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Summary

The November 13, 2015, terrorist attacks in Paris have refocused attention on U.S. visa issuance and national security screening procedures that undergird the admission of foreign nationals to the United States. The visa issuance process is widely recognized as an integral part of immigration control and border security. Foreign nationals (i.e., aliens) not already legally residing in the United States who wish to come to the United States generally must obtain a visa to be admitted. The foreign national must establish that he/she is qualified for the visa under one of the various admission criteria. He or she must also establish that he/she is not ineligible for the visa due to one or more of the legal bars to admission. Applying for a visa is the first gateway for foreign nationals to seek admission to the United States, and the data collected as part of that process forms the core of the biometric and associated biographic data that the United States collects on foreign nationals.

The visa applicant is required to submit his or her photograph and fingerprints, as well as full name (and any other name used or by which he or she has been known), age, gender, and the date and place of birth. Depending on the visa category, certain documents must be certified by the proper government authorities (e.g., birth certificates and marriage licenses). All prospective lawful permanent residents (LPRs) must submit to physical and mental examinations, and prospective nonimmigrants also may be required to have physical and mental examinations.

Consular officers use the Consular Consolidated Database (CCD), a biometric and biographic database, to screen visa applicants. Records of all visa applications are now automated in the CCD, with some records dating back to the mid-1990s. Since February 2001, the CCD has stored photographs of all visa applicants in electronic form; since 2007, the CCD has begun storing 10-finger scans. The system links with other databases to flag problems that may have an impact on the issuance of the visa.

For some years, consular officers have been required to check the background of all aliens in the "lookout" databases, specifically the Consular Lookout and Support System (CLASS) database, which contained over 42.5 million records in 2012. Consular officers use name-searching algorithms to ensure matches between names of visa applicants and any derogatory information contained in CLASS. Since 2013, U.S. consular officials have partnered with the National Counterterrorism Center (NCTC) to utilize the Terrorist Identities Datamart Environment (TIDE) on known and suspected terrorists and terrorist groups.

Preventing terrorist travel to the United States is front and center after the coordinated terrorist attacks at six locations in Paris on November 13, 2015, left at least 129 people dead and over 350 injured. Congressional oversight of visa security is ongoing, and possible legislative reforms are under consideration. Visa security provisions are included in Title IV of the Michael Davis, Jr. in Honor of State and Local Law Enforcement Act (H.R. 1148), which the House Committee on the Judiciary ordered reported on March 18, 2015.

At its core, visa integrity protects the United States from foreign nationals who threaten public health and safety or national security, while at the same time welcomes legitimate foreign nationals who bolster the U.S. economy and foster international exchanges. Balancing these dual, and some would say competing, missions is an ongoing challenge. The policy questions center on the efficacy of the process, the security features of the policies, and whether the law needs to be revised to improve efficiency and strengthen security.

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Introduction

The November 13, 2015, terrorist attacks in Paris have refocused attention on U.S. visa issuance and national security screening procedures that undergird the admission of foreign nationals to the United States.[1] The visa issuance process is widely recognized as an integral part of immigration control and border security. Foreign nationals (i.e., aliens) not already legally residing in the United States who wish to come to the United States generally must obtain a visa to be admitted.[2] The foreign national must establish that he/she is qualified for the visa under one of the various admission criteria. He or she must also establish that he/she is not ineligible for the visa due to one or more of the legal bars to admission. Applying for a visa is the first gateway for foreign nationals to seek admission to the United States, and the data collected as part of that process forms the core of the biometric and associated biographic data that the United States collects on foreign nationals.

Under current law, two departments—the Department of State (DOS) and the Department of Homeland Security (DHS)—play key roles in administering the law and policies on immigration visas.[3] DOS's Bureau of Consular Affairs (Consular Affairs) is responsible for issuing visas, DHS's Citizenship and Immigration Services Bureau (USCIS) is charged with approving immigrant petitions (and nonimmigrant petitions stateside), DHS's Immigration and Customs Enforcement (ICE) operates the Visa Security Program in selected embassies abroad, and DHS's Customs and Border Protection Bureau (CBP) is tasked with inspecting all people who enter the United States.

Today's visa issuance policy dates back to 1924, when Congress first passed legislation assigning consular officers with the responsibility to approve or deny visas.[4] The Immigration Act of 1924 codified a decree in 1917 as a consequence of World War I that proclaimed aliens must present certain documents as a prerequisite to entering the United States. When the Senate Committee on the Judiciary was tasked with investigating the immigration system in 1947,[5] their report offered the following observation:

> After a study of this problem, the Congress provided in the Immigration Act of 1924 for a double check of aliens by separate independent agencies of the Government, first by consular officers before the visas were issued, and by immigration officers after the aliens reached the port of entry. If a double check was essential 25 years ago to protect the United States against criminals or other undesirables, it is the opinion of the subcommittee that it is even more necessary in the present critical condition of the world to use the double check to screen aliens seeking to enter the United States.[6]

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[1] CRS Insight IN10209, *European Security, Islamist Terrorism, and Returning Fighters*, by Kristin Archick and Paul Belkin.

