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106TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 106–564

VISA WAIVER PERMANENT PROGRAM ACT

APRIL 6, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3767]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3767) to amend the Immigration and Nationality Act to make improvements to, and permanently authorize, the visa waiver pilot program under section 217 of such Act, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Visa Waiver Permanent Program Act".

TITLE I—PERMANENT PROGRAM AUTHORIZATION

SEC. 101. ELIMINATION OF PILOT PROGRAM STATUS.

(a) IN GENERAL.—Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) is amended—

(1) in the section heading, by striking "PILOT";

(2) in subsection (a)—

(A) in the subsection heading, by striking "PILOT";

(B) in the matter preceding paragraph (1), by striking "pilot" both places it appears;

(C) in paragraph (1), by striking "pilot program period (as defined in subsection (e))" and inserting "program"; and

(D) in paragraph (2), in the paragraph heading, by striking "PILOT";

(3) in subsection (b), in the matter preceding paragraph (1), by striking "pilot";

(4) in subsection (c)—

(A) in the subsection heading, by striking "PILOT";

(B) in paragraph (1), by striking "pilot";

(C) in paragraph (2)—

(i) by striking "subsection (g)" and inserting "subsection (f)"; and

(ii) by striking "pilot"; and

(D) in paragraph (3)—

(i) in the matter preceding subparagraph (A), by striking "(within the pilot program period)";

(ii) in subparagraph (A), in the matter preceding clause (i), by striking "pilot" both places it appears; and

(iii) in subparagraph (B), by striking "pilot";

(5) in subsection (e)(1)—

(A) in the matter preceding subparagraph (A), by striking "pilot"; and

(B) in subparagraph (B), by striking "pilot";

(6) by striking subsection (f) and redesignating subsection (g) as subsection (f); and

(7) in subsection (f) (as so redesignated)—

(A) in paragraph (1)(A) by striking "pilot";

(B) in paragraph (1)(C), by striking "pilot";

(C) in paragraph (2)(A), by striking "pilot" both places it appears;

(D) in paragraph (3), by striking "pilot"; and

(E) in paragraph (4)(A), by striking "pilot".

(b) CONFORMING AMENDMENTS.—

(1) DOCUMENTATION REQUIREMENTS.—Clause (iv) of section 212(a)(7)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(B)(iv)) is amended—

(A) in the clause heading, by striking "PILOT"; and

(B) by striking "pilot".

(2) TABLE OF CONTENTS.—The table of contents for the Immigration and Nationality Act is amended, in the item relating to section 217, by striking "pilot".

TITLE II—PROGRAM IMPROVEMENTS

SEC. 201. EXTENSION OF RECIPROCAL PRIVILEGES.

Section 217(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1187(a)(2)(A)) is amended by inserting ", either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions," after "to extend)".

SEC. 202. MACHINE READABLE PASSPORT PROGRAM.

(a) REQUIREMENT ON ALIEN.—Section 217(a) of the Immigration and Nationality Act (8 U.S.C. 1187(a)) is amended—

(1) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8), respectively; and

(2) by inserting after paragraph (2) the following:

"(3) MACHINE READABLE PASSPORT.—On and after October 1, 2006, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.".

(b) REQUIREMENT ON COUNTRY.—Section 217(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(B)) is amended to read as follows:

"(B) MACHINE READABLE PASSPORT PROGRAM.—

"(i) IN GENERAL.—Subject to clause (ii), the government of the country certifies that it issues to its citizens machine-readable passports that satisfy the internationally accepted standard for machine readability.

"(ii) DEADLINE FOR COMPLIANCE FOR CERTAIN COUNTRIES.—In the case of a country designated as a program country under this subsection prior to May 1, 2000, as a condition on the continuation of that designation, the country—

"(I) shall certify, not later than October 1, 2000, that it has a program to issue machine-readable passports to its citizens not later than October 1, 2003; and

"(II) shall satisfy the requirement of clause (i) not later than October 1, 2003.".

SEC. 203. DENIAL OF PROGRAM WAIVER BASED ON GROUND OF INADMISSIBILITY.

(a) IN GENERAL.—Section 217(a) of the Immigration and Nationality Act (8 U.S.C. 1187(a)), as amended by section 202, is further amended by adding at the end the following:

"(9) AUTOMATED SYSTEM CHECK.—The identity of the alien has been checked using an automated electronic database containing information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found.".

(b) VISA APPLICATION SOLE METHOD TO DISPUTE DENIALS OF WAIVER BASED ON GROUND OF INADMISSIBILITY.—Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), as amended by section 101(a)(6) of this Act, is further amended by adding at the end the following:

"(g) VISA APPLICATION SOLE METHOD OF DISPUTING GROUND OF INADMISSIBILITY FOUND IN AUTOMATED SYSTEM.—In the case of an alien denial a waiver under the program by reason of a ground of inadmissibility uncovered through a written or verbal statement by the alien or a use of an automated electronic database required under subsection (a)(9), the alien may apply for a visa at an appropriate consular office outside the United States. There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.".

(c) PAROLE AUTHORITY.—Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) is amended—

(1) in subparagraph (A), by striking "subparagraph (B)" and inserting "subparagraph (B) or (C)"; and

(2) by adding at the end the following:

"(C) The Attorney General may not parole into the United States an alien who has applied under section 217 for a waiver of the visa requirement, and has been denied such waiver by reason of a ground of inadmissibility uncovered through a written or verbal statement by the alien or a use of an automated electronic database required under section 217(a)(9), unless the Attorney General determines that compelling reasons in the public interest, or compelling health considerations, with

respect to that particular alien require that the alien be paroled into the United States.".

SEC. 204. EVALUATION OF EFFECT OF COUNTRY'S PARTICIPATION ON LAW ENFORCEMENT AND SECURITY.

(a) INITIAL DESIGNATION.—Section 217(c)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(C)) is amended to read as follows:

"(C) LAW ENFORCEMENT AND SECURITY INTERESTS.—The Attorney General, in consultation with the Secretary of State—

"(i) evaluates the effect that the country's designation would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States);

"(ii) determines that such interests would not be compromised by the designation of the country; and

"(iii) submits a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate regarding the country's qualification for designation that includes an explanation of such determination.".

(b) CONTINUATION OF DESIGNATION.—Section 217(c) of the Immigration and Nationality Act (8 U.S.C. 1187(c)) is amended by adding at the end the following:

"(5) WRITTEN REPORTS ON CONTINUING QUALIFICATION; DESIGNATION TERMINATIONS.—

"(A) PERIODIC EVALUATIONS.—

"(i) IN GENERAL.—The Attorney General, in consultation with the Secretary of State, periodically (but not less than once every 5 years)—

"(I) shall evaluate the effect of each program country's continued designation on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States);

"(II) shall determine whether any such designation ought to be continued or terminated under subsection (d); and

"(III) shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate regarding the continuation or termination of the country's designation that includes an explanation of such determination and the effects described in subclause (I).

"(ii) EFFECTIVE DATE.—A termination of the designation of a country under this subparagraph shall take effect on the date determined by the Attorney General, but may not take effect before the end of the 30-day period beginning on the date on which notice of the termination is published in the Federal Register.

"(iii) REDESIGNATION.—In the case of a termination under this subparagraph, the Attorney General shall redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Attorney General, in consultation with the Secretary of State, determines that all causes of the termination have been eliminated.

"(B) AUTOMATIC TERMINATION.—

"(i) REQUIREMENT.—On and after October 1, 2005, the designation of any program country with respect to a report described in subparagraph (A)(i)(III) has not been submitted in accordance with such subparagraph during the preceding 5 years shall be considered terminated.

