in the program's implementation. For example, last month one of our consular inspectors visited the Kentucky Consular Center, where Diversity Visa applications are processed, in conjunction with a broader inspection of CA. Our 2003 report made eight recommendations, and today, I will review those recommendations and our understanding of how CA responded.

BACKGROUND

In fiscal year 1995, Congress established the Diversity Visa program that authorized up to 50,000 immigrant visas annually to persons from countries that were underrepresented among the 400,000 to 500,000 immigrants coming to the United States each year. Most immigration to the United States is based on family relationships or employment. Diversity Visa applicants, however, can qualify based on education level and/or work experience. This program commonly is referred to as the "visa lottery" because the "winners" are selected through a computer-generated random drawing. If ultimately selected as a lottery winner, like other immigrant applicants, they are subject to all grounds of ineligibility related to adverse medical conditions, criminal behavior, and other factors. If deemed eligible on those grounds, they need only to demonstrate that they have the equivalent of a U.S. high school education or possess two years of work experience in an occupation that requires at least two years of training or experience within the five-year period immediately prior to the application.

Originally, the Diversity Visa program was one of many immigrant visa functions assigned to the National Visa Center at Portsmouth, New Hampshire. In October 2000, Diversity Visa processing was moved to a newly remodeled site at Williamsburg, Kentucky, known as the Kentucky Consular Center. This alleviated overseas missions of many clerical and file storage responsibilities. In November 2003, CA introduced an electronic filing process for the Diversity Visa program, known as the

E-DV program, requiring electronic applications to be sent through the Internet. This permits computer screening of all principal applicants, spouses, and children for violations of Diversity Visa application rules.

OIG's fieldwork for the September 2003 report was conducted when the Diversity Visa program was paper-based and applications were processed by hand. Therefore, the recommendations in the report were based on technologies and statistics that have been significantly modified—well before the introduction of program tools such as computer data mining to detect duplicate entries, improved facial recognition technology, the use of electronic Diversity Visa applications filed exclusively via the E-DV program, and the recent increase in the Diversity Visa fee levied on winners at a level that covers the full cost of the program.

RESULTS IN BRIEF

OIG's September 2003 report identified eight recommendations to strengthen the Diversity Visa program. Specifically, OIG recommended that CA:

- propose legislative changes to the Immigration and Nationality Act to bar aliens from states that sponsor terrorism from the Diversity Visa program;
- propose legislative changes to the Immigration and Nationality Act to bar permanently from future Diversity Visa lotteries all adults identified as filing multiple applications;
- issue standards for determining whether foreign high school educations are comparable to U.S. high school educations;
- prepare an annual report on regional and worldwide Diversity Visa trends and program issues;
- determine whether antifraud field investigations are useful in Diversity Visa cases;
- request authority to collect fees from all persons applying for the Diversity Visa program;
- determine how the Diversity Visa fee could be appropriately devoted to antifraud work at overseas missions; and
- conduct workload studies to determine whether a full-time visa officer position and a language-designated telephone inquiry position should be established at the Kentucky Consular Center.

OIG considers seven of the eight recommendations as closed or in the processes of closure. One that is open, related to multiple filings, is discussed below.

FINDINGS AND RECOMMENDATIONS

Aliens from States that Sponsor Terrorism

Section 306 of the Enhanced Border Security and Visa Act of 2002 (Public Law 107–173) generally prohibits issuance of nonimmigrant visas to aliens from states that sponsor terrorism unless the Secretary of State judges that such aliens pose no risk to national security. OIG noted that no parallel restriction exists for immigrant visas, including those resulting from the Diversity Visa program. To date, this legislative double standard persists.

OIG recommended that CA propose legislative changes to the Immigration and Nationality Act to bar aliens from states that sponsor terrorism from the Diversity Visa program. OIG continues to believe that the Diversity Visa program contains significant risks to national security from hostile intelligence officers, criminals, and terrorists attempting to use the program for entry into the United States as permanent residents. However, CA expressed concern with permanently disbarring aliens fleeing oppressive regimes of states that sponsor terrorism. For example, aliens fleeing oppression from Cuba, Libya, Syria, and Iran would be ineligible to apply for a visa via the Diversity Visa program if this recommendation were strictly implemented.

Under current conditions, consular procedures and heightened awareness generally provide greater safeguards against terrorists entering through the Diversity Visa process than in the past. Consular officers interview all Diversity Visa winners and check police and medical records once applicants begin the actual visa application process. CA now requires all immigrant and nonimmigrant visa applicants to be fingerprinted. This allows consular officers to run visa applicant fingerprints through U.S. databases of criminals and terrorists in about 15 minutes. It also means that if an applicant applies for a nonimmigrant visa using one name and later applies for a Diversity Visa under a different name, the fingerprint system will

help to identify him as a fraudulent applicant. OIG closed this recommendation based on acceptable noncompliance.

Persons Filing Multiple Applications

OIG's review identified a significant number of duplicate applications in the Diversity Visa program based on a completely paper process at the time. OIG took issue with the unfair advantage that multiple filers had for becoming winners and their additional administrative burden. Despite program restrictions against duplicate submissions, CA detects thousands of duplicate filings each year. Currently, the penalty for duplicate entry is disqualification for the year that the duplicate submission was detected.

OIG recommended that CA propose changes to the Immigration and Nationality Act to bar permanently from future Diversity Visa lotteries all adults identified as filing multiple applications. Under Section 212(a)(6)(C) of the Immigration and Nationality Act persons are ineligible for a visa based on fraud or willful material misrepresentations. There is no legal precedent or legislative authority for finding an applicant ineligible based on a clerical review. Therefore, CA raised concerns with the fairness and enforceability of the recommendation because it is difficult to prove that duplicate applications (1) were willful misrepresentations rather than inadvertent, and (2) were actually made by the applicant rather than by someone else to discredit or penalize the applicant.

This recommendation remains open between OIG and CA. OIG recommended this again in a more recent review concerning the Consular Fraud Prevention program.[1] OIG will continue to review this recommendation in light of improvements and new technologies.

Standards to Determine High School Equivalency

OIG recognized that the worldwide managerial direction for the Diversity Visa program needed tightening for adjudicating visa eligibility based on educational requirements. At the time of our review, some posts indicated that they had not evaluated local school systems to determine their equivalency to a U.S. high school degree and could not locate any Department cable or e-mail guidance on educational determinations. Embassies and consulates responsible for adjudicating third-country national applications described documents as unreliable and nearly impossible to check. Officers did not know third-country documents quite as well as their host country documents and typically could not determine the reliability of those documents.

OIG recommended that CA issue standards for determining whether foreign high school educations are comparable to U.S. high school educations. In 2004, CA began purchasing and distributing copies of the handbook, *Foreign Educational Credentials Required for Consideration of Admission to Universities and Colleges in the United States.* At that time, CA indicated that all Diversity Visa-issuing posts abroad would eventually receive this reference book, which translates and standardizes foreign educational credentials. Recently, CA distributed the reference books to all Diversity Visa-issuing posts. OIG considers this recommendation as resolved and intends to close it once formal instructions for using the books are established.

Annual Report on Diversity Visa Trends

In reviewing the work at several posts, OIG identified challenges that consular officers face in adjudicating applications. At the time of OIG's fieldwork, all missions were asked to comment on the Diversity Visa program, if relevant, in their annual Consular Package submissions. OIG observed that consular officers reported data. However, CA did not prepare and disseminate analyses on the Diversity Visa regional and worldwide trends. For example, although the Consular Package's annual statistics report provided useful issuance information by nationality and eligibility, this data was not reviewed and summarized for managing the program.

OIG recommended that CA prepare an annual report on regional and worldwide Diversity Visa trends and program issues. As a result, CA issued summary reports in September 2004 and February 2005; therefore, OIG closed this recommendation.

Antifraud Field Investigations

Fraud is an ongoing major program issue. Antifraud activities are generally dominated by nonimmigrant visa fraud cases. Our 2003 review determined that many embassies and consulates with significant Diversity Visa issues did not routinely refer problem cases to their antifraud units. In fact, although every mission has a designated Fraud Prevention Officer, some missions have no separate antifraud

[1] See OIG report, *Management Review of Visa and Passport Fraud Prevention Programs* (ISP-CA-05-52), issued in November 2004.

units. CA was unable to document a strategy for overcoming the fact that certain countries' records, including school records, are under such poor control that their passports, identity documents, and vital records are unreliable for visa purposes, despite complaints of several embassies.

OIG recommended that CA determine whether antifraud field investigations are useful in Diversity Visa cases. CA responded by canvassing the top ten Diversity Visa posts in the summer of 2004 to collect information on Diversity Visa fraud prevention strategies. Based on this survey, CA prepared and sent to the field in October 2004 excellent guidance on Diversity Visa fraud prevention strategies and tools. Therefore, this recommendation is closed.

Making the Diversity Visa Program Self-Financing

Unlike other visa applications, the current Diversity Visa processing fee is collected only from applicants selected as winners. Millions of applicants, therefore, pay nothing to participate in the program, and traditionally, the U.S. government has paid all costs not covered by the Diversity Visa fee. Under the paper-based Diversity Visa system, CA determined that charging a small fee for registration was impractical, not cost effective, and not likely to serve as an adequate deterrent against multiple registrations.

Due to program costs significantly exceeding revenues, OIG recommended that CA request authority to collect processing fees from all persons applying for the Diversity Visa program. In response, CA revised the Diversity Visa surcharge, effective March 8, 2005, from $100 to $375. This processing surcharge is imposed on winners of the Diversity Visa program. Although only charged to winners, the fee will be sufficient to cover all program costs. In view of this, OIG is closing this recommendation.

Diversity Visa Fraud Prevention

At the time of our 2003 review, OIG determined that CA could do a better job identifying all costs associated with the Diversity Visa program from overseas posts, especially with regard to the cost of its fraud prevention efforts. OIG recommended that CA determine how the Diversity Visa fee could be appropriately devoted to antifraud work at overseas missions.

In fiscal year 2004, the budget for the Diversity Visa Program was $4.287 million, of which just over $1 million was attributed to anti-fraud activities worldwide. To underscore the importance of the Diversity Visa program, in future allocations, CA intends to emphasize the need to include fraud expenses in their Diversity Visa funding requests as a separate item. OIG considers this recommendation as fully implemented and, therefore, closed.

Expertise for Strengthening the Diversity Visa Administrative Processing

When OIG began its review of the Diversity Visa program, there was no antifraud officer position at the Kentucky Consular Center. This lack of expertise made reviewing applications for fraud implications overwhelming, especially under the old paper-based system. Moreover, the Kentucky Consular Center had been receiving inquiries from Diversity Visa applicants to discuss their applications. As a result, OIG recommended that CA conduct workload studies to determine whether a full-time visa officer position and a language-designated telephone inquiry position should be established at the Kentucky Consular Center.