[2] Authorities to except or to waive visa requirements are specified in law, such as the broad parole authority of the Attorney General under §212(d)(5) of Immigration and Nationality Act (INA) and the specific authority of the Visa Waiver Program in §217 of INA. CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

[3] Other departments, notably the Department of Labor (DOL), and the Department of Agriculture (USDA), play roles in the approval process depending on the category or type of visa sought, and the Department of Health and Human Services (DHHS) sets policy on the health-related grounds for inadmissibility discussed below. The Department of Justice's Executive Office for Immigration Review (EOIR) has a significant policy role through its adjudicatory decisions on specific immigration cases.

[4] Immigration Act of May 26, 1924; 43 Stat. 153.

[5] During the 80th Congress, Senate Resolution 137, which passed on July 26, 1947, directed the Senate Committee on the Judiciary to make a full and complete investigation of the entire immigration system.

[6] U.S. Congress, Senate Committee on the Judiciary, *The Immigration and Naturalization Systems of the United States,*

This view prevailed in 1952 when Congress codified the various statutes on immigration and nationality into the Immigration and Nationality Act of 1952 (P.L. 82-414), which remains the basis of governing law.

At its core, visa integrity protects the United States from foreign nationals who threaten public health and safety or national security, while at the same time welcomes legitimate foreign nationals who bolster the U.S. economy and foster international exchanges. Balancing these dual, and some would say competing, missions is an ongoing challenge.[7] The policy questions center on the efficacy of the process, the security features of the policies, and whether the law needs to be revised to improve efficiency and strengthen security.

The report opens with an overview of visa issuance policy. It then explains the key provisions that guide the documentary requirements and approval/disapproval process. The section on consular screening procedures includes an analysis of trends over time in denying visas. Visa revocation, a reoccurring issue of concern to Congress, and the visa security program are discussed as well.

Overview on Visa Issuances

There are two broad classes of aliens that are issued visas: immigrants and nonimmigrants. Humanitarian admissions, such as asylees, refugees, parolees and other aliens granted relief from deportation, are handled separately under the Immigration and Nationality Act (INA). Persons granted asylum or refugee status are ultimately eligible to become legal permanent residents (LPRs).[8] Illegal aliens or unauthorized aliens include those noncitizens who entered the United States without an official inspection at a port of entry, entered with fraudulent documents, or who violated the terms of their visas after entering the United States.

Immigrant Visas

Aliens who wish to come to live permanently in the United States must meet a set of criteria specified in the INA. They must qualify as

- a spouse or minor child of a U.S. citizen;
- a parent, adult child, or sibling of an adult U.S. citizen;
- a spouse or minor child of a legal permanent resident;
- an employee that a U.S. employer has gotten approval from the Department of Labor to hire;
- a person of extraordinary or exceptional ability in specified areas;
- a refugee or asylee determined to be fleeing persecution;
- winner of a visa in the diversity lottery; or

report pursuant to S. Res.137, committee print, 81st Cong., 2nd sess., April 20, 1950.

[7] These goals are comparable to the twofold mission of the CBP port-of-entry border inspections process. For further discussion of border inspections, see CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*, by Lisa Seghetti.

[8] For background and further discussion of humanitarian cases, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno; CRS Report R41753, *Asylum and "Credible Fear" Issues in U.S. Immigration Policy*, by Ruth Ellen Wasem; and CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*, by Lisa Seghetti, Karma Ester, and Ruth Ellen Wasem.

- a person having met other specialized provisions of law.[9]

Petitions for immigrant (i.e., LPR) status are first filed with USCIS by the sponsoring relative or employer in the United States. If the prospective immigrant is already residing in the United States, the USCIS handles the entire process, which is called "adjustment of status." If the prospective LPR does not have legal residence in the United States, the petition is forwarded to Consular Affairs in their home country after USCIS has reviewed it. The Consular Affairs officer (when the alien is coming from abroad) and USCIS adjudicator (when the alien is adjusting status in the United States) must be satisfied that the alien is entitled to the immigrant status.

Nonimmigrant Visas

Foreign nationals who seek to come to the United States temporarily rather than to live permanently are known as nonimmigrants.[10] These aliens are admitted to the United States for a temporary period of time and for an expressed reason. There are 24 major nonimmigrant visa categories, and over 70 specific types of nonimmigrant visas are issued currently. Most of these nonimmigrant visa categories are defined in §101(a)(15) of the INA. These visa categories are commonly referred to by the letter and numeral that denotes their subparagraph in §101(a)(15), e.g., B-2 tourists, F-1 foreign students, H-1B temporary professional workers, or J-1 cultural exchange participants.