"(ii) EFFECTIVE DATE.—A termination of the designation of a country under this subparagraph shall take effect on the last day of the 5-year period described in clause (i).

"(iii) REDESIGNATION.—In the case of a termination under this subparagraph, the Attorney General shall redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the required report is submitted, if the report includes a determination by the Attorney General that the country should continue as a program country.

"(C) EMERGENCY TERMINATION.—

"(i) IN GENERAL.—In the case of a program country in which an emergency occurs that the Attorney General, in consultation with the Secretary of State, determines threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States), the Attorney Gen-

eral shall immediately terminate the designation of the country as a program country.

"(ii) DEFINITION.—For purposes of clause (i), the term 'emergency' means—

"(I) the overthrow of a democratically elected government;

"(II) war (including undeclared war, civil war, or other military activity);

"(III) disruptive social unrest;

"(IV) a severe economic or financial crisis; or

"(V) any other extraordinary event that threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States).

"(iii) REDESIGNATION.—The Attorney General may redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Attorney General determines that—

"(I) at least 6 months have elapsed since the effective date of the termination;

"(II) the emergency that caused the termination has ended; and

"(III) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the period of termination under this subparagraph was less than 3.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such period.

"(D) TREATMENT OF NATIONALS AFTER TERMINATION.—For purposes of this paragraph—

"(i) nationals of a country whose designation is terminated under subparagraph (A), (B), or (C) shall remain eligible for a waiver under subsection (a) until the effective date of such termination; and

"(ii) a waiver under this section that is provided to such a national for a period described in subsection (a)(1) shall not, by such a designation termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.".

SEC. 205. USE OF INFORMATION TECHNOLOGY SYSTEMS.

(a) IN GENERAL.—Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), as amended by section 203(b), is further amended by adding at the end the following:

"(h) USE OF INFORMATION TECHNOLOGY SYSTEMS.—

"(1) AUTOMATED ENTRY-EXIT CONTROL SYSTEM.—

"(A) SYSTEM.—Not later than October 1, 2001, the Attorney General shall develop and implement a fully automated entry and exit control system that will collect a record of arrival and departure for every alien who arrives by sea or air at a port of entry into the United States and is provided a waiver under the program.

"(B) REQUIREMENTS.—The system under subparagraph (A) shall satisfy the following requirements:

"(i) DATA COLLECTION BY CARRIERS.—Not later than October 1, 2001, the records of arrival and departure described in subparagraph (A) shall be based, to the maximum extent practicable, on passenger data collected and electronically transmitted to the automated entry and exit control system by each carrier that has an agreement under subsection (a)(4).

"(ii) DATA PROVISION BY CARRIERS.—Not later than October 1, 2002, no waiver may be provided under this section to an alien arriving by sea or air at a port of entry into the United States on a carrier unless the carrier is electronically transmitting to the automated entry and exit control system passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out this paragraph.

"(iii) CALCULATION.—The system shall contain sufficient data to permit the Attorney General to calculate, for each program country and each fiscal year, the portion of nationals of that country who are described in subparagraph (A) and for whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

"(C) REPORTING.—

"(i) PERCENTAGE OF NATIONALS LACKING DEPARTURE RECORD.—Not later than January 30 of each year (beginning with the year 2003), the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the calculation described in subparagraph (B)(iii) for each program country for the previous fiscal year.

"(ii) SYSTEM EFFECTIVENESS.—Not later than October 1, 2004, the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

"(I) The conclusions of the Attorney General regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

"(II) The recommendations of the Attorney General regarding the use of the calculation described in subparagraph (B)(iii) as a basis for evaluating whether to terminate or continue the designation of a country as a program country.

"(2) AUTOMATED DATA SHARING SYSTEM.—

"(A) SYSTEM.—The Attorney General and the Secretary of State shall develop and implement an automated data sharing system that will permit them to share data in electronic form from their respective records systems regarding the admissibility of aliens who are nationals of a program country.

"(B) REQUIREMENTS.—The system under subparagraph (A) shall satisfy the following requirements:

"(i) SUPPLYING INFORMATION TO IMMIGRATION OFFICERS CONDUCTING INSPECTIONS AT PORTS OF ENTRY.—Not later than October 1, 2002, the system shall enable immigration officers conducting inspections at ports of entry under section 235 to obtain from the system, with respect to aliens seeking a waiver under the program—

"(I) any photograph of the alien that may be contained in the records of the Department of State or the Service; and

"(II) information on whether the alien has ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

"(ii) SUPPLYING PHOTOGRAPHS OF INADMISSIBLE ALIENS.—The system shall permit the Attorney General electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a national of a program country and has been determined to be ineligible to receive a visa.

"(iii) MAINTAINING RECORDS ON APPLICATIONS FOR ADMISSION.—The system shall maintain, for a minimum of 10 years, information about each application for admission made by an alien seeking a waiver under the program, including the following:

"(I) The name of each immigration officer conducting the inspection of the alien at the port of entry.

"(II) Any information described in clause (i) that is obtained from the system by any such officer.

"(III) The results of the application.".

(b) CONFORMING AMENDMENT.—Section 217(e)(1) of the Immigration and Nationality Act (8 U.S.C. 1187(e)(1)) is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) in subparagraph (C), by striking the period at the end and inserting ", and"; and

(3) by adding at the end the following:

"(D) to collect, provide, and share passenger data as required under subsection (h)(1)(B).".

SEC. 206. CONDITIONS FOR VISA REFUSAL ELIGIBILITY.

Section 217(c) of the Immigration and Nationality Act (8 U.S.C. 1187(c)), as amended by section 204(b) of this Act, is further amended by adding at the end the following:

"(6) COMPUTATION OF VISA REFUSAL RATES.—For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, sexual orientation, or disability, unless otherwise specifically authorized by law or regulation.".

PURPOSE AND SUMMARY

H.R 3767 would amend section 217 of the Immigration and Nationality Act to permanently authorize the Visa Waiver Pilot Program and make changes in the program to strengthen the law enforcement and security interests of the United States and reduce the vulnerability of the United States to entry by unqualified aliens under the program.

BACKGROUND AND NEED FOR THE LEGISLATION

I. BACKGROUND

The Visa Waiver Pilot Program (VWPP) allows aliens traveling from certain designated countries to come to the United States as temporary visitors for business or pleasure without having to obtain the nonimmigrant visa normally required to enter the United States. The program authorizes the Attorney General to waive the "B" visa requirement for aliens traveling from countries that have qualified on the basis of requirements set forth in section 217 of the Immigration and Nationality Act. There are currently 29 countries participating in the program.

While the visa waiver program eliminates the visa requirement for aliens who would otherwise have to present a "B" visa, the program has important restrictions. Aliens entering with a "B" visa may apply to extend the length of their stay in the U.S. and may petition to change to another nonimmigrant or immigrant visa status. Aliens entering under the VWPP may not extend their stay and cannot change their status. An alien who violates the terms of admission (by staying beyond 90 days or by accepting unauthorized employment) is deportable without any judicial recourse or review, except when claiming asylum.

The Attorney General, in consultation with the Secretary of State, has the authority to designate countries to the VWPP program. To qualify for admission to the program, a country must extend reciprocal visa-free entry privileges to U.S. citizens, have a low (less than 3 percent) nonimmigrant visa refusal rate and have or be developing a machine readable passport. Finally, the admission of the country to the program must not compromise U.S. law enforcement interests.