In response, CA established and hired a fraud prevention manager and two assistants for the Kentucky Consular Center, thus eliminating the need for a full-time visa officer. OIG believes that Diversity Visa fees can fund these positions. However, with regard to the language-designated telephone inquiry position, CA determined that no predominating language exists among Diversity Visa applicants, other than English. CA believes that the Public Inquiries division sufficiently handles stateside inquiries received by telephone, letter, and e-mail as well as providing Diversity Visa information on the Department's web site. Posts abroad handle case-specific inquiries. Therefore, CA believes that language staffing either at the Kentucky Consular Center or at the National Visa Center is unnecessary. In light of these actions, OIG closed the recommendation.

CONCLUSIONS

During her visit last month to the Kentucky Consular Center, our consular inspector determined that, with the online filing of Diversity Visa applications now in its second year, all Diversity Visa enrollment applications are checked for duplicates using anti-fraud technology. Duplicates found at this step are disqualified. Winning entries selected from the remaining applications are checked for duplicate enrollment using facial recognition technology and bio-data comparison. However,

the potential for fraud does not end with identifying duplicates. The Kentucky Consular Center flags fraud indicators for adjudicating officers to address when winning applications are further processed in the field. Although E-DV has not stopped duplicate filing, it has made identifying duplicate applications easier and helped the adjudicating officers have more effective interviews. As a result, CA is able to identify an increasing number of duplicates. OIG believes that continued advances in technology will increase detection of duplicates but will not stop duplicate electronic filings.

In closing, OIG believes that in the process of complying with the recommendations of our 2003 report, CA has strengthened the Diversity Visa program. OIG will continue to monitor the program, as we inspect CA's management of consular operations and individual posts abroad, to oversee and assist the Department in improving both border security and program management.

Thank you Mr. Chairman. I welcome your questions and those of other members.

Mr. HOSTETTLER. Thank you, Mr. Krongard.

Mr. Krikorian.

TESTIMONY OF MARK KRIKORIAN, EXECUTIVE DIRECTOR, CENTER FOR IMMIGRATION STUDIES

Mr. KRIKORIAN. Thank you, Mr. Chairman. I appreciate the invitation.

I am afraid that my comments will not be as interesting as the testimony yesterday from outer space that a couple Members of this body were able to hear, but I will do my best.

The visa lottery is a fatally flawed program. There are in fact as many problems with mismanagement as there are with much of the other elements of the immigration system, and problems like that could at least in theory be fixed by reforms. But the administrative problems, as important as they are, are secondary. It is the existence of the program that is the main problem because the visa lottery does not serve any national interest. And it should be discontinued. And let me touch briefly on some of the reasons I think that.

Despite its name, the diversity lottery has done nothing to diversify the immigrant flow. Mr. Morrison conceded that it is impossible for it to diversify the immigration flow. And yet that is the clear rationale for many people's support of it. It can never be expected to diversify the flow. The top ten immigrant-sending countries still account for the majority of new arrivals just as a they did a decade ago. In fact, if you look at the existing immigrant population, the very time that the lottery has been operating, the existing immigrant population has been getting steadily less diverse. In 1990, Mexicans, the largest national origin group, were 22 percent of all immigrants. In 2000, they accounted for 30 percent of all immigrants. When you put all of Spanish-speaking Latin America together, one cultural group, they went from 37 to 46 percent of the total immigrant population; something we have never experienced in American history. Only a 30-, 40-, 50-fold increase in admissions under this program would make even a dent in the diversity of the immigration flow. And if national origins quotas are what this is about, we should just embrace them and stop pretending that we are trying to diversify the flow and institute open national origins quotas. I think that is a bad idea, but that is essentially what this is about.

Furthermore, the requirements for entering the lottery are so low as to be essentially meaningless. By design, they do not select the

best and brightest from overseas that have the skills that are important to a modern society. Nor in my opinion would an increase in the nominal skills, levels of education and what have you that applicants would need to have make much difference because of the pervasive nature of fraud in the program.

And the fraud problem is systemic. It is not something that really can be alleviated or at least ended with better management. The systemic nature of the fraud is for two reasons. One, the State Department has an unavoidable institutional bias against law enforcement in favor of diplomacy, and that is essential. And weeding out fraud is a law enforcement function. That could be alleviated conceivably by transferring the visa function to the Homeland Security Department, but that is something that Congress decided not to do.

The second reason that fraud is systemic is that lottery applicants come from the most corrupt nations in the world, objectively judged by people who do that sort of thing, and they have no U.S. family member or no U.S. institution to vouch for them or to help demonstrate their legitimacy as do family members or people being sponsored for jobs who also come from countries where corruption is widespread.

The idea of basing eligibility for immigration to the United States principally on a paper document issued in Nigeria or in Bangladesh or in Albania is absurd on its face.

The fraud is bad enough, of course, in the abstract, but after 9/11, this poses a serious security threat. First of all, it is a diversion for the State Department, a diversion of time and resources from people who are supposed to be attempting to screen terrorists and others out of those who are trying to come to the United States. And the lottery composes a large portion of the work in a number of important consular posts.

Nor does it draw people randomly from around the world. It disproportionately draws people from the Islamic world, the very countries where al-Qaeda is active. And I have some statistics on that in my statement.

This is not theoretical. As you said, Mr. Chairman, there are actual terrorists who have come in through the lottery program. Actually, you missed a couple. Karim Koubriti and Ahmed Hannan, who were members of the Michigan sleeper cell, were Moroccan lottery winners. The very fact that it encourages immigration of people who have no family or other connections in the United States makes it ideal for someone planning an attack.

There are other ways to get here. For instance, temporary visas and what have you, but a greencard enables a terrorist to do a lot more than a temporary visa would. And the real vulnerability is not simply in the process that the Kentucky service center deals with, the initial application. The security vulnerability especially comes from the final application process where the winning numbers can and in fact according to the State Department have been sold to people who did not actually apply; and this gives al-Qaeda or any other bad guys attempting to enter the United States an opening.

And let me say just finally, this really is not about even the level of immigration. I have concerns about the level of immigration, but

even if you think that we need 50,000 extra people each year entering the United States, it would seem both common sense and morally imperative to simply take the next 50,000 husbands, wives and little kids of legal, permanent residents rather than take complete strangers who have no family, no skills and no jobs in the United States. I will end there and be happy to answer questions.

[The prepared statement of Mr. Krikorian follows:]

PREPARED STATEMENT OF MARK KRIKORIAN

Oversight hearing on the "Diversity Visa Program"

Statement of Mark Krikorian
Executive Director
Center for Immigration Studies

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Immigration, Border Security, and Claims
Wednesday, May 25, 2005

Because of the overwhelming role family connections play in current immigration law, most newcomers to the United States tend to come from a handful of countries, mostly in Latin America and Asia. In 1986 and again in 1990, Congress used this lack of immigrant diversity as a pretext for re-embracing the spirit of the discredited national origins quotas, in the form of a "diversity lottery."

Originally devised as a means of amnestying Irish illegal aliens, the program continues even in the absence of any more Irish illegals — in fact, Ireland is now a country of immigration for the first time in centuries. Nonetheless, the lottery (as often happens with government programs) has taken on a life of its own. It has evolved over the years, and now offers 50,000 visas per year to people from "underrepresented" countries, i.e., all the nations of the world other than the top sending countries.[1] In practice, this means that most visa lottery winners come from the Islamic world, Eastern Europe, and sub-Saharan Africa; in the results of the FY 2005 lottery,[2] announced in June 2004, Ireland fell to 60th place, behind Kyrgyzstan, and in FY 2003 only 120 people from Ireland ended up actually getting green cards via the lottery.

It's long past time to get rid of the lottery. Here's why:

No Actual Diversity. Despite the moniker, the lottery has done nothing to diversify the immigrant flow. In FY 2003, the top ten immigrant-sending countries were the source of more than half of that year's total legal immigration, almost exactly the same percentage as ten years earlier. In fact, taken as a whole, the nation's total immigrant population (legal and illegal) has actually become *less* diverse during the course of the lottery; a recent analysis of Census data by the Center for Immigration Studies found that from 1990 to 2000, Mexicans went from 22 percent of all immigrants to 30 percent, while immigrants from all of Spanish-speaking Latin America combined went from 37 to 46 percent of the total foreign-born population.[3]

Truly diversifying immigration would entail one of two things: huge reductions in immigration from Mexico, or huge increases in immigration from everywhere else. The lottery as it exists simply cannot do what it purports to.

Inadequate Requirements. Flawed as it is, the lottery might appear more plausible if it took the 50,000 most qualified people among the millions who apply. But instead, the requirements for entry are so low as to be meaningless — they do nothing to ensure that applicants have skills that a modern economy needs. Applicants must have (or lie about

having; see below) either a high school education or equivalent, or "two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform." The Labor Department's Occupational Information Network (online.onetcenter.org) lists the jobs that fall under this convoluted formulation, including many that are hardly the supposed "jobs Americans won't do": travel agents, insurance agents, restaurant hostesses, actors, "Mental Health and Substance Abuse Social Workers," "Caption Writers," "Title Examiners and Abstractors," and "Costume Attendants." Many lesser-skilled individuals can also qualify in jobs such as Recreation Worker, Pipe Fitter, Baker, or Computer Operator.

Rampant Fraud. Even this low threshold for participation assumes, of course, that the credentials presented are valid. Given the countries that lottery applicants are coming from, this is unlikely, to say the least. The two most corrupt nations in the world, according to Transparency International's Corruption Perceptions Index 2004[4], are Bangladesh and Nigeria — which are also perennially among the top-ten lottery winners.

State Department records from 1996 (we can't get more recent numbers for most countries) show that lottery winners are even more likely than other immigration applicants to be refused a visa due to fraud. Among the top ten nations in the FY 2005 lottery, diversity visa refusal rates from 1996 were as follows: Poland 24%, Ethiopia 38%, Bangladesh 44%, Egypt 46%, Ghana 62%, and, Nigeria 80%.[5] And last year, the State Department's Deputy Inspector General testified before this subcommittee that the refusal rate for lottery visa applicants in Bangladesh had climbed to a whopping 85%.[6] And these rates would be even higher but for the State Department's laxity with regard to fraud in the visa process. Apart from the general prevalence of fraud in these countries, the lottery itself is a problem, since it invites applications from almost anyone, and only requires them to show they qualify after they are selected, prompting a mad rush for bogus documents once the winners are notified.

Even if the fraud is detected in the limited amount of time consular officers have to investigate the applications, there is no punishment imposed, other than disqualification for that particular year. Anyone found out is welcome to try to cheat again in future years.

Now, corrupt Third World countries are precisely the places that people want to get out of, so it makes sense that that's where the demand for immigration comes from. But this poses enormous problems for a modern system of regulation that attempts to apply even the most minimal of documentary or paper-based requirements.