To be admitted to the U.S. under the program, travelers must be a national of, and present a passport issued by, a designated country, plan to visit the U.S. for business or pleasure for 90 days or less, enter the U.S. via a participating carrier (most airlines and passenger lines, including cruise lines, are participating carriers) or via a land border, have an onward or return ticket if traveling via air or sea and be otherwise eligible for admission (in other words, not be ineligible for admission because of a prior visa refusal, criminal record, previous deportation, etc.).

Since its initial enactment as part of the Immigration Reform and Control Act of 1986, the VWPP has been a temporary program. However, Congress has periodically reauthorized the program, recognizing its importance to the U.S. travel and tourism industry and the benefit it provides to American citizens (through reciprocity) who travel abroad. Failure to reauthorize the program would result

in considerable disruption of the travel industry. Additionally, U.S. taxpayers would have to bear the burden of restaffing Department of State consular offices to issue visas to the millions of visitors who currently enter under the waiver program. Some of the countries now in the program would impose a reciprocal visa requirement on American visitors, resulting in inconvenience to U.S. citizens traveling abroad.

II. PROBLEMS/VULNERABILITIES

Mechanism for Monitoring Overstays

The principal mechanism in the statute for monitoring the continuing qualification of countries in the program has never worked. The statute provides that countries may be redesignated in the VWPP on a year by year basis unless the sum of the number of nationals of the country who were denied admission to the country and number of nationals who violated the terms of their admission as nonimmigrant visitors (includes travelers admitted with "B" visas and under the VWPP) was 2 percent or more of the number of nationals of that country admitted as nonimmigrant visitors during the preceding fiscal year. Relying on a measure of the nationals of VWPP countries who violate the terms of their admission has not worked because the INS has been unable to either develop a mechanism for tracking the departure of temporary visitors from VWPP countries (or any other country) or to develop reliable estimates of overstays based on secondary sources.

Even if the there were a reliable system to calculate or estimate overstays by aliens from VWPP countries, such a mechanism would not be sufficient in emergency situations. Overstay rates are a lagging indicator based on fiscal year data, which often are not compiled until months, or years, after the close of the fiscal year. With 29 countries now in the program, more effective mechanisms are needed for monitoring countries in the program and for evaluating the impact of the program on the law enforcement (including immigration law) and security interests of the United States.

Machine Readable Passport

Another problem with the VWPP has been the failure by several designated countries to deploy a machine readable passport. When a machine readable passport is presented by a traveler at a port of entry, the data on the passport can be read electronically; when a traveler presents a passport that is not machine readable, the passport data must be entered manually by the INS official who inspects the traveler. The presentation of a non-machine readable passport is harmful to the security interests of the United States because it forces the official to concentrate on data entry rather than evaluating the alien. Since 1990, the statute has required the Government of a country nominated for participation in the VWPP to certify that it has or "is in the process of developing" a machine readable passport. Unfortunately, some countries that were admitted to the program as long ago as 1991 still have not developed a machine readable passport. Other counties that have developed a machine readable passport continue to issue some non-machine readable passports.

Reliability of Lookout Data

The absence of an overseas consular review of a visa application for VWPP travelers makes it crucially important that all potentially useful data be available to INS inspectors at ports of entry and that aliens ineligible for admission not be admitted. Currently, Department of State data on ineligible aliens is routinely transferred to the INS. However, the transferred data contains text-only biographic information. Although Department of State files usually contain a photograph of the ineligible alien, the agencies do not have a system for transmitting photographs as part of an electronic lookout file. Without access to photographs, INS inspectors frequently face difficult decisions when inspecting travelers whose data is close to but not an exact match with the information in the lookout file.

III. H.R. 3767

H.R. 3767, the Visa Waiver Permanent Program Act, permanently authorizes the visa waiver program, thus ending the program's "pilot" status. The bill also strengthens the program by establishing a mechanism for periodic evaluation of the impact of each country's participation in the program on the law enforcement and security interests of the United States. It also provides a mechanism for suspending a country's participation in the program when emergency situations arise. Other provisions in the bill establish a deadline for implementation of a machine readable passport by program countries, strengthen admission requirements for visa waiver travelers to prevent ineligible aliens from using the program to circumvent immigration laws, establish a fully automated entry/departure system for tracking overstays by visa waiver travelers and require increased sharing of information on ineligible aliens between the Department of State and the Department of Justice.

HEARINGS

The committee's Subcommittee on Immigration and Claims held a hearing on the Visa Waiver Pilot Program on February 10, 2000. Testimony was received from Robert Ashbaugh, Acting Inspector General, U.S. Department of Justice; Ambassador Mary A. Ryan, Assistant Secretary of State for Consular Affairs, U.S. Department of State; Michael Cronin, Acting Associate Commissioner for Programs, U.S. Immigration and Naturalization Service, Elisa Liang, Associate Deputy Attorney General, U.S. Department of Justice; William S. Norman, President and Chief Executive Officer, Travel Industry Association; E. Wayne Merry, Director, Program on European Societies in Transition, The Atlantic Council of the United States; and John Ratigan, Immigration Consultant, Paul Weiss, Rifkind, Wharton & Garrison.

COMMITTEE CONSIDERATION

On March 1, 2000, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported a committee print by a voice vote, a quorum being present. On March 30 and April 4, 2000, the committee met in open session and ordered fa-

vorably reported the bill H.R. 3767 with amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

The committee adopted H.R. 3767 by voice vote. Four amendments also were adopted by voice vote. These were: (1) an amendment by Mr. Smith of Texas changing the deadlines requiring countries in the program to have a machine readable passport from October 1, 2001, to October 1, 2003, and requiring aliens applying for admission under the program to present a machine readable passport from October 1, 2002, to October 1, 2006; (2) an amendment by Ms. Jackson Lee modifying the provisions providing for the reinstatement of countries that have been terminated from the program; (3) an amendment by Mr. Conyers prohibiting the inclusion of refusals based on race, sex, sexual orientation or disability in the calculation of visa refusal rates used for determining the eligibility of a country to be designated as a program country; and (4) an amendment by Mr. Frank including compelling health considerations as a standard for authorizing parole of aliens who apply for admission under the program.

There was one recorded vote during the committee's consideration of H.R. 3767, as follows:

Amendment offered Mr. Conyers to require the Attorney General to conduct a study on the criteria used for selection of program countries. Defeated 9–13.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Sensenbrenner			
Mr. McCollum			
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (TX)		X	
Mr. Gallegly		X	
Mr. Canady		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins			
Mr. Hutchinson	X		
Mr. Pease		X	
Mr. Cannon			
Mr. Rogan		X	
Mr. Graham			
Ms. Bono		X	
Mr. Bachus			
Mr. Scarborough			
Mr. Vitter		X	
Mr. Conyers	X		
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Delahunt	X		
Mr. Wexler			
Mr. Rothman			
Ms. Baldwin	X		
Mr. Weiner			
Mr. Hyde, Chairman		X	
Total	9	13	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the committee believes that the bill will have no cost for the current fiscal year and for the next five fiscal years.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8, clause 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 101. Elimination of Pilot Program Status

Section 101 eliminates the visa waiver program's pilot status and permanently authorizes the program.

Section 201. Extension of Reciprocal Privileges

Countries designated to the visa waiver program must extend reciprocal privileges (visa free admissions for 90 days) to citizens and nationals of the United States. The countries of the European Community (EC) are in the process of establishing a common area for immigrant admissions with uniform standards for entry and dura-

tion of stay. Eventually, foreign visitors who enter the EC will be inspected only once (by the immigration authorities of the country of entry) and be authorized to stay 90 days irrespective of where they travel within the EC. Currently, the United States has separate bilateral reciprocity agreements with all EC countries that participate in the Visa Waiver Program. When the EC implements its uniform standards for duration of stay, the individual bilateral agreements will become unworkable.