Security Threat. Of course, fraud is bad enough when people lie about their education or work experience. But after 9/11, immigration fraud of any kind poses a dire security threat. First of all, weeding out fraudulent lottery applications, and even processing legitimate ones, is a diversion for an agency that's supposed to be identifying terrorists among the millions seeking to come to America. An internal audit conducted by the State Department in the 1990s characterized the visa lottery as a costly unfunded mandate that saps personnel resources.[7]

For an illustration of the visa lottery's role in diverting scarce State Department resources from more important functions, we may look at visa issuance statistics for FY'04 (most recent available). There are 16 consular posts where the lottery visa issuances make up a significant share of the immigrant visa workload (more than 20%) *and* where the post issues a large

number of diversity visas (more than 450 per year), making the lottery program a very significant portion of the consular work there. (There are also many posts where lottery visas are a very high proportion of the workload, but where there are few visas issued overall; in Benin, for example, 95% of the visas were for the lottery, but that was 43 out of only 45 total visas). These are the posts:

Cameroon	76%	of immigrant visas are that country's lottery winners,	adding 495	extra visas a year.
Ethiopia	79%	"	3,659	"
Ghana	34%		805	
Kenya	77%		1,993	
Liberia	58%		488	
Nigeria	56%		3,335	
Togo	93%		1,314	
Albania	75%		2,207	
Bulgaria	81%		2,470	
Poland	22%		3,255	
Romania	49%		1,147	
Turkey	29%		1,192	
Egypt	45%		1,726	
Morocco	82%		1,753	
Bangladesh	29%		1,837	
Nepal	89%		1,775	

These numbers do not count the additional impact of lottery winners from other countries; for example, if someone in Angola wins, they travel to Harare, Zimbabwe, to get the visa, because the Angolan capital of Luanda does not issue immigrant visas. Processing winners from other countries has a noticeable impact on the consular posts' already-swollen caseload – for example, the nearly 3,200 Ukrainian winners from 2004 were processed in Warsaw, doubling the numbers there.

This presents both workload and fraud issues. The State Department has consolidated lottery visa issuances to the medium and large posts, making quality control much more difficult. How is a Polish-speaking officer in Warsaw, for instance, able to evaluate the credentials of Lithuanian or Ukrainian applicants?

Some of these consular posts are already having difficulty providing good service without having to manage the burden the lottery program imposes. In Poland, for example, tourists have to wait eight days to get an interview appointment and then two more days to get their tourist visa. In Cairo, even the expedited visa applications must wait between one week and one month for an interview. And of course, processing so many lottery visas is a distraction for officers in Egypt, Morocco, Turkey, and Bangladesh, whose work has changed significantly since 9/11.

This points to the additional fact that the lottery does not draw people randomly from around the globe, but instead artificially generates immigration from the very countries where al Qaeda is active. Winners come disproportionately from the Islamic world, with about one-third coming from Muslim-majority countries. In fact, the lottery is a disproportionately important means of immigration for people from those countries; while only about 7% of all people who got green cards in FY03 were beneficiaries of the lottery, the proportion for most large Muslim countries was much higher. Around 10% of last year's immigrants from Saudi

Arabia, Pakistan, and Yemen came via the lottery, plus 16% of Bangladeshis, 23% of Egyptians, 29% of Turks, 37% of Sudanese, 53% of Moroccans, and 60% of Algerians.

This isn't simply gratuitous profiling. A number of lottery winners have already been involved in terrorism in the United States. Michigan sleeper cell member Karim Koubriti, convicted in 2003 of terrorism-related charges, was a lottery winner from Morocco, along with Ahmed Hannan, who was acquitted of terrorism charges in the same trial but convicted of document fraud.

The most notorious lottery winner is Hesham Mohamed Ali Hedayet, the Egyptian immigrant who went to Los Angeles International Airport to kill Jews on Fourth of July, 2002. Hedayet came to this country in 1992 on a temporary visa, became an illegal alien when he overstayed his welcome, then applied for asylum, was denied, again becoming an illegal alien, and finally got a green card when his wife won the lottery after repeated attempts.

Not only does the visa lottery actively recruit extra immigrants from the Middle East, but the fact that it allows people into the United States with no family or other significant connections to the country makes it ideal for someone planning an attack our country. While there are other ways for a person with no connections to enter the United States, a green card is far more valuable to terrorists than a temporary visa, such as those for tourists or students – a green card lets a person stay in the United States indefinitely and would thus give terrorists the time they would need to plan a sophisticated plot. Moreover, permanent residency allows the recipient to work at almost any job, get a license to handle hazardous materials, and to travel freely in and out of the country. It would be hard to design a visa program that was better suited to the needs of terrorists.

Some argue that the lottery is a highly unlikely and uncertain way for terrorists to gain entry to the United States, because it involves chance. But it is not the entry process that is most vulnerable (although it doesn't cost terrorists anything to try). It is the final application process that is so vulnerable to terrorists and other perpetrators of immigration fraud. For instance, the State department's Deputy Inspector General testified last year about a fraud ring in one consular post where the locally hired employees were buying lottery winners' applications for $4,000 and then re-selling their winning numbers to others for much more money.[8] That is precisely the kind of opening that al Qaeda would seek to utilize.

Momentum for Illegal Immigration. No one wakes up in Cairo and says, "Today, I will move to Hoboken!" Immigration takes place by way of networks of relatives, friends, acquaintances, or fellow countrymen already in the United States, and the lottery helps create new networks where none previously existed. Thus established, these networks plant the seed of a new idea — immigration to America — in the minds of millions, leading not only to further legal immigration, but also to new streams of illegal immigration.

The forces set in motion by the lottery are so powerful that even 9/11 didn't make much of a dent. The application period for the FY 2003 lottery began just three weeks after the 9/11 attacks, and although the number of applicants was indeed down from the previous year, it was still a colossal 8.7 million, about two and half million of them from Muslim-majority countries.[9]

Troll the Internet and you can see the lottery's power to spark interest in coming to America. In response to "green card lottery," Google returns 709,000 hits, including sites like dreamofusa.com, visaforyou.org, mygreencard.com, rapidimmigration.com, greencardgratis.de, and hundreds of others, some legitimate, many not. The frenzy surrounding the lottery is so intense that crooked attorneys and "consultants" have grown fat off of unsuspecting would-be immigrants, claiming that, for a fee, they can guarantee a winning application. This prompted the Federal Trade Commission to issue a Consumer Alert in October 2003 warning of the scams.[10]

The forces unleashed by the lottery manifest themselves outside cyberspace, as well. In 1997, police in Freetown, Sierra Leone, fired on stone-throwing rioters who attacked the central post office after thousands of completed lottery applications were found dumped in the sea.[11] A local newspaper speculated that the government ordered the applications thrown away to hide the locals' eagerness to leave. After the U.S. embassy in Freetown was closed due to political turmoil later that same year, hundreds of Sierra Leonean lottery applicants went to Ghana to pursue their applications. Only five actually received visas, prompting many of the losers to demand refugee status in Ghana.

Cutting in Line. The list of people who have family-based immigration applications pending, but who have to wait because of various category and per-country limits, is perhaps four million. Spouses and children of legal permanent residents from India or the Philippines now getting their green cards have been waiting since 2001, and the same category of people from Mexico have been waiting since 1998. If, for some reason, we decide that we need 50,000 additional people each year, wouldn't it make more sense to take the next 50,000 husbands, wives, and little kids of legal permanent residents on the list, rather than complete strangers with no family, no skills, and no jobs?

Conclusion. There is a Chinese saying, to justify gambling, that it's always advisable to "leave the window open to chance." There is always the chance some lottery winner will be a future inventor, entrepreneur, or even just a decent, God-fearing citizen pulling his own weight. Unfortunately, "chance" can go both ways, and, in the case of the lottery, it already has. The sooner we bring an end to this program, the better.

Notes

1. Natives of the following countries are the only ones who were not eligible for the 2006 visa lottery, whose registration period ended January 7, 2005: Canada, Mainland China (except for Hong Kong and Macau), Colombia, the Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, the Philippines, Russia, South Korea, the United Kingdom (except for Northern Ireland), and Vietnam.

2. http://travel.state.gov/visa/immigrants/types/types_1317.html

3. "Where Immigrants Live: An Examination of State Residency of the Foreign Born by Country of Origin in 1990 and 2000," by Steven A. Camarota and Nora McArdle, Center for Immigration Studies Backgrounder, September 2003, http://www.cis.org/articles/2003/back1203.html

4. http://www.transparency.org/cpi/2004/cpi2004.en.html. Haiti, which is tied with Nigeria as the most corrupt nation in the world, does not participate in the lottery because it already sends so many immigrants to the United Ststes.

5. "Visa Lottery Still An Inviting Option," Jessica Vaughan, Immigration Review #28, Spring 1997, http://www.cis.org/articles/1997/IR28/visa_lottery.html

6. Statement of Anne W. Patterson at Oversight Hearing on the "Diversity Visa Program, and its Susceptibility to Fraud and Abuse," April 29, 2004, http://judiciary.house.gov/OversightTestimony.aspx?ID=201

7. "Visa Lottery Still An Inviting Option," Jessica Vaughan, op.cit.

8. Statement of Anne W. Patterson, op.cit.

9. http://travel.state.gov/DV-2003results.html

10. http://www.ftc.gov/bcp/conline/pubs/alerts/lottery.htm

11. "Protesters Riot in Sierra Leone," The Associated Press, February 12, 1997.

Mr. HOSTETTLER. Thank you, Mr. Krikorian.
Ms. Jenks.

TESTIMONY OF ROSEMARY JENKS, DIRECTOR OF GOVERNMENT RELATIONS, NumbersUSA

Ms. JENKS. Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to testify today about the Visa Lottery Program.

NumbersUSA is a grassroots organization representing 830,000 Americans who are concerned primarily with immigration's impact on American workers and on quality-of-life issues. These are folks who see the impact of our current immigration policy in their community every day. Their kids attend over-crowded schools. Their local emergency room is on the brink of bankruptcy. Many of them are unable to find a job that pays a livable wage, and those who are employed find their commutes getting longer and longer as roads become increasingly congested.

Imagine how these folks feel when they find out that the United States government by law holds a national-origins-based lottery each year to hand out 50,000 visas to randomly selected winners. I can assure you that the American people did not call their representatives in Washington one day and demand that a visa lottery be set up.

I think it is also safe to say that the spouses and children of lawful permanent residents who must wait at least 4 years for a visa based on current processing times did not demand it either.

So who did demand it? I think Congressman Morrison answered that question in 1990 when he said, "It is absolutely key to political support for our immigration system that all of the diverse groups that make up our country know that our immigration laws understand their interests and the concerns that they have that people from the parts of the world that their ancestors come from will also be considered under our immigration system."

In fact, the lottery was created to benefit a handful of ethnic groups led by the Irish. The fact that 40 percent of the transition visas were reserved for Irish nationals, although the law was carefully worded so as to avoid saying that explicitly, is proof of that.

"Mr. Chairman, it has always been my understanding that the best immigration policy would be a policy that is fair and that applies equally to every country. In 1965, the last year that we passed a legal immigration bill, the whole point of that immigration bill was to make up for past discrimination and to come up with a legal immigration bill that would be fair and equal to all countries. Here we are today debating a bill that is special interest legislation that gives special privileges only to individuals from certain countries. I think that violates the fairness and equity that we all should expect in our immigration laws."

Congressman Lamar Smith was referring to the lottery when he said those words almost 15 years ago during the floor debate on the bill that became the Immigration Act of 1990. And he was right. The visa lottery is inescapably and inexcusably a national-origins-based policy. It discriminates to the detriment of some and to the benefit of others based solely on a person's nationality.

The visa lottery and the transition program leading up to it were justified on two grounds. First is the idea that some mostly European countries were adversely affected by the 1965 amendments. In other words, by taking away the privileged status of these countries that they had enjoyed prior to the 1965 act, Congress had discriminated against them, and so we now owed it to them to discriminate for them yet again.

Second is the idea that Congress has a duty to make the United States more diverse. The reality is that the United States does not need to admit a single additional immigrant to ensure increasing ethnic and racial diversity here. It is a demographic certainty. But the fact that 52 percent of all lottery visas have been awarded to Europeans should be sufficient to dispel the notion that true diversity was the goal.

Congressman John Bryant, a former Member of this Subcommittee from Texas pointed this out in 1990. "They say that we need to increase diversity. We are already the most diverse country in the world. I would ask, how can bringing in so many people of the same race as the majority race encourage diversity?"

But even if the lottery did exactly what it purported to do, it would still be bad policy. As the bipartisan Jordan Commission on Immigration Reform pointed out in its final report, immigration policy should serve the national interest. That means that we should have clear goals and priorities and then design the immigration system to prioritize the admission of immigrants who meet those goals. The commission argued that in the absence of a compelling national interest to do otherwise and as long as an adequate system of protections for American workers is in place, immigrants should be chosen on the basis of the skills they contribute to the U.S. economy. The Jordan Commission found only two national interests compelling enough to diverge from this priority: uniting nuclear family members and providing safe haven to refugees.

The commissioners apparently all agreed that the visa lottery should not be part of our legal immigration system. In fact, only one commissioner, Warren Leiden, disagreed with the commission's final report and even he did not mention the lottery in his dissent.

Mr. Chairman, the Immigration and Nationality Act says, "No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth or place of residence."

Eliminating the visa lottery will bring us one step closer to making that law a fact. Thank you.

[The prepared statement of Ms. Jenks follows:]

The Visa Lottery:

A Result of the Influence of Special Interests on U.S. Immigration Law

June 15, 2005

Testimony of

Rosemary Jenks
Director of Government Relations
NumbersUSA

Before the Immigration, Border Security, and Claims Subcommittee of the Committee on the Judiciary of the House of Representatives

Introduction

The 1965 Amendments to the Immigration and Nationality Act of 1952 were intended to end national origins-based discrimination in United States immigration policy. Yet, today, we are here to discuss the visa lottery, a program based explicitly on national origin. While it may be argued that the 1965 Act marked the end of national origins-based discrimination as a *central* feature of this country's immigration policy, it obviously cannot be said to have ended all such discrimination in our immigration system.

Indeed, 1965 marked the beginning of a new form of national origins-based discrimination that has nothing to do with any real or perceived intolerance on the part of Americans, but rather reflects which narrow special interests are able to influence Congress at any given time. The visa lottery is a blatant example of this special-interest-driven approach to policymaking, and it is perhaps the most reprehensible because the lottery is elevated under the law to an equal level with the three primary, historical purposes of immigration policy—reunifying nuclear family, attracting workers with needed skills, and satisfying humanitarian obligations.

The 1965 Amendments to the INA

When Congress passed the Immigration and Nationality Act of 1952, it justified retaining the quota system by claiming that it was a "rational and logical" way to restrict immigration numbers.[1] The 1952 law assigned quotas of at least

---

[1] S. REP. NO. 1515, 81st Congress, at 455 (1950).

100 visas to all countries except those in the Western Hemisphere, whose nationals could enter without any limits. Half of each country's quota was reserved for aliens with relatives living in the United States, and half was reserved for those with needed education, work experience or ability. Under this system, more than half of all immigrants came from Europe, with almost 30 percent coming from just three countries—Germany, the United Kingdom, and Ireland.[2]

In 1963, President John F. Kennedy told Congress that a national origins-based immigration system "neither satisfies a national need nor accomplishes an international purpose. In an age of interdependence among nations, such a system is an anachronism for it discriminates among applicants for admission into the United States on the basis of the accident of birth."[3] Thus, the 1965 Amendments, adopted in the wake of the Civil Rights Act, eliminated the national origins quota system and set a cap of 170,000 on immigrants from the Eastern hemisphere and 120,000 on those from the Western Hemisphere. Within the Eastern hemisphere cap, seven preference categories were used to determine who was admitted. (Neither per country limits, nor the preference system were applied to the Western Hemisphere cap until 1976.) This preference system reserved 84 percent of available visas for aliens with relatives residing in the United States, 10 percent for aliens with occupational skills or training needed in the United States, and six percent for refugees.

---

[2] Unless otherwise noted, all statistics are from the STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE, 1996-2003.

[3] John F. Kennedy, PUB. PAPERS 594-597 (1964).

Recognizing that discrimination could no longer be tolerated in immigration law, Congress not only abolished the quota system, it included in the 1965 Amendments a general prohibition against discrimination in what would become the introduction to section 202(a) of the INA: "Except as specifically provided...no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence." The original exceptions for which the law specifically provided were:

1) Per country limits on family-based and employment-based immigrants so no country could completely dominate the flow; and
2) The provision that permits the immediate relatives of U.S. citizens to enter without numerical limits, while all other relatives must enter under quotas.

It seems obvious, both from the language of this section and from the exceptions, that immigration laws that either give or deny immigrant visas on the basis of national origin would be impermissible. Despite the Supreme Court's holding that Congress has the authority to discriminate on the basis of national origin in the admission of immigrants,[1] it is contradictory, at the least, for Congress to pass laws that grant or deny immigrant visas explicitly on the basis of national origin after Congress itself has passed a general prohibition on this practice.

Yet, this is exactly what Congress has done, repeatedly and with no explanation of how such discrimination is to be justified, in the years since 1965.

---

[1] See, e.g., Chae Chan Ping v. United States, 130 U.S. 581 (1889).

Instead of refraining from adopting discriminatory policies, Congress either ignores the prohibition or amends it by adding another exception—currently, there are four, including one that covers the visa lottery.

The Origins of the Visa Lottery

In 1978, Congress established the Select Commission on Immigration and Refugee Policy and gave it a mandate to "study and evaluate ... existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States."[5] By the time the commission began its work, two sets of special interest groups—conservative business interests and a liberal coalition of religious, immigrant, and civil liberties groups—had aligned themselves on the immigration issue and were growing in power and influence. They turned their focus on the commission to such an extent that the commission warned that the public's interests were being subjugated by the lobbying appeals of these special interests.

The sixteen members of the commission were unable to reach agreement on many details, but they did release a final report in August 1981. In this report, they suggested that U.S. immigration policy should support three goals: family reunification, economic growth balanced by protection of the U.S. labor market, and "diversity consistent with national unity." It was this third recommendation that eventually led to the enactment of the "diversity visa program," or the visa lottery, in the Immigration Act of 1990.

---

[5] Pub. L. No. 95-412, 92 Stat. 907 (1978).

The Commission, however, did not explain exactly what it meant by "diversity." Instead, it proposed a new category of "independent immigrants" to be selected on the basis of their potential contributions to the U.S. labor market. In the congressional debates following the commission's recommendations, at least three different concepts of diversity were used: 1) historians and other academics suggested that diversity involved the admission of immigrants from countries that had not *ever* sent significant numbers of their nationals to the United States; 2) some members of Congress argued that, since Latin American and Asian immigrants had come to dominate the immigration flow since the 1965 Amendments, diversity involved re-opening the immigration doors to European and other "traditional" source countries; and 3) various ethnic advocacy groups argued that diversity required the maximum number of visas to be made available to nationals of the countries they represented.

The 1986 Immigration Reform and Control Act (IRCA) contained the first legislative effort to reach a consensus on which concept of diversity would be applied to immigration law. IRCA included a temporary program under which 5,000 visas would be allocated in 1987 and 1988 to nationals of countries that were "adversely affected" by the enactment of the 1965 Amendments. The program, designed by Rep. Brian Donnelly (D-Mass.), left it up to the State Department to determine which countries would qualify. The State Department thus came up with a list of the countries whose nationals' average annual rate of migration to the United States between 1966 and 1985 was less than their average annual rate between 1953 and 1965. The list included most of Europe,

North Africa, Argentina, Bermuda, Canada, Guadeloupe, Indonesia, Japan, Monaco and New Caledonia. Since the countries of sub-Saharan Africa had sent few immigrants either immediately before or after the 1965 law, they were excluded from the program. IRCA specified that applications for these visas would be processed on a first-come, first-served basis and it did not restrict the total number of applications each would-be immigrant could submit. The result was that applicants who were in the United States illegally during the application period, and so could rely on the U.S. mail service, had an overwhelming advantage. Some forty percent of all the visas made available under the program ended up being issued to Irish nationals who were already in the United States illegally.[6]

In 1987, after becoming the Chairman of the Senate Subcommittee on Immigration and Refugee Affairs, Sen. Edward Kennedy (D-Mass.) introduced a bill containing a program that combined the recommendations of the Select Commission and the lottery provision from IRCA.[7] The Kennedy bill included a separate immigration category for "Independent Immigrants," with a subcategory for "Nonpreference Aliens." These Nonpreference Aliens were to be selected through the use of a points system under which applicants would be awarded points for certain attributes, including education, age, English language ability and work experience. The largest individual allocation of points, however, was to be

---

[6] Walter P. Jacob, *Diversity Visas: Muddled Thinking and Pork Barrel Politics*, 6 GEO. IMMIGR. L.J. 297, 305-06 (1992).

[7] S. 1611, 100th Cong., 1st Sess. (1987).

awarded to nationals of countries "adversely affected" by the enactment of the 1965 Amendments.

The bill was designed specifically to benefit Irish nationals, as was openly acknowledged during the subcommittee hearings in the Senate. Rep. Brian Donnelly, the creator of the 1986 lottery program, testified during the hearings about the positive contributions Irish immigrants had made to America and that the 1965 Amendments were discriminatory in much the same way as the national origins quota system that preceded them. He claimed that "the cumulative effect of the policy of the last 20 years has been to discriminate against many of the peoples who have traditionally made up our immigrant stock. You cannot solve the problems of discrimination by eliminating it for some and creating it for others." Ironically, he went on to say that "[w]e must work to formulate a level playing field on which all peoples of the world are treated on a fair and equitable basis."[8]

The Kennedy bill was not enacted. Instead, Congress passed the Immigration Amendments of 1988, which extended the IRCA lottery program for another two years, but increased the number of visas available annually to 15,000 from 5,000.[9] The amendments did not, however, alter the application process, so Irish nationals living in the United States illegally retained their advantage.