Section 201 amends the reciprocity requirement to allow a program country to extend reciprocal treatment to U.S. citizens and nationals either on its own or in conjunction with one or more other countries that have established a common area for immigrant admissions. This change affects only the reciprocity requirement for countries that have already been designated as Visa Waiver Program countries. The individual countries that make up a common area for immigrant admissions must still qualify for designation to the program and meet all requirements for continuing qualification. This change will not in any way impinge on the authority of the Attorney General to rescind the designation of any program country.

Section 202. Machine Readable Passport Program

Section 202 deals with the failure of some Visa Waiver Program countries to take timely action on the requirement to issue a machine readable passport. It also introduces a more precise description of a machine readable passport, requiring that program countries issue a machine readable passport that satisfies "the internationally accepted standard for machine readability." The technical specifications for machine readable passports are set by the International Civil Aviation Organization (ICAO), a United Nations organization. The ICAO specifications are endorsed by the International Organization for Standardization. The machine readable passports of the United States and most other countries issuing machine readable passports meet the ICAO standard.

Subsection (a) requires that, as of October 1, 2006, all aliens traveling on the Visa Waiver Program must present a machine readable passport to be admissible under the program. This requirement will address the situation in which a country designated to the program has introduced a machine readable passport, but still issues some non-machine readable passports.

Subsection (b) requires that new countries designated to the program issue a machine readable passport and imposes a deadline for compliance by countries currently in the program. Program countries that do not currently have a machine readable passport must certify by October 1, 2000, that they have a program to issue machine readable passports and must begin issuing machine readable passports by October 1, 2003.

Section 203. Denial of Program Waiver Based on Ground of Ineligibility

Section 203 makes it more difficult for aliens who are ineligible for admission to the United States to gain admission under the VWPP. It ensures that the program continues to benefit eligible aliens (the vast majority of those who utilize the program) while

not allowing it to become a means for aliens who are ineligible for admission to the United States to circumvent the visa application process.

Subsection (a) requires that all aliens admitted under the Visa Waiver Program be checked against an automated electronic lookout system to determine whether there are any grounds of ineligibility under which the alien may be inadmissible. While alien travelers under the program are already subjected to automated name checks in most instances, section 203(a) makes such name checks a statutory requirement for aliens applying under the Visa Waiver Program and prohibits the Immigration and Naturalization Service from admitting to the United States inadmissible aliens who apply under the program.

Subsection (b) affirms that a visa application is the sole method for an alien to dispute a finding of inadmissibility under the program.

Subsection (c) contains conforming amendments that limit the circumstances under which an alien who is ineligible for admission under the Visa Waiver Program can be paroled into the United States. Parole may not be authorized unless the Attorney General determines there are compelling reasons in the public interest or compelling health concerns that require a particular alien be paroled into the United States.

Section 204. Evaluation of Effect of Country's Participation in Program on Law Enforcement

Section 204 provides mechanisms for evaluating the impact on U.S. law enforcement (including the enforcement of immigration law) and security interests of the designation of a country to participate in the visa waiver program. These changes, in effect, provide statutory sanction to the approach taken by the Attorney General to nominations of the four countries (Greece, Portugal, Singapore and Uruguay) most recently considered for designation to the program. To consider the impact on U.S. law enforcement of the admission of each of the four countries, the Attorney General established an Interagency Working Group (IWG) comprised of representatives of the Department of Justice (Criminal Division), Department of State, INS, FBI, and chaired by the Department Justice's Executive Office of National Security. The IWG developed a comprehensive protocol for evaluating candidate counties and used the protocol to evaluate the four nominated countries.

Subsection (a) deals with the initial designation of a new country to the program. It requires the Attorney General, in consultation with the Secretary of State, to evaluate the effect on the law enforcement and security interests of the United States of the country's designation in the program and to provide a report to the Judiciary Committees of the House and Senate regarding the outcome of such evaluation.

Subsection (b) deals with the continuing designation of countries in the program. It requires the Attorney General, in consultation with the Secretary of State, to periodically (but not less than once every 5 years) evaluate the effect on the law enforcement and security interests of the United States of the country's continued designation in the program and to provide a report to the Judiciary

Committees of the House and Senate regarding the outcome of such evaluation. To ensure that the reports are submitted in a timely manner, there is a provision, effective October 1, 2005, for the automatic termination of the designation of a country for which a report has not been submitted during the preceding 5 years.

Subsection (b) also provides for the emergency termination of a Visa Waiver Program country's designation in the event the country is affected by an emergency situation. Emergency is defined as the overthrow of a democratically elected Government, war, disruptive social unrest, severe economic or financial crisis or any other extraordinary event that threatens the law enforcement (including immigration law) or security interests of the United States.

The expansion of the Visa Waiver Program in recent years to countries that have had only limited experience with democratic institutions or have economies that are vulnerable to severe fluctuations and/or are located in less stable areas of the world has increased the potential for a serious emergency occurring in a program country that could threaten the law enforcement or security interests of the United States. The emergency termination provision would be used in rare instances where, because of emergent circumstances in a program country, there would be an immediate threat to U.S. law enforcement or security interests if the country were to continue participating in the program.

A war emergency would only apply to situations in which hostile military activity occurs on the territory of a program country. It would not apply in situations where a program country participates in an allied military action outside of its territory (such as the Persian Gulf War or recent military actions in Kosovo).

An emergency involving "disruptive social unrest" would apply to a situation in which there was a severe breakdown in law and order affecting a significant portion of a program country's territory. It would not apply in situations involving isolated events lasting for a relatively brief time, although the implications of such isolated, temporary events could be considered during the periodic (five year) review of the country's continued designation to the program.

A "severe economic or financial crisis" would apply to a situation in which a program country experiences a severe economic collapse or a financial meltdown similar to what occurred in Indonesia and several other countries in1998. It would not apply in a situation where a country experiences a cyclical economic recession such as was experienced by Japan and several European countries during the 1990's.

Section 205. Use of Information Technology Systems

This section mandates the establishment of a fully automated system for tracking the entries and departures of aliens who are nationals of a program country and an automated system to share data regarding the inadmissability of aliens who are nationals of a program country.

Subsection (a)(1) mandates the establishment of a fully automated system for tracking the entries and departures of aliens who arrive by sea or air. This system will provide the first functioning mechanism for monitoring compliance with the visa waiver pro-

gram since it was authorized in 1986. The basic technology for such a system is already in place. Many inbound flights already transmit passenger data to the INS electronically via the Advanced Passenger Information System (APIS). Section (a)(1) requires the INS to make similar use of outbound passenger data, thereby eliminating the current reliance on the collection of a paper form from outbound passengers.

The resulting data on entries and departures by visa waiver travelers will be matched. Since more than 98 percent of visa waiver program aliens enter and depart via a participating carrier, a calculation of the number of aliens for each program country for whom there is no record of a departure, should provide a statistically sound basis for determining overstay rates for program countries. The Attorney General is required to make specific recommendations as to how this calculation will be used by October 1, 2004.

Subsection (a)(2) requires the Attorney General and Secretary of State to develop and implement an automated data system that will permit the sharing of information regarding the inadmissability of aliens who are nationals of program countries. It requires that a photograph of the alien, when available, be included in the data transmitted on an ineligible alien. Including a photograph of the alien whenever available will reduce the risk of inadmissible aliens gaining entry to the United States under the visa waiver program. It also will facilitate the entry of legitimate travelers whose biographic data happens to be similar to that of an alien in the INS lookout files.