---

[8] *Legal Immigration Reforms: Hearings Before the Subcomm. on Immigration and Refugee Affairs of the Senate Comm. on the Judiciary*, 100th Cong., 1st Sess. 3, 52-3 (1987).

[9] Pub. L. No. 100-658, 102 Stat. 3908

Senators Kennedy and Alan Simpson (R-Wyo.), the ranking member of the Senate Subcommittee on Immigration and Refugee Affairs, then introduced the Immigration Act of 1989, S. 358, which included a category of "Independent Immigrants." This category would be used by immigrants who could not qualify for admission under the current law because they did not have family members or an employer in the United States. It included a subcategory of "Selected Immigrants," which would be allocated 55,000 visas. Selected Immigrants would be chosen through a point system much like the one in the original Kennedy bill, except that no extra points would be allocated to nationals of countries "adversely affected" by the 1965 Amendments. The provision to award points for English language ability was removed during the Senate Judiciary Committee markup, but the rest of the bill was passed by the Senate in July 1989.

In the meantime, advocates for the Irish were honing their lobbying skills. Led by a hired Washington lobbyist, the Irish Immigration Reform Movement (IIRM) began working directly with then-Rep. Charles Schumer (D-N.Y.) and his staff to draft a diversity program that differed significantly from any considered up to that point. The Schumer proposal would have set aside 75,000 visas each year for a new category of "diversity immigrants."[10] Under this proposal, the world would be separated into "high-admission regions" and "low-admission regions," within which would be "high-admission states" and "low-admission states." High-admission states would be those from which at least 25,000 immigrants had come to the United States within the most recent five-year period. While no state would

[10] H.R. 4165, 101st Cong., 2d Sess. (1990).

be allocated more than seven percent of available visas, the bulk of visas would go to low-admission states in low-admission regions, with a much smaller number allotted to low-admission states in high-admission regions. Any visas not used by the state to which they were allocated would go to the remaining eligible states.

The regions used in the Schumer proposal were: 1) Africa; 2) Asia; 3) Europe; 4) North America, excluding Mexico; 5) Oceania; and 6) South America, Mexico, Central America and the Caribbean. The largest beneficiaries undoubtedly would be Europe and Africa, since Asia and Latin America would be high-admission regions and Oceania and North America were unlikely to send large numbers of immigrants in any case. Moreover, by lumping together countries that send vastly different numbers of immigrants, the plan seriously disadvantaged some "low-admission states" that fell into a "high-admission region." Finally, thanks to major pressure from the IIRM, Rep. Schumer agreed that Northern Ireland would be treated as a separate state for purposes of visa allocation. Irish nationals would get 14 percent of the available visas, instead of seven percent.[11]

However, Rep. Schumer refused to include in his bill a program specifically targeted at legalizing the large number of Irish living illegally in the United States, which was a major goal of IIRM. So IIRM went to House Immigration Subcommittee Chairman Rep. Bruce Morrison (D-Conn.) for help.[12] In March 1990, Rep. Morrison introduced a bill, H.R. 4300, with a different version of Rep.

---

[11] Jacob, supra note 6, at 319.

[12] Id. at 319-20.

Schumer's diversity program. The Morrison bill would have allocated 75,000 visas per year for "Diversity Immigrants," but only for a period of three years.[13] One-third of those visas, however, were to be reserved for illegal aliens who would have qualified for the diversity program included in the 1986 law. Much to the disappointment of the IIRM, though, Rep. Morrison refused to treat Northern Ireland as a separate state under his plan.[14]

The House Immigration Subcommittee adopted a diversity program that represented a compromise between the Schumer and Morrison proposals.[15] The approved version of H.R. 4300 included a "Diversity Transition Program," which set aside up to 25,000 visas per year for three years for illegal aliens who would have qualified for the 1986 diversity program. Beginning in 1994, 55,000 visas would be allocated each year to a new, permanent category of "Diversity Immigrants," as defined by the Schumer bill.

Several members of the full Judiciary Committee were openly skeptical of a "diversity" program that would mostly benefit Europeans. Rep. John Bryant (D-Tex.) questioned the value of a program that sought specifically to restore immigration from traditional source countries and argued instead that the goal of U.S. immigration policy should be to help the most needy, including refugees and

---

[13] H.R. 4300, 101st Cong., 2d Sess. (1990).

[14] Jacob, supra note 6, at 321.

[15] SUBCOMM. ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW, HOUSE COMM. ON THE JUDICIARY, 101ST CONG., 2D SESS., FAMILY UNITY AND EMPLOYMENT OPPORTUNITY IMMIGRATION ACT OF 1990 (Amendment-in-the-Nature of a Substitute to the Comm. Print, May 7, 1990).

those seeking asylum.[16] He characterized the Morrison bill as "a patchwork of special-interest pleadings from various nationalities."[17]

The House Judiciary Committee passed H.R. 4300 in August 1990, with Rep. Morrison's Diversity Transition Program still in tact. Rep. Schumer's Diversity Immigrants program was retained, as well, but with an important change: a state would only be categorized as high admission if it had sent at least 50,000 (instead of the original 25,000) immigrants to the United States within the most recent five-year period. This meant that the nationals of more countries would be eligible for diversity visas. Northern Ireland would still be treated as a separate state under the program.

Eight of the 12 Members of the Judiciary Committee who voted against the bill voiced strong dissent in the House Report. Their critique argued:

> *Instead of fashioning a policy for the national interest of all Americans, H.R. 4300 responds to every special interest group that has made a demand on the U.S. immigration system...Instead of creating an underlying immigration system which is neutral as to race, religion, or national origin, H.R. 4300 grants additional visas to specific countries and regions which, the bill alleges, have been treated unfairly. This is not a rational way to create immigration policy.*[18]

---

[16] Dick Kirschten, *A Patchwork, Not a Policy*, 1990 NAT'L.J. 1, 980.

[17] *More on House Legal Immigration Reform Bill*, 67 INTERPRETER RELEASES 918 (1990).

[18] H.R. REP. NO. 101-723, pt. 1, at 138-39 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6776.

Hoping to get the bill passed by the full House before the close of the 101st Congress, the IIRM turned up the heat. In one day, members of the IIRM visited more than two-thirds of the offices of Members of the House of Representatives. Even the Irish Embassy sent staff members to lobby members of Congress.[19] Their efforts paid off. Before floor consideration of H.R. 4300, the House Rules Committee agreed to limit the number and subject matter of amendments to the bill; amendments to the lottery program were among those that were precluded.

Both Democrats and Republicans expressed concerns during the floor debate that the visa lottery provisions in the bill were the product of special-interest pressures rather than deliberative policymaking. Rep. Bryant expressed such concerns several times during the two-day debate:

> *Legislation with regard to immigration ought to be crafted in such a way that it suits the national interest, not every group of special-interest-pleading organizations that come before the Congress asking that their particular concern be met in this, a patchwork piece of legislation which is designed not to pursue a coherent national purpose but which is designed to satisfy the demands of legions of special-interest groups that have come to this Congress.*
>
> *They say that we need to increase diversity. We are already the most diverse country in the world. I would ask: How can it be that a bill which extends more visas and the right to enter to more Europeans*

---

[19] Jacob, supra note 6, at 327-28.

than we are allowing to enter now which are already the majority group, white Europeans are already the majority group in America, how can that advance the cause of diversity, as though it need to be advanced in a country as diverse as ours already? How can bringing in so many people of the same race as the majority race encourage diversity?[20]

Other Members pointed out that Congress would, once again, institutionalize national origins-based discrimination by enacting the lottery:

Supposedly, in 1965 we took discrimination out of our immigration laws. What this bill does is to put discrimination back in...[for] countries that benefited from the discrimination of the pre-1965 law.

Mr. Chairman, it has always been my understanding that the best immigration policy would be a policy that is fair and that applies equally to every country. In 1965, the last year that we passed a legal immigration bill, the whole point of that immigration bill was to make up for past discrimination and come up with a legal immigration bill that would be fair and equal to all countries, and here we are today debating a bill that is special interest legislation that gives special privileges only to individuals from certain countries. I think that

---

[20] 136 CONG. REC. H8,640 (Oct. 2, 1990).

violates the fairness and equity that we all should expect in our immigration laws.[21]

The bill passed the House by a vote of 231 to 192, after less than two days of debate, and with the lotteries intact.

Sen. Simpson opposed several provisions in H.R. 4300, including the Transition Diversity Program.[22] Knowing the 101st Congress was close to adjournment, Sen. Simpson blocked the appointment of Senate conferees to force informal negotiations. Once the negotiators had reached an agreement that Sen. Simpson could live with, the conference committee was appointed, met, agreed and issued a report that passed both chambers, all within a four-day period.

As passed, the Immigration Act of 1990 included a Diversity Transition program that allocated 40,000 visas per year in 1992, 1993 and 1994 to nationals of "adversely affected" countries, as defined by the 1986 diversity program. In lieu of a specific program to legalize illegal Irish immigrants living in the United States, the IIRM settled for a provision in the Diversity Transition program that would guarantee Irish nationals at least 40 percent of the 40,000 visas made available each year. Instead of referring specifically to a set-aside for Ireland, however, the law allotted at least 40 percent of the Diversity Transition visas to "the foreign state the natives of which received the greatest number of visas issued under section 314 of the Immigration Reform and Control Act."

---

[21] 136 Cong. Rec. H8,635 (Oct. 2, 1990).

[22] Jacob, supra note 6, at 331.

The visa lottery program would be allocated 55,000 visas per year on a permanent basis beginning in 1995. Eligible countries would be determined as prescribed by H.R. 4300, as passed by the House. The point system in S. 358 was eliminated, and instead, beneficiaries would have to show that they had the equivalent of a high school education or two years of job training or experience.

The new law also retained the 1986 program's first-come, first-served system for processing applications, though it set aside the 40 percent of the visas that were to go to Irish applicants during the first three years. It also failed to set a limit on the number of applications each would-be beneficiary could submit. The result of this system in 1992 was that, while the State Department expected to receive around five million entries for the 40,000 available visas, in fact it received almost 19 million applications. The State Department estimated that each applicant submitted an average of 10 applications, though some people claimed to have submitted more than 1,000. About three-quarters of the 1992 beneficiaries gave U.S. mailing addresses, suggesting that they were already living in the United States illegally. [23]

How successful has the 1990 Immigration Act's visa lottery been at bringing "diversity" to the United States? The table on the following page shows lottery beneficiaries by region and the leading countries of nationality. Europeans are the clear winners, so if by "diverse" we mean more White, the program is a success.

---

[23] Center for Immigration Studies, *The Visa Lottery: Increasing Immigration with a Spin O' the Wheel*, SCOPE, No. 10, 8-9 (1992).

Lottery Beneficiaries by Region
1992-2003

Region/ Country	1992-94 Transition	1995	1996	1997	1998
Total	**108,435**	**47,245**	**58,790**	**49,374**	**45,499**
Europe	93,421	23,741	24,855	21,783	19,423
Asia	9,643	6,418	9,636	8,254	7,768
Africa	725	13,760	20,808	16,224	15,394
Oceania	227	594	795	669	526
N. America (excl.Mexico)	2,461	303	190	145	130
Mexico, Central & S. America & the Caribbean	1,958	2,429	2,506	2,288	2,133
	1999	**2000**	**2001**	**2002**	**2003**
Total	**47,571**	**50,945**	**42,015**	**42,829**	**46,347**
Europe	21,636	24,585	17,952	16,867	19,162
Asia	7,192	7,244	5,958	7,175	8,131
Africa	15,526	15,810	15,499	16,310	16,503
Oceania	654	808	675	533	555
N. America (excl.Mexico)	111	125	84	78	74
Mexico, Central & S. America & the Caribbean	2,335	2,312	1,775	1,821	1,864

Source: U.S. Citizenship and Immigration Services, Department of Homeland Security

It is clear that the Diversity Transition program did not increase diversity in the immigrant flow. The permanent visa lottery program did a somewhat better job in that African immigrants received one-third of the available visas, while they have accounted for only 1.2 percent of all immigrants to the United States since 1820. The fact that 52 percent of all lottery visas have been awarded to Europeans, who represent 56 percent of all immigrants since 1820, should be sufficient to dispel the notion that true diversity was the goal.

Conclusion

Even if the lottery were successfully diversifying America, however, it would still be bad policy. In fact, the entire premise on which the lottery is based is false. The United States does not need to admit a single additional immigrant to ensure increasing ethnic and racial diversity here. It is a demographic certainty. When you add to that a legal immigration flow of around a million per year, plus another million or so coming illegally, 50,000 lottery visas have very little impact on diversity, no matter who the beneficiaries are.

While the lottery is not effectively serving its stated goal, it is undermining our immigration system and our values as a nation, and built into it is a serious potential for physical harm to Americans. The visa lottery is inescapably and inexcusably a national origins-based policy. It discriminates to the detriment of some and to the benefit of others based solely on a person's nationality. If we are serious about removing all discrimination from our laws, the lottery must go.

If we are serious about the rule of law itself, the lottery must go. A U.S. green card is one of the two most coveted documents in the world (the other being a U.S. passport), and yet we hand out 50,000-55,000 visas each year to randomly chosen winners made eligible solely because of where they happen to have been born. Is it any wonder that much of the world looks at our immigration law as a joke when it includes the equivalent of a huge lotto game based on national origin? The visa lottery undermines any attempts to make our immigration policy coherent, and it creates false expectations that result in increased illegal immigration.

Immigration policy is supposed to serve the national interest. The reunification of nuclear families clearly meets that test, as does the importation of some number of highly skilled, foreign workers, so long as adequate protections for American workers are in place. The admission of refugees and asylees serves the national interest in two ways. It allows us to meet our international obligations, and, perhaps more importantly, it satisfies our desire to be compassionate and to share our good fortune with those who need protection.

The visa lottery, on the other hand, actually threatens our national interest. It presents a significant security threat, since nationals of virtually every terrorist-sponsoring state are eligible to try their luck. As long as a terrorist has not been added to the watchlist, he has nothing to fear. According to DHS statistics, about 54 percent of lottery winners are male, and about half are single and between the ages of 20 and 34. A terrorist would blend right in.

The lottery also adds 50,000 new, mostly low-skilled workers to our labor force each year to compete with America's most vulnerable workers. Around one-quarter of lottery winners report that they have executive, management, professional, or technical jobs. The other three-quarters have low-skilled jobs, or no jobs. The fact that all lottery winners must pay around $200 in visa fees and then pay their way here means that these are not the poorest, the neediest, or necessarily the most deserving of the five billion people in the world who live in countries poorer than Mexico.

This is one of the problems with nationality-specific immigration laws—there is no principled place to draw the line. There are many countries around the world whose nationals are deserving of protection, whether from persecution, economic privation or environmental destruction. Granting that protection on the basis of which groups have the most political clout in the United States, or which groups come from countries with governments the United States opposes certainly is not a principled way to draw lines. Granting protection to some groups, but not others who are similarly situated also is not fair.

The United States obviously cannot provide a permanent home to all the people of the world who would like to live here, or even to all the people of the world who are deserving of a better life. The goal of U.S. immigration policy, then, should be to establish a race- and nationality-neutral system that can grant admission to those with the most compelling need for resettlement and to those who are most needed by the United States.

Some argue that programs like the lottery are needed because U.S. law has discriminated against various nationalities in the past. It may be true that in some instances, redress is needed. The argument does not hold up where the lottery is concerned, however. It is absurd to think that, by removing from the law those provisions that were discriminatory, we are now discriminating against those who benefited from the prior discrimination. The entire argument rests on the false premise that one group has a right to the special treatment.

In the words of John F. Kennedy about national origins-based discrimination, the visa lottery "neither satisfies a national need nor accomplishes an international purpose. In an age of interdependence among nations, such a system is an anachronism for it discriminates among applicants for admission into the United States on the basis of the accident of birth."

Mr. HOSTETTLER. Thank you, Ms. Jenks.

At this point, we will turn to questions.

Mr. Krongard, in your opening statement, you talked about the issue of weeding out the presence of duplicate applications, and then at one point, even the recommendations that had been made by the OIG to the State Department will not necessarily result in the end of duplicates or the use of duplicates and the successful use of duplicates in the process. And Mr. Krikorian suggested that the problem in the program is systemic.

Can you further elaborate on why you think that this program will never achieve the weeding out of the fraud, such as duplicate applications, and the successful gaining of visas as a result of duplicate applications?

Mr. KRONGARD. I think the lead in to your question is correct, sir. First of all, we are dealing with very large numbers of applications, and there are no restrictions on who these applicants can be. For example, people can be making application who have no intention whatsoever of ever immigrating to the United States. They can be Americans. They can be American citizens who are participating in this. They can be people from some of these countries who have no intention of coming. However, winning the lottery is like a winning lottery ticket. As the gentleman from Virginia said, a cottage industry has grown up so that there are facilitators who make money off of this. There are advisors. There are people who, through unlawful means, acquire the winning notice, and therefore, there is an inducement that we are never going to eliminate. The recommendation that is still open is one that would make it at least illegal to reapply after you have been caught making multiple entries in 1 year. And that is still not dealt with. So there is really not enough disincentive or enough technology to eliminate the ability to make multiple entries.

But I might add that, as the CA has definitely made improvements, I do not think there is any question about that, the technology has gotten better, more duplicate entries are being found and eliminated. Part of the problem now is also in the winning pool. In other words, there are anecdotal evidences of new types of fraud growing up in dealing with the winning lottery ticket and what is done with that and issues of who actually then comes along.

For example, we have the issue of what we call pop-up families. In other words, an applicant registers as a single person, for example, and wins the lottery and, in the course of applying for the visa with the winning lottery, now has a family. That is not on its face inappropriate. Under the regular immigration rules, to have a change, a significant change in your family life might put you into a different category, but there is only one category for diversity applicants. And therefore, if the reasons are correct and there is a true change that cannot be proven to be fraudulent, we have situations where a one-person enrollee becomes say a three- or four-person immigrating family.

Mr. HOSTETTLER. Interesting.

Mr. Krikorian, what do you think is the single biggest vulnerability to the program or to the visa lottery scheme in general?

Mr. KRIKORIAN. I would have to say the very concept of artificially stimulating immigration of people with no connections to the United States from the most corrupt countries in the world is, in other words, the center of the visa lottery, the whole concept of the visa lottery is the greatest vulnerability. I do not see any specific vulnerability or weakness that we could patch up that would make it significantly less problematic. I mean, it is bailing out the Titanic. It sinks a little slower, but it is a problem on its face.

So I would have to say, stimulating immigration of people with no connection to the United States for no good reason, not to promote any specific national interest, is the central problem with the visa lottery.

Mr. HOSTETTLER. Do you have suggestions of how to address those in a reform?

Mr. KRIKORIAN. Getting rid of the visa lottery. That is my point. This is not something that can be reformed. It has got to be eliminated. Again, I would emphasize. I would prefer these 50,000 visas simply not be issued, but a less radical change would be simply to divert them to family category which actually does serve at least conceivably some national interest.

Mr. HOSTETTLER. Thank you.

The Chair now recognizes the gentlewoman from Texas, Ms. Jackson Lee, for purposes of an opening statement and questions.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Let me acknowledge a Member of my Committee, Mr. Berman. I thank him for his commitment to these issues and the Members of this Committee. This is an important hearing.

I just left a Homeland Security hearing, Mr. Chairman, and I thank you for your indulgence. We are overlapping hearings, and we were in the middle of intense questioning on the issue of the potential of terrorist acts against chemical plants. And one report suggests that that could wind up killing 2.4 million persons in a densely populated area. I make that anecdotal story because it appears that, on many occasions, we have taken immigration to be equated to terrorism. And this hearing, I hope, will shed some light on a very viable program and also give us some impetus for what I think many of us have a common commitment to, and that is a comprehensive look at immigration and the comprehensive reforming of the immigration policies in America, those that will respect the founding basis of this nation, that we are a land of immigrants and of laws.

I want to congratulate Mr. Morrison on his vision on the Diversity Visa during his tenure here in the United States Congress.

The United States has tried several different systems for distributing immigration visas, and a national origins quota system favored immigrants from Europe at the expense of immigrants from other regions. In 1965, Congress replaced the national origins quota system with a system of family-based and employment-based immigration and a per-country limit. This does not distribute visas evenly either.

During the next 20 years, immigrants from Asia, Latin America outnumbered immigrants from other parts of the world. The next attempt to balance immigration from around the world produced a series of piecemeal lottery programs, and lotteries made it possible

for immigrants from under-represented countries to obtain visas. This was followed by a permanent lottery system, the Diversity Visa program that is the subject of this hearing.

I think a year or two ago, we listened to a young man from Kenya who told a passionate story, a moving story about his opportunity to come to the United States on the basis of the Diversity Visa. It was established by the Immigration Act of 1990.

Diversity Visas are limited to six geographic regions with a greater number of visas going to regions that have low rates of immigration. The Diversity Visa program does not provide visas for countries that have sent more than 50,000 immigrants to the United States in 5 years. Applicants for Diversity Visas are chosen by a computer-generated random lottery drawing. The winners who qualify for immigrant visas and are eligible to admission to the United States are granted legal permanent resident status.

To qualify, an applicant must have completed 12 years of formal education, the equivalent of graduating from a United States high school, or 2 years of qualified work experience. When Diversity Visa aliens apply for admission to the United States, they receive the same inspection that other immigrants receive.

I would hesitate to say that these are not individuals that cannot come here and provide for themselves and be contributing to our society.

In September 2003, the Office of the Inspector General for the Department of State issued a report on Diversity Visas. According to the report, the Diversity Visa program was subject to widespread abuse. Despite a rule against duplicate submission, thousands of duplicates were detected each year. Identity fraud was endemic, and fraudulent documents are commonplace.