Section 206. Conditions For Visa Refusal Eligibility

Section 206 prohibits the use of visa refusals which incorporate any procedures or are otherwise based on race, sex, sexual orientation or disability when calculating the visa refusal rate for determining the eligibility of a country for the program.

It would be a violation deep-seated American principles of equality of treatment and fair play to make determinations regarding visa eligibility based on discriminatory criteria. However, this provision does not prohibit a consular officer, when adjudicating a nonimmigrant visa application, from examining the applicant's economic situation, income level, family situation, general life circumstances or other factors affecting the applicant's entitlement to nonimmigrant status under Section 101(a)(15) (B) of the Immigration and Nationality Act.

The political, economic and social situation in the country or region of the applicant's residence also are appropriate factors for a consular officer to consider since they could affect the applicant's entitlement to nonimmigrant status. When considering this provision, the committee specifically excluded refusals based on nationality, place of birth, and place of residence from the list of prohibited refusal criteria because it determined that these are factors that could have a bearing on a visa applicant's entitlement to nonimmigrant status.

AGENCY VIEWS

U.S. DEPARTMENT OF STATE,
Washington, DC, March 30, 2000.

Hon. LAMAR SMITH, *Chairman,*
Subcommittee on Immigration and Claims,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We are pleased to take this opportunity to provide the views of the Department of State on H.R. 3767, the "Visa Waiver Permanent Program Act." The Department supports key concepts of the bill, such as a permanent visa waiver program (VWP), enhanced border security and datasharing, and use of machine-readable passports (MRPs). Our concerns lie with those provisions that could work against the more positive aspects of VWP: promotion of US trade and tourism, enhanced foreign relations with participating countries, and more effective use of State Department resources. Striking the proper balance between competing U.S. interests is an important goal for us in thinking about a permanent visa waiver program.

We agree that a permanent visa waiver regime requires certain safeguards to ensure that a country's continued participation in the program in no way threatens U.S. interests. H.R. 3767 proposes several measures to tighten up the existing program, including requiring VWP visitors to enter the U.S. with a machine-readable passport. The Department agrees with the need for stricter enforcement of MRP requirements, but finds the compliance dates in the bill far too restrictive. While there is no question that some VWPP countries did not make MRP issuance a high enough priority, we expect all VWP countries to be issuing MRPs by 2003. Even countries with longstanding programs, however, will need more than two years to issue MRPs to all their citizens who wish to travel to the U.S. under the visa waiver program.

The U.S. itself does not issue MRPs to all its citizens because of the high cost of installing the required machinery at all consular posts abroad. (Currently 1.5 percent of passports issued to U.S. citizens are not machine-readable.) Similarly, many VWP countries do not issue MRPs at all their overseas posts.

Another consideration is that passports are generally valid for ten years, which means there will be a mix of passport types in circulation until all non-machine readable passports have expired and been replaced with machine-readable versions. One and a half percent of the 50 million U.S. passports currently in circulation are not machine-readable—some 750,000 documents. These passports were issued before MRPs were available and have not yet expired. All VWPP countries face a similar situation. We need to provide passport agencies in VWP countries sufficient lead time to plan for and respond to the increase in demand for MRPs that would occur under H.R. 3767. Ideally, we would grant countries ten years to issue MRPs to all their citizens. If this is not possible, we strongly urge that the compliance dates in the bill, October 1, 2001, for issuance of MRPs, and October 1, 2002, for all VWP travelers to enter on a MRP, be changed to October 1, 2003, and October 1, 2008, respectively.

From a resource perspective, we are concerned about provisions for precipitous removal of a country from the program. We realize that border security concerns are behind these proposed measures, but want to be clear about the severe resource implications for the Department if a country suddenly loses its visa waiver status. Our immediate capacity to issue large numbers of visas in the affected country would be overwhelmed. The Department would require at least three years to reallocate permanent resources to a country that was suddenly removed from the program. We would have to rely on temporary duty (TDY) assistance and other types of more expensive staffing solutions in the interim.

The Department agrees that major destabilizing events inside a VWP country should have a bearing on that country's continued designation. We believe that this type of situation can be addressed through the general authority given the Attorney General under current law or as proposed under section 204(C)(i) of H.R. 3767.

Periodic reviews of a VWP country's performance are an important part of a permanent program. The VWP interagency group agrees on the need to monitor a country's performance and is looking at ways to incorporate this type of review into its protocol. The Department finds the automatic rescission clause of the reporting requirement unnecessary and unduly harsh on the affected VWP country.

Thank you for your consideration of these matters. A permanent visa waiver program that promotes the full range of US interests—border security, enhanced foreign relations with friends and allies, increased trade and tourism, and more efficient government—is a high priority for the Department. We would be pleased to continue working with the Congress on provisions of concern in H.R. 3767.

Sincerely,

BARBARA LARKIN, *Assistant Secretary,*
Legislative Affairs.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, March 30, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice on H.R. 3767, the "Visa Waiver Permanent Program Act." We are pleased that H.R. 3767 permanently authorizes the Visa Waiver Pilot Program ("VWPP"). We have concerns, however, about several provisions contained in this bill and cannot fully endorse it as written. Generally, the time frames for provisions concerning automated databases appear to be overly ambitious. In addition, we believe this bill can be strengthened by the inclusion of certain provisions that are designed to ensure the future program meets the law enforcement and national security interests of the United States. The first section below contains comments that address our specific concerns with H.R. 3767. Following those comments, we offer additional measures that we believe would safeguard the integrity of the future visa waiver program.

SPECIFIC BILL COMMENTS

Section 1 of the bill would make the Visa Waiver Pilot Program a permanent program. We support a permanent visa waiver program. However, we believe that a permanent authorization for the program should have provisions to strengthen its integrity. First, we believe Congress should provide added safeguards to protect the law enforcement and national security interests of the United States. Below, we offer several proposals intended to enhance the Government's law enforcement and national security interests with respect to visa waiver travel to the United States. In addition, we believe that the bill should include a provision permitting the Attorney General to temporarily suspend country participation in the waiver program.

In section 101(a)(2)(C), the word "period" should be inserted in the quotation after "program" and just before the parenthetical.

Section 201 of the bill would expand the definition of reciprocal privileges. The INS defers to the Department of State on this issue.

As amended, section 202(b) would require each participant country to issue a machine-readable passport no later than October 1, 2003. We support a date certain for the issuance of machine-readable passports. However, we believe that the Attorney General, in consultation with the Secretary of State, should determine the date upon which a participant country should meet this condition. The reference to "[s]ection 217(c)" should be corrected to reference section 217(c)(2)(B).

Section 203(b) of the bill specifies that a visa application is the sole method to dispute denial of a waiver based on a ground of inadmissibility. Although we support requiring that an alien refused admission under the program apply for a visa in order to enter the United States, we are concerned about the clause that requires that the ground of inadmissibility be uncovered "through a written or verbal statement by the alien or a use of an automated electronic database required under subsection (a)(9)." This provision, as written, will unduly hamper immigration officers because facts evidencing an alien's inadmissibility are often uncovered through sources other than the alien's statements or an automated database check. For example, an alien's inadmissibility may be uncovered during a luggage search where documents secreted in a suitcase reveal that the alien has an overseas criminal conviction or that he is entering the United States to live and work permanently. In addition, reliable information from the alien's friend or family member may clearly evidence that the alien is traveling to the United States to reside permanently. With respect to the nonreviewability clause in contained in section 203(b) (prohibiting review of any denial of admission), the current VWPP is designed to achieve the goal of nonreviewability except in asylum cases. The limited nonreviewability provision in this bill could be read to suggest that there is a right to administrative or judicial review in other non-asylum VWPP denials. Current provisions in section 217 of the INA adequately address this issue.