The report recommended barring aliens from states that sponsor terrorism, permanently barring adult aliens who submit multiple applications, and making the program self-financing by charging every applicant a fee, instead of just charging applicants who win the lottery, which is in the present system.

The charge to winners is $350 per person. A much lower fee would be possible if every applicant had to pay a filing fee. The State Department has tried to work on this issue as it has converted from paper to electronic applications. It has required each applicant to submit an electronic photograph. The new process went into effect for the FY 2005 lottery program. The electronic system has made it possible to do much more comprehensive screening for duplicate applications.

Mr. Chairman, I think it is important to note that there has been some progress in using the electronic format, and I think we should give this program greater opportunity. The last report by Deputy Inspector General Anne W. Patterson on April 29, 2004, she testified that the State Department had made progress in reducing fraud and vulnerabilities by introducing a facial recognition system.

So I would hope that we all express our concern in the right direction for fighting terrorists and that we find a way to cut down on fraud. In fact, Mr. Chairman, we note that there is fraud in the Social Security card. But I would hope that we would see the via-

bility of the Diversity Visa program and hope to fix it and not to end it.

With that, Mr. Chairman, I would like to pose questions to the congressman for a time, and as I do so, Congressman Morrison, let me cite for the record that I have been given an overall gleaming affirmation of my commitment, Americans for Better Immigration. And I am so glad that I do not have to show this report card to my mother. But if I showed it to her, I could explain it to her, and I could assure you that she would be applauding me for understanding this nation. This is a bunch of F's and D's as relates to immigration, and distorted I might suggest. Distorted, misconstrued and false.

But I think it is important that we get a full understanding of what the visa program is. So could you briefly say to me whether and how you try to thwart fraud? In particular, would you respond to Ms. Jenks' comments, the visa lottery is a blatant example of a special interest driven approach to policy making?

Mr. MORRISON. Congresswoman Jackson Lee, first of all, I am pleased to be here and to answer your questions. Let me say that, of course, special interest is always in the eye of the beholder. The things we do not like are special interests. The things we support are national interests, and of course, we will always be debating that. That is the nature of politics.

At the heart of the decision to create a program like this is a recognition that things that on the surface do not discriminate or do not give some people better opportunities than others, when you look below the surface operate a different way. The fact is that who it is that comes under family- and employment-based systems has its own special choice-making mechanisms and networking mechanisms that favor some people from some parts of the world over people from other parts of the world. The fact that we developed an immigration system that never opened the door to Africans to immigrate has a lot to do with our history with respect to Africa. And it certainly was one of the things that cried out to me at the time that we were considering these questions.

The same is true of the Soviet Union and other parts of what were the Warsaw Pact countries where people did not get to immigrate here and never created the employment flows, the networks of employment, nor the family relationships. So what this is is not an attempt to undo what exists in the other parts of the immigration system. It is an alternative route, and I think it accomplishes an alternative route.

And yes, there are—there have been in the administration of the program opportunities for fraud. And it seems to me that the State Department has been innovative in finding ways to fight that. And in fact, some of their identity verification schemes, their value goes far beyond the lottery program but to other immigration programs and other screening programs. And I think that is a benefit that has come from the existence of this program and should continue to be used.

But the program itself is not the source of fraud, and the program itself is not incapable of being operated in a relatively effective manner.

Ms. JACKSON LEE. Let me ask you just quickly about the question that Mr. Krongard suggested about fraud and these pop-up immigrants if you will, pop-up family members. How do you respond to that?

Mr. MORRISON. Well, the possibility of pop-up families exist in all immigration categories. People get approved, and at the time that they apply for a visa, not when they get qualified initially through their family relationship or their employment or through the lottery, when they get to the point of applying for a visa, they can offer up accompanying or following to join family members that they claim to be related to. And that is a problem in immigration. And it has to be dealt with in every case, and it has to be dealt with as an area where there could be fraud, in which the relationship has to be examined. So it is not a problem with the diversity program. It is a problem with the fact that people are entitled to bring their families when they come to this country, whether as family members to someone else already here or to an employee for a company that is here.

Ms. JACKSON LEE. So you are saying that diversity visas should not be singled out because it plagues all levels of immigration, which we are all trying to work to decrease the fraud in all levels of our immigration system.

Mr. MORRISON. I do not know whether it plagues this more than others. The fact is that you can abuse our immigration system. Any system that allows people to travel here to the United States, to move here to the United States, there are bad people in the world who will try to misuse it. If we want to be totally safe, we can close the door or try to. But the fact is that if we are going to have the kind of open door that has served the country well for its history, then we will have to work on the anti-fraud side rather than to destroy the programs that bring people here.

The fact is, people are talking about these folks who are coming without connection. For most of our history, most of the immigrants who are the forebearers of many of the people sitting in this room came on a self-selected basis who did not have a reason other than the reason they had in their hopes and their dreams to come here. So these people are not that different from the people who built America.

Mr. HOSTETTLER. I thank the gentlewoman.

The Chair recognizes the gentleman from Virginia, Mr. Goodlatte for 5 minutes.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Congressman Morrison, welcome back to the Subcommittee that you once chaired. When you were doing that in the 1980's, I was practicing immigration law, and I assisted people from more than 70 countries to immigrate to the United States. So my purpose here is not anti-immigration. I do have views about many aspects of our current immigration system. I believe both our legal and illegal immigration problems are in need of addressing in many, many areas but most especially in this area.

When you talk about the creation of diversity, I have a problem with that because the fact of the matter is that countries from virtually every continent, including Africa, have been excluded from participation in this program at various times. Nigeria, for exam-

ple, has in some years, because of the volume of the immigration from Nigeria, been excluded from participation. And I have a real problem telling someone from Nigeria who has a close family member or who has a job skill that is needed in the United States and has a direct contact with somebody in this country, that they are entitled to watch somebody from Kenya or Sierra Leone or some other African country bypass that entire process and, much more rapidly than they are able to do, come into this country on a visa with very skimpy information. We know far less about them because they do not have those family ties. They do not have those job skills, that contact with an employer in the country, and I just wonder how you justify telling that person from Nigeria or from Mexico—the last time we had a hearing on this there was an Asian-American who testified about the discrimination against Chinese applicants. There is discrimination again Europeans because sometimes Great Britain is on this list, and they are excluded from being able to participate, that somehow this is a fair system based upon our system of fairness and justice for people coming to this country from around the world.

Mr. MORRISON. Our system is not fair, meaning that each person gets to be at the head of the line when they would like to be at the head of the line.

Mr. GOODLATTE. Do you not think that immigration should be a two-way street, that the national interests of the United States in seeking family reunification, in seeking employment skills that are needed in this country is a part of the process of determining who should come in here and not simply giving a visa to somebody because they put their name in a hat or, in this case, a computer, and they were lucky enough in a 1-out-of-100 or a 1-out-of-200 chance to have their name drawn while other people are on the sidelines from many, many countries that have——

Mr. MORRISON. If the gentleman would yield.

Mr. GOODLATTE. I will yield again.

[4:57 p.m.]

Mr. MORRISON. We do all of those things. That is, we bring—most of the people who come to the United States come through those two channels that you have just described. And it is a matter of opinion. Reasonable people can differ as to whether there ought to be this other channel.

But on the question of fairness, on the question of fairness which is where you started, the fact is that if you want fairness for immediate families then you ought to do what was in the House version of the Immigration Act of 1990, which is to treat immediate families, minor children and spouses, as immediate relatives and reunify those families immediately.

Our failure to do that——

Mr. GOODLATTE. Reclaiming my time.

Mr. Krikorian, who I agree with in terms of wanting to take these visas off the list because they serve no interest, pointed out that we could also use these visas for that very purpose. The bill that I have introduced that Mr. Smith co-sponsored, Congresswoman Herseth co-sponsored, does not do that, but it is a step in the right direction of ending what I think is an unfair practice.

Let me get in one more question—I see my light has turned yellow—to Mr. Krongard, and that is—I would ask you if you can tell me this. No matter what security precautions we take with this visa lottery program, there will always be relatively easy opportunities for terrorists to exploit the program; and I would argue that the inherent dangers of the program outweigh the merits. Do you believe that the program still contains serious risks to national security by the entry of terrorists or foreign intelligence officers?

Mr. KRONGARD. As I say in my written statement, we do continue to believe that. There are improvements that have been made. It is an open question as to how far the technology and the efforts by CA can go to really reduce to a satisfactory level that risk. The risk does continue. Whether it outweighs other things, I couldn't address that.

Mr. GOODLATTE. Thank you. Thank you, Mr. Chairman.

Mr. HOSTETTLER. The gentleman's time has expired.

The Chair recognizes the gentleman from Texas, Mr. Smith, for purposes of questions.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Krongard, as I recall, in your written testimony you recommended that the visa lottery program be reformed and that we do not admit individuals from terrorist-sponsoring countries. As I understand it, something like 18 percent of all the visa lottery applicants have come from both terrorist-sponsoring countries and countries that are sort of on our watchlist. That is a significant number. Would you be comfortable with that recommendation that you made in regard to terrorist-sponsoring countries extending to watch countries as well, where we either give them extra scrutiny or not admit them?

Mr. KRONGARD. That recommendation was deemed to be closed and satisfied by the response from CA, which was that they did not want to be in a position to prevent people fleeing oppression in countries like Cuba or Libya or Syria or Iran to make them ineligible for visa through the diversity visa program; and it would have taken statutory change to permit that. So while that recommendation was made, the response from our perspective being just dealing with compliance and implementation of a program rather than the policy and wisdom of the program, we deemed that that was a satisfactory response.

Mr. SMITH. Thank you.

Let me direct my next question to Mr. Morrison, but on the way there say that Ms. Jenks almost embarrassed me by reminding me that it has been 15 years that I have been involved in the immigration reform business. Mr. Morrison could have embarrassed me by reminding us that while he was Chairman of the Immigration Subcommittee I was his Ranking, but I will bring it up myself as sort of going on the offense before I have to go on the defense.

Mr. Morrison, would you be willing to reform the system—my light is sort of blinking here—reform the system to the point where we do not admit individuals from terrorist-sponsoring countries? I know that is a small percentage, but would you be comfortable with that change?

Mr. MORRISON. I think that is a consideration.

I would also think that——

Mr. SMITH. Would you support it?

Mr. MORRISON. Well, I want to qualify it a bit, as you would expect. I think that it is a complicated question, because many of these people are applying outside of those countries. They are in fact—this is a—as all of our immigration quota system works, it depends on where you were born, not where you are. So the question of whether somebody is tainted by birth, but—it raises some questions. So I would think about it more broadly as to from where they are applying, and that might be an appropriate disqualification.

Mr. SMITH. Okay. Ms. Jenks, you don't want to reform the system. You want to eliminate the system, as does Mr. Krikorian. Why do you say it is bad policy and why do you say it is contrary to the national interest to have such a program?

Ms. JENKS. Well, first of all, it is a national-origins-based system. I mean, there is no way to get around that. You are only eligible if you are from certain countries that are on the list.

The second thing is that it doesn't serve a national interest. These are, again, people who are not connected to the United States in any way. There is no particular reason to bring them here except for immigration for the sake of immigration. Maybe when we were still developing the west that would have been a justifiable reason, but it is not today when there are people in line who have spouses and minor children who have been waiting for years, when we have got employment-based immigrants now at the unskilled level at least waiting, and we have saturated our low-skill labor market here, and these are more people coming in with a high school—the equivalent of a high school degree. They are just not needed here.

Mr. SMITH. A few minutes ago, I think Mr. Goodlatte pointed out that this doesn't really contribute to diversity. Why do you think the lottery visas do not contribute to diversity? And Mr. Krikorian, if you could answer the same question.

Ms. JENKS. Well, the numbers—the statistics on the lottery winners show that 52 percent of them are European. We don't have a shortage of white people in this country. That is not additional diversity. There is a significant number of Africans coming in, which does put Africans above their historical level of immigration. But is that justification enough to bring in a whole bunch more white people from Europe? It just doesn't seem like that is diversity. And if you are talking about 50,000 visas in a flow of a million-plus legal immigrants and maybe another million illegal immigrants, you are not going to get to diversity.

Mr. SMITH. Thank you.

Mr. Krikorian.

Mr. KRIKORIAN. The numbers that I cited clearly show that it is not having an effect on diversity. In other words, that the immigrant flow and the immigrant stock already here aren't getting more diverse, more mixed. In fact, quite the opposite is what seems to be happening.

But I am—frankly, I am uncomfortable with the very idea that there aren't enough people of whatever kind coming in or too many people of whatever kind. I mean, this is national origins thinking. And if we want to do that, if we think that we need to have more

Africans or more eastern Europeans coming in, I think let us start setting quotas. I don't like that idea. But as Lincoln said a long time ago in a different context, he said: I prefer to move to Russia where they take their despotism pure and unalloyed by hypocrisy.

Let us say what we are doing or let us not do it and try to stick to a neutral and ethically and racially neutral immigration system.

Mr. SMITH. Thank you.

Mr. Chairman, may I have the time to ask one more question?

Mr. HOSTETTLER. Without objection.

Mr. SMITH. Thank you.

Mr. Krikorian, another question now. This is a little bit unfair. I noticed in your testimony that you use the phrase "jobs Americans won't do." That is not the subject of today's hearing, but I would like to have your opinion as to whether there are jobs Americans won't do.

Mr. KRIKORIAN. There is no such thing as work that won't get done without immigration. It is economic gibberish. The fact is that there may be a specific number of jobs that would shrink without immigration, but that would mean that to——

Just to pull a simple example out of the air. Instead of five landscapers with shovels, you would have one landscaper with a little bobcat frontloader. So, in that case, those four extra jobs may well be jobs that Americans won't do, but the work gets done by a smaller number of more productive, highly paid American or legal immigrant workers.

Mr. SMITH. Thank you, Mr. Krikorian.

Thank you, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentleman from Texas for his keen eye on that issue.

The Chair now recognizes the gentlelady from California, Ms. Waters, for 5 minutes.

Ms. WATERS. I thank you very much, Mr. Chairman.

I really don't have a statement. I need to learn a lot more about the diversity visas. Of course, I have raised some questions in the past about places that I understand have met the quota of—I don't know what the quota is. But there are quotas that have been established, like places like Haiti who have a quota, met the quota in the United States, are not eligible for the diversity visas. Is that correct?

Mr. HOSTETTLER. If the gentlelady would yield, I am not exactly sure of the individual countries, but that can be the case.

Ms. WATERS. Well, then what I need to do is find out more information. I am particularly interested in the Caribbean and Africa, and I need to find out which of these countries——

Mr. GOODLATTE. Would the gentlelady yield?

Ms. WATERS. Yes.

Mr. GOODLATTE. I thank the gentlelady for yielding.

The countries—I will list them off for you, because this is a very interesting—and it is very diverse across the world. These countries are not eligible to participate in this year, and every year it can change. But Canada, China, Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Russia, South Korea, United Kingdom—except Northern Ireland, and Vietnam.

Now each year that changes. Some years, for example, Nigeria has been on that list as well excluded from participation, I would say discriminated against in participating. So to answer your question, Haiti is on the list this year. They cannot participate.

Ms. WATERS. Thank you very much. I yield back.

Mr. HOSTETTLER. I thank the gentlelady.

I want to thank once again the members of the panel for your presence and your testimony and assistance in this very important issue. All Members are instructed that we have 5 legislative days to make additions to the record.

The business before this Subcommittee being completed, we are adjourned.

[Whereupon, at 5:08 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

Mr. Chairman, thank you for holding this important oversight hearing.

The visa lottery program was created to bring foreign nationals into the United States from countries that have sent fewer immigrants in the past. This program awards permanent resident visas based on pure luck and threatens national security, results in the unfair administration of our nation's immigration laws, and encourages a cottage industry for fraudulent opportunists.

Each year, the visa lottery program grants approximately 50,000 foreign nationals "permanent resident" status. Because winners of the visa lottery are chosen at random, the visa lottery program presents a serious national security threat. A perfect example of the system gone awry is the case of Hesham Mohamed Ali Hedayet, the Egyptian national who killed two and wounded three during a shooting spree at Los Angeles International Airport in July of 2002. He was allowed to apply for lawful permanent resident status in 1997 because of his wife's status as a visa lottery winner.

The State Department's Inspector General has even weighed in on the national security threat posed by the visa lottery program. In his testimony, the Department of State's Inspector General states that the Office of Inspector General "continues to believe that the Diversity Visa program contains significant risks to national security from hostile intelligence officers, criminals, and terrorists attempting to use the program for entry into the United States as permanent residents." Even if improvements were made to the visa lottery program, nothing would prevent terrorist organizations or foreign intelligence agencies from having members apply for the program who do not have criminal backgrounds. These types of organized efforts would never be detected, even if significant background checks and counter-fraud measures were enacted within the program.

Usually, immigrant visas are issued to foreign nationals that have existing connections with family members lawfully residing in the United States or with U.S. employers. These types of relationships help ensure that immigrants entering our country have a stake in continuing America's success and have needed skills to contribute to our nation's economy. However, under the visa lottery program, visas are awarded to immigrants at random without meeting such criteria.

In addition, the visa lottery program is unfair to immigrants who comply with the United States' immigration laws. The visa lottery program does not expressly prohibit illegal aliens from applying to receive visas through the program. Thus, the program treats foreign nationals that comply with our laws the same as those that blatantly violate our laws. In addition, most family-sponsored immigrants currently face a wait of years to obtain visas, yet the lottery program pushes 50,000 random immigrants with no particular family ties, job skills or education ahead of these family and employer-sponsored immigrants each year with relatively no wait. This sends the wrong message to those who wish to enter our great country and to the international community as a whole.

Furthermore, the visa lottery program is wrought with fraud. A report released by the Center for Immigration Studies states that it is commonplace for foreign nationals to apply for the lottery program multiple times using many different aliases. In fact, 364,000 duplicate applications were detected in the 2003 visa lottery alone.

In addition, the visa lottery program has spawned a cottage industry featuring sponsors in the U.S. who falsely promise success to applicants in exchange for large sums of money. Ill-informed foreign nationals are willing to pay top dollar for the "guarantee" of lawful permanent resident status in the U.S.

The visa lottery program is also by its very nature discriminatory. The complex formula for assigning visas under the program arbitrarily disqualifies natives from countries that send more than 50,000 immigrants to the U.S. within a five-year period. For the 2006 application period, nationals from countries such as Mexico, Canada, China, the Dominican Republic, El Salvador, Haiti and others were not allowed to participate in the visa lottery program.

The visa lottery program represents what is wrong with our country's immigration system. That is why I introduced H.R. 1219, the "Security and Fairness Enhancement (SAFE) for America Act." This much-needed legislation eliminates the controversial visa lottery program to enhance national security, reduce fraud and opportunism and restore fairness to our immigration system.

Thank you again, Mr. Chairman, for holding this important hearing.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

The United States has tried several different systems for distributing immigrant visas. A national origins quota system favored immigrants from Europe at the expense of immigrants from other regions. In 1965, Congress replaced the national-origins quota system with a system of family-based and employment-based immigration and a per-country limit, but this did not distribute visas evenly either. During the next 20 years, immigrants from Asia and Latin America outnumbered immigrants from other parts of the world.

The next attempt to balance immigration from around the world produced a series of piecemeal lottery programs. Lotteries made it possible for immigrants from under represented countries to obtain visas. This was followed by a permanent lottery system, the Diversity Visa Program that is the subject of this hearing. It was established by the Immigration Act of 1990.

Diversity visas are limited to 6 geographic regions, with a greater number of visas going to regions that have low rates of immigration. The Diversity Visa Program does not provide visas for countries that have sent more than 50,000 immigrants to the United States in the past 5 years.

Applicants for diversity visas are chosen by a computer-generated, random lottery drawing. The winners who can qualify for immigrant visas and are eligible for admission to the United States are granted legal permanent residence status. To qualify, an applicant must have completed twelve years of formal education (the equivalent of graduating from a United States high school) or 2 years of qualifying work experience. When diversity visa aliens apply for admission to the United States, they receive the same inspection that other immigrants receive.

In September of 2003, the Office of the Inspector General for the Department of State issued a report on the Diversity Visa Program. According to the report, the Diversity Visa Program was subject to widespread abuse. Despite a rule against duplicate submissions, thousands of duplicates were detected each year. Identity fraud was endemic, and fraudulent documents were commonplace.

The report recommended barring aliens from states that sponsor terrorism; permanently barring adult aliens who submit multiple applications; and making the program self-financing by charging every applicant a fee instead of just charging the applicants who win the lottery, which is the present system. The charge to winners is $350 per person. A much lower fee would be possible if every applicant had to pay a filing fee.

The State Department has converted from paper to electronic applications and has required each applicant to submit an electronic photograph. The new process went into effect for the FY 2005 lottery program. The electronic system has made it possible to do much more comprehensive screening for duplicate applications.

When paper applications were being used, the screening for duplicates was limited to comparing the winning applications against each other and against a small sampling of applications from applicants who had not been selected. It was not feasible to do more comprehensive screening when there were as many as 9 million paper applications. Under the new, electronic system, all of the applications from within each of the 6 regions are compared to each other; and additional comparisons are made among the winners.

At a hearing last year on April 29, 2004, the Deputy Inspector General, Anne W. Patterson, testified that the Department of State had made progress in reducing fraud and vulnerabilities by implementing a facial recognition system.

Another concern I want to address is that terrorists will use the program to enter the United States. People who enter the U.S. using diversity visas receive the same

screening as any other aliens who come here as an immigrants, and this is much more extensive than the screening for admission as a nonimmigrant visitor, which is how the 9/11 terrorists entered the country.

The Diversity Visa Program does what it was intended to do; it diversifies immigration to the United States. I believe very strongly that this is a benefit to the United States. Thank you.