Section 203(c) of the bill divests the Attorney General of authority to parole an alien for urgent humanitarian purposes. We strongly oppose this provision. Currently, the Attorney General may, on

a case-by-case basis, parole an alien for urgent humanitarian reasons or for significant public benefit. Parole requests under the Visa Waiver Permanent Program likely will arise where parole is necessary for compassionate family or medical situations. Such emergencies fail to meet the public interest standard; rather, these circumstances meet the urgent humanitarian interest standard.

Section 204(b) also requires immediate rescission of country participation in the visa waiver program when emergencies occur. We propose amending the emergency rescission language (indicated in italics) to read, "In the case of a program country in which an emergency occurs that the Attorney General, in consultation with the Secretary of State, determines *would compromise* the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States) *if designation of that country were not immediately rescinded*, the Attorney General shall immediately rescind the designation of the country as a program country."

Section 205(a) refers to an amendment made earlier in the bill by section 203(b)(2), but there is no 203(b)(2) in the bill. Perhaps, the drafters meant to refer to section 203(b).

Section 205(a) of the bill would require the development and implementation of an automated entry-exit control system at airports and seaports. We support this provision for airports but oppose it for seaports. The time frame, however, for developing such an airport system is unworkable, and no resources are authorized to implement this provision. Although we support an October 2004 deadline for developing this system, funding must be appropriated because such a system depends upon further database enhancements and the automated I–94 system.

Section 205(a) also would require air and sea carrier data collection. The data requirements under this provision should be compatible with our automated I–94 system to ensure that arrival records can be matched with departure records.

Section 205(a) of the bill would require an automated data sharing system. We support the provisions concerning data sharing with the Department of State. Appropriate funding to support this provision will have to be provided to both agencies.

ADDITIONAL PROPOSALS FOR A FUTURE VISA WAIVER PROGRAM

Initial Qualifications for the Permanent Program

All citizens of visa waiver countries benefit from being in the visa waiver program, regardless of where those citizens reside. Therefore, it is essential that worldwide nonimmigrant visitor visa refusal rates be used to determine which countries might initially qualify for the program. It is common practice for individuals who obtain fraudulent passports to apply for nonimmigrant visas outside the country identified by the passport.

As a distinct qualification criterion entry into the permanent program, we propose a United States border interception rate of less than .20 percent (2 out of every 1000), which would apply to applicants for admission who were not admitted at the initial port-of-entry. This criterion should include a method to account for the risk posed by third country nationals fraudulently using a partici-

pant country's passport at the time of application for admission at a United States port-of-entry. It should reflect that some nations have a low volume of admissions to the United States and that therefore the overall number of incidents of fraud perpetrated by third-country nationals may be misleading because of the small number of travelers.

Continuing Qualification

We favor a separate provision that automatically would trigger review of a country whose passport is abused by third country nationals. This would enable the United States to review visa waiver privileges from any country unable to implement adequate controls over its passports and their issuance.

Finally, we urge removal of the probationary status provisions from the current statute. The current probationary provision simply provides sanction for a high-risk country to continue to participate in the program. Instead, we advocate provisions that would allow the Attorney General, with notification to the Secretary of State, to revoke or suspend a country's privilege under the VWPP to quickly address law enforcement or national security concerns. In today's world, we must be able to adjust to rapidly changing circumstances as quickly as possible. We also support a suspension provision in addition to the rescission provisions.

Thank you for the opportunity to express the Department's views. Please do not hesitate to call upon my office if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

ROBERT RABEN, *Assistant Attorney General.*

Identical letter sent to the Honorable John Conyers, Jr., Ranking Minority Member

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

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TITLE II—IMMIGRATION

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CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

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GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) * * *

* * * * * * *

(7) DOCUMENTATION REQUIREMENTS.—

(A) * * *

* * * * * * *

(B) NONIMMIGRANTS.—

(i) * * *

* * * * * * *

(iv) VISA WAIVER [PILOT] PROGRAM.—For authority to waive the requirement of clause (i) under a [pilot] program, see section 217.

* * * * * * *

(d)(1) * * *

* * * * * * *

(5)(A) The Attorney General may, except as provided in [subparagraph (B)] *subparagraph (B) or (C)* or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

* * * * * * *

(C) The Attorney General may not parole into the United States an alien who has applied under section 217 for a waiver of the visa requirement, and has been denied such waiver by reason of a ground of inadmissibility uncovered through a written or verbal statement by the alien or a use of an automated electronic database required under section 217(a)(9), unless the Attorney General determines that compelling reasons in the public interest, or compelling

health considerations, with respect to that particular alien require that the alien be paroled into the United States.

* * * * * * *

VISA WAIVER [PILOT] PROGRAM FOR CERTAIN VISITORS

SEC. 217. (a) ESTABLISHMENT OF [PILOT] PROGRAM.—The Attorney General and the Secretary of State are authorized to establish a [pilot] program (hereinafter in this section referred to as the "[pilot] program") under which the requirement of paragraph (7)(B)(i)(II) of section 212(a) may be waived by the Attorney General, in consultation with the Secretary of State, and in accordance with this section, in the case of an alien who meets the following requirements:

(1) SEEKING ENTRY AS TOURIST FOR 90 DAYS OR LESS.—The alien is applying for admission during the [pilot program period (as defined in subsection (e))] *program* as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding 90 days.

(2) NATIONAL OF [PILOT] PROGRAM COUNTRY.—The alien is a national of, and presents a passport issued by, a country which—

(A) extends (or agrees to extend)*, either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions,* reciprocal privileges to citizens and nationals of the United States, and

(B) is designated as a pilot program country under subsection (c).

(3) MACHINE READABLE PASSPORT.—On and after October 1, 2006, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.

[(3)] *(4)* EXECUTES IMMIGRATION FORMS.—The alien before the time of such admission completes such immigration form as the Attorney General shall establish.

[(4)] *(5)* ENTRY INTO THE UNITED STATES.—If arriving by sea or air, the alien arrives at the port of entry into the United States on a carrier which has entered into an agreement with the Service to guarantee transport of the alien out of the United States if the alien is found inadmissible or deportable by an immigration officer.

[(5)] *(6)* NOT A SAFETY THREAT.—The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

[(6)] *(7)* NO PREVIOUS VIOLATION.—If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

[(7)] *(8)* ROUND-TRIP TICKET.—The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Attorney General under regulations).

(9) AUTOMATED SYSTEM CHECK.—The identity of the alien has been checked using an automated electronic database containing information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found.

(b) WAIVER OF RIGHTS.—An alien may not be provided a waiver under the [pilot] program unless the alien has waived any right—

(1) * * *

* * * * * * *

(c) DESIGNATION OF [PILOT] PROGRAM COUNTRIES.—

(1) IN GENERAL.—The Attorney General, in consultation with the Secretary of State, may designate any country as a [pilot] program country if it meets the requirements of paragraph (2).

(2) QUALIFICATIONS.—Except as provided in subsection [(g)] *(f)*, a country may not be designated as a [pilot] program country unless the following requirements are met:

(A) * * *

* * * * * * *

[(B) MACHINE READABLE PASSPORT PROGRAM.—The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.

[(C) LAW ENFORCEMENT INTERESTS.—The Attorney General determines that the United States law enforcement interests would not be compromised by the designation of the country.]

(B) MACHINE READABLE PASSPORT PROGRAM.—

(i) IN GENERAL.—Subject to clause (ii), the government of the country certifies that it issues to its citizens machine-readable passports that satisfy the internationally accepted standard for machine readability.

(ii) DEADLINE FOR COMPLIANCE FOR CERTAIN COUNTRIES.—In the case of a country designated as a program country under this subsection prior to May 1, 2000, as a condition on the continuation of that designation, the country—

(I) shall certify, not later than October 1, 2000, that it has a program to issue machine-readable passports to its citizens not later than October 1, 2003; and

(II) shall satisfy the requirement of clause (i) not later than October 1, 2003.

(C) LAW ENFORCEMENT AND SECURITY INTERESTS.—The Attorney General, in consultation with the Secretary of State—

(i) evaluates the effect that the country's designation would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States);

(ii) determines that such interests would not be compromised by the designation of the country; and

(iii) submits a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate regarding the country's qualification for designation that includes an explanation of such determination.

(3) CONTINUING AND SUBSEQUENT QUALIFICATIONS.—For each fiscal year [(within the pilot program period)] after the initial period—

(A) CONTINUING QUALIFICATION.—In the case of a country which was a [pilot] program country in the previous fiscal year, a country may not be designated as a [pilot] program country unless the sum of—

(i) * * *

* * * * * * *

(B) NEW COUNTRIES.—In the case of another country, the country may not be designated as a [pilot] program country unless the following requirements are met:

* * * * * * *

(5) WRITTEN REPORTS ON CONTINUING QUALIFICATION; DESIGNATION TERMINATIONS.—

(A) PERIODIC EVALUATIONS.—

(i) IN GENERAL.—The Attorney General, in consultation with the Secretary of State, periodically (but not less than once every 5 years)—

(I) shall evaluate the effect of each program country's continued designation on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States);

(II) shall determine whether any such designation ought to be continued or terminated under subsection (d); and

(III) shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate regarding the continuation or termination of the country's designation that includes an explanation of such determination and the effects described in subclause (I).

(ii) EFFECTIVE DATE.—A termination of the designation of a country under this subparagraph shall take effect on the date determined by the Attorney General, but may not take effect before the end of the 30-day period beginning on the date on which notice of the termination is published in the Federal Register.

(iii) REDESIGNATION.—In the case of a termination under this subparagraph, the Attorney General shall redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Attorney General, in consultation with the Sec-

retary of State, determines that all causes of the termination have been eliminated.

(B) AUTOMATIC TERMINATION.—

(i) REQUIREMENT.—On and after October 1, 2005, the designation of any program country with respect to a report described in subparagraph (A)(i)(III) has not been submitted in accordance with such subparagraph during the preceding 5 years shall be considered terminated.

(ii) EFFECTIVE DATE.—A termination of the designation of a country under this subparagraph shall take effect on the last day of the 5-year period described in clause (i).

(iii) REDESIGNATION.—In the case of a termination under this subparagraph, the Attorney General shall redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the required report is submitted, if the report includes a determination by the Attorney General that the country should continue as a program country.

(C) EMERGENCY TERMINATION.—

(i) IN GENERAL.—In the case of a program country in which an emergency occurs that the Attorney General, in consultation with the Secretary of State, determines threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States), the Attorney General shall immediately terminate the designation of the country as a program country.

(ii) DEFINITION.—For purposes of clause (i), the term "emergency" means—

(I) the overthrow of a democratically elected government;

(II) war (including undeclared war, civil war, or other military activity);

(III) disruptive social unrest;

(IV) a severe economic or financial crisis; or

(V) any other extraordinary event that threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States).

(iii) REDESIGNATION.—The Attorney General may redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Attorney General determines that—

(I) at least 6 months have elapsed since the effective date of the termination;

(II) the emergency that caused the termination has ended; and

(III) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the period of termination under this

subparagraph was less than 3.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such period.

(D) TREATMENT OF NATIONALS AFTER TERMINATION.—For purposes of this paragraph—

(i) nationals of a country whose designation is terminated under subparagraph (A), (B), or (C) shall remain eligible for a waiver under subsection (a) until the effective date of such termination; and

(ii) a waiver under this section that is provided to such a national for a period described in subsection (a)(1) shall not, by such a designation termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.

(6) COMPUTATION OF VISA REFUSAL RATES.—For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, sexual orientation, or disability, unless otherwise specifically authorized by law or regulation.

* * * * * * *

(e) CARRIER AGREEMENTS.—

(1) IN GENERAL.—The agreement referred to in subsection (a)(4) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the [pilot] program—

(A) * * *

(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the [pilot] program, [and]

(C) to be subject to the imposition of fines resulting from the transporting into the United States of a national of a designated country without a passport pursuant to regulations promulgated by the Attorney General[.]*, and*

(D) to collect, provide, and share passenger data as required under subsection (h)(1)(B).

* * * * * * *

[(f) DEFINITION OF PILOT PROGRAM PERIOD.—For purposes of this section, the term "pilot program period" means the period beginning on October 1, 1988, and ending on April 30, 2000.]

[(g)] *(f)* DURATION AND TERMINATION OF DESIGNATION.—

(1) IN GENERAL.—

(A) DETERMINATION AND NOTIFICATION OF DISQUALIFICATION RATE.—Upon determination by the Attorney General that a [pilot] program country's disqualification rate is 2 percent or more, the Attorney General shall notify the Secretary of State.

* * * * * * *

(C) TERMINATION OF DESIGNATION.—Subject to paragraph (3), if the program country's disqualification rate is 3.5 percent or more, the Attorney General shall terminate the country's designation as a [pilot] program country effective at the beginning of the second fiscal year following the fiscal year in which the determination under subparagraph (A) is made.

(2) TERMINATION OF PROBATIONARY STATUS.—

(A) IN GENERAL.—If the Attorney General determines at the end of the probationary period described in paragraph (1)(B) that the program country placed in probationary status under such paragraph has failed to develop a machine-readable passport program as required by section (c)(2)(C), or has a disqualification rate of 2 percent or more, the Attorney General shall terminate the designation of the country as a [pilot] program country. If the Attorney General determines that the program country has developed a machine-readable passport program and has a disqualification rate of less than 2 percent, the Attorney General shall redesignate the country as a [pilot] program country.

* * * * * * *

(3) NONAPPLICABILITY OF CERTAIN PROVISIONS.—Paragraph (1)(C) shall not apply unless the total number of nationals of a [pilot] program country described in paragraph (4)(A) exceeds 100.

(4) DEFINITION.—For purposes of this subsection, the term "disqualification rate" means the percentage which—

(A) the total number of nationals of the [pilot] program country who were—

* * * * * * *

(g) VISA APPLICATION SOLE METHOD OF DISPUTING GROUND OF INADMISSIBILITY FOUND IN AUTOMATED SYSTEM.—In the case of an alien denial a waiver under the program by reason of a ground of inadmissibility uncovered through a written or verbal statement by the alien or a use of an automated electronic database required under subsection (a)(9), the alien may apply for a visa at an appropriate consular office outside the United States. There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.

(h) USE OF INFORMATION TECHNOLOGY SYSTEMS.—

(1) AUTOMATED ENTRY-EXIT CONTROL SYSTEM.—

(A) SYSTEM.—Not later than October 1, 2001, the Attorney General shall develop and implement a fully automated entry and exit control system that will collect a record of arrival and departure for every alien who arrives by sea or air at a port of entry into the United States and is provided a waiver under the program.

(B) REQUIREMENTS.—The system under subparagraph (A) shall satisfy the following requirements:

(i) DATA COLLECTION BY CARRIERS.—Not later than October 1, 2001, the records of arrival and departure

described in subparagraph (A) shall be based, to the maximum extent practicable, on passenger data collected and electronically transmitted to the automated entry and exit control system by each carrier that has an agreement under subsection (a)(4).

(ii) DATA PROVISION BY CARRIERS.—Not later than October 1, 2002, no waiver may be provided under this section to an alien arriving by sea or air at a port of entry into the United States on a carrier unless the carrier is electronically transmitting to the automated entry and exit control system passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out this paragraph.

(iii) CALCULATION.—The system shall contain sufficient data to permit the Attorney General to calculate, for each program country and each fiscal year, the portion of nationals of that country who are described in subparagraph (A) and for whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

(C) REPORTING.—

(i) PERCENTAGE OF NATIONALS LACKING DEPARTURE RECORD.—Not later than January 30 of each year (beginning with the year 2003), the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the calculation described in subparagraph (B)(iii) for each program country for the previous fiscal year.

(ii) SYSTEM EFFECTIVENESS.—Not later than October 1, 2004, the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

(I) The conclusions of the Attorney General regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

(II) The recommendations of the Attorney General regarding the use of the calculation described in subparagraph (B)(iii) as a basis for evaluating whether to terminate or continue the designation of a country as a program country.

(2) AUTOMATED DATA SHARING SYSTEM.—

(A) SYSTEM.—The Attorney General and the Secretary of State shall develop and implement an automated data sharing system that will permit them to share data in electronic form from their respective records systems regarding the admissibility of aliens who are nationals of a program country.

(B) REQUIREMENTS.—The system under subparagraph (A) shall satisfy the following requirements:

(i) SUPPLYING INFORMATION TO IMMIGRATION OFFICERS CONDUCTING INSPECTIONS AT PORTS OF ENTRY.—

Not later than October 1, 2002, the system shall enable immigration officers conducting inspections at ports of entry under section 235 to obtain from the system, with respect to aliens seeking a waiver under the program—

(I) any photograph of the alien that may be contained in the records of the Department of State or the Service; and

(II) information on whether the alien has ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

(ii) SUPPLYING PHOTOGRAPHS OF INADMISSIBLE ALIENS.—The system shall permit the Attorney General electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a national of a program country and has been determined to be ineligible to receive a visa.

(iii) MAINTAINING RECORDS ON APPLICATIONS FOR ADMISSION.—The system shall maintain, for a minimum of 10 years, information about each application for admission made by an alien seeking a waiver under the program, including the following:

(I) The name of each immigration officer conducting the inspection of the alien at the port of entry.

(II) Any information described in clause (i) that is obtained from the system by any such officer.

(III) The results of the application.

* * * * * * *

ADDITIONAL VIEWS

We take this opportunity to express our additional views on the committee's consideration of amendments offered to prohibit the use of discriminatory profiling in the adjudication of visa applications and to study the problem of using visa refusal rates as a criterion to determine eligibility for the Visa Waiver Program.

In particular, we are deeply troubled by demonstrable evidence of discriminatory and unlawful profiling in the adjudication of visa applications. U.S. District Court Judge Stanley Sporkin determined in the case of *Olsen* v. *Albright*[1] that the U.S. Consulate General in Sao Paulo, Brazil based its nonimmigrant visa determinations in large part on the applicants' race, ethnicity or national origin. Judge Sporkin correctly concluded: "The principle that government must not discriminate against particular individuals because of the color of their skin or the place of their birth means that the use of generalizations based on these factors is unfair and unjustified." In addition, we are concerned that the use of visa refusal rates as a criterion to determine eligibility for the Visa Waiver Program has a discriminatory impact on African and Caribbean nations.

In an effort to respond to these concerns, two amendments were offered to H.R. 3767:

Conditions for Visa Refusal Eligibility

The unlawful practices found at the U.S. Consulate General in Sao Paulo call into question the use of visa refusal rates as a criterion in the Visa Waiver Program. Judge Sporkin identified numerous instances of unlawful profiling in adjudicating visas in the *Olsen* decision. For example, Korean and Chinese nationals were rarely to be issued visas unless they were older and had previously received a visa. According to the Consular Section Head, "Filipinos and Nigerians have high fraud rates, and their applications should be viewed with extreme suspicion, while British and Japanese citizens rarely overstay, and generally require less scrutiny." Further, identifying cities "known for fraud" (most with predominantly black populations), the Consulate's manual stated that "anyone born in these locations is suspect unless older, well-traveled, etc."

We are greatly concerned that certain countries have not been able to qualify under the Visa Waiver Program because visas are wrongly refused based on generalizations stemming from a person's race, sex, national origin or other discriminatory factors.[2] Therefore, Rep. Conyers offered an amendment to ensure that Consulates and Embassies abroad adjudicate nonimmigrant visas

[1] 990 F. Supp. 31 (D.C.D.C. Dec. 1997)

[2] Under the Visa Waiver Program, the selection of countries to participate in the program includes the consideration of a country's refusal rate, which is the rate at which applications for nonimmigrant visas are denied. The standard for eligibility is a refusal rate that is lower than 3% for the two-year period preceding the application.

based on the merits of the applications, and not on the basis of "race, sex, sexual orientation, disability, nationality, place of birth or place of residence, unless otherwise specifically authorized by law or regulation." The purpose of the offered amendment is to ensure that Embassies and Consulates do not engage in the types of practices described by Judge Sporkin in *Olsen*.

The committee agreed to a revised amendment to prohibit the adjudication of visas on the basis of race, sex, sexual orientation, or disability, unless otherwise specified by law or regulation. We are supportive of the committee's agreement to this amendment because it codifies into law what already should be the practice of the State Department.

However, it should be, and in our view is clear, that the decision to remove "nationality, place of birth, or place of residence" does not give consular officers discretion to discriminate on these bases. The *Olsen* decision confirms that the use of generalizations based on nationality, place of birth or place of residence is unfair, unjustified and contrary to law.

This amendment makes it clear to the U.S. Consulates and Embassies abroad that it is a violation of U.S. law for visa refusals to occur based on generalizations that by their very nature are not applicable to the individual application. The amendment is intended to ensure that Embassies and Consulates adjudicate visas based on the merits of the applications, and not on the basis of irrelevant and harmful discriminatory stereotypes.

Report on Impact of Use of Visa Refusal Rates on Selection of Countries

Under the Visa Waiver Program, the selection of countries to participate in the program includes the consideration of a country's refusal rate. This amendment offered by Reps. Conyers and Jackson Lee would have required the Attorney General to study whether the use of visa refusal rates in determining the eligibility of countries in the Visa Waiver Program has a discriminatory impact as well as whether there is a connection between visa rejection rates and the overstay rates.

The visa refusal rate is not a relevant statistic in determining eligibility for the Visa Waiver Program. The pertinent question should be whether the past practices of the country's citizens indicate a tendency to remain in the United States beyond the terms of their visas. The refusal rate is simply not sufficiently probative of that fact. The overstay rates for a country would be a far more relevant consideration for determining eligibility to participate in the Visa Waiver Program. Not a single African or Caribbean country currently is eligible for the Visa Waiver Program and we continue to believe that a study is urgently needed to determine why this situation exists. We regret that the Majority chose to reject this common sense amendment.

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