Most visitors, however, enter the United States without nonimmigrant visas through the Visa Waiver Program (VWP). This provision of the INA allows the Attorney General to waive the visa documentary requirements for aliens coming as visitors from 38 countries. Since aliens entering through VWP do not have visas, CBP inspectors at the port of entry perform the background checks and admissibility reviews.[11]

Key Provisions

The documentary requirements for visas are stated in §§221-222 of the INA, with some discretion for further specifications or exceptions by regulation. Generally, the application requirements are more extensive for aliens who wish to permanently live in the United States than those coming for visits. The amount of paperwork required and the length of adjudication process to obtain a visa to come to the United States are analogous to that of the Internal Revenue Service's (IRS's) tax forms and review procedures. Just as persons with uncomplicated earnings and expenses may file an IRS "short form" while those whose financial circumstances are more complex may file a series of IRS forms, so too an alien whose situation is straightforward and whose reason for seeking a visa is easily documented generally has fewer forms and procedural hurdles than an alien whose circumstances are more complex. The visa application files must be stored in an electronic database that is available to immigration adjudicators and immigration officers in DHS. There are over 70 U.S. Citizenship and Immigration Services (USCIS) forms as well as DOS forms that pertain to the visa issuance process.

The visa issuance procedures delineated in the statute require the petitioner to submit his or her photograph, as well as full name (and any other name used or by which he or she has been

[9] For a more complete discussion of LPR categories and a statistical analysis of admissions trends, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*, by William A. Kandel.

[10] For a full discussion and analysis of nonimmigrant visas, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem. (Hereinafter cited as RL31381, *Temporary Admissions*.)

[11] CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

known), age, gender, and the date and place of birth. Depending on the visa category, certain documents must be certified by the proper government authorities (e.g., birth certificates and marriage licenses). All prospective LPRs must submit to physical and mental examinations, and prospective nonimmigrants also may be required to have physical and mental examinations.

§221(g) Disqualification

The statutory provision that gives the consular officer the authority to disqualify a visa applicant is broad and straightforward:

> No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 212 [8 USC §1182], or any other provision of law, (2) the application fails to comply with the provisions of this Act, or the regulations issued there under, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa or such other documentation under section 212 [8 USC §1182], or any other provision of law.... [12]

These determinations are based on the eligibility criteria of the various and numerous visa categories.[13] The shorthand reference for these disqualifications is §221(g), which is the subsection of the INA that provides the authority.

A §221(g) disqualification is generally the most common reason an LPR visa is denied. DOS disqualified 290,369 LPR visas in FY2013 and 240,876 LPR visas in FY2014. In terms of nonimmigrant visas, DOS disqualified 775,201 visas in FY2013 and 689,379 visas in FY2014.[14]

§214(b) Presumption

Overwhelmingly, the most common reason that DOS denies nonimmigrant visas is the "failure to establish entitlement to nonimmigrant status." Specifically, §214(b) of the INA generally presumes that all aliens seeking admission to the United States are coming to live permanently; as a result, most aliens seeking a nonimmigrant visa must demonstrate that they are not coming to reside permanently.[15] DOS denied 1.4 million nonimmigrant visas in FY2013 and 1.7 million nonimmigrant visas in FY2014 on the basis of INA §214(b).[16]

§212(a) Exclusion

In addition to the determination that a foreign national is qualified for a visa, a decision must be made as to whether the foreign national is admissible or excludable under the INA. The grounds

[12] Section 221(g) of the INA. 8 U.S.C. 1201.

[13] For further information and analysis of these numerous visa categories, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem, and CRS Report RL31381, *Temporary Admissions*.

[14] Bureau of Consular Affairs, *Report of the Visa Office 2012*, U.S. Department of State, Table XX, 2013; and Bureau of Consular Affairs, *Report of the Visa Office 2011*, U.S. Department of State, Table XX, 2012.

[15] §214(b) of the INA; 8 U.S.C. §1184(b). There are three nonimmigrant visas that might be considered provisional in that the visaholder may simultaneously seek LPR status. As a result, the law exempts nonimmigrants seeking any one of these three visas, i.e., H-1 professional workers, L intracompany transfers, and V accompanying family members, from the requirement that they prove they are not coming to live permanently.

[16] Bureau of Consular Affairs, *Report of the Visa Office 2013*, U.S. Department of State, Table XX, 2014; and Bureau of Consular Affairs, *Report of the Visa Office 2014*, U.S. Department of State, Table XX, 2015.

for inadmissibility are spelled out in §212(a) of the INA. These INA §212(a) inadmissibility criteria are

- health-related grounds,[17]
- criminal history,[18]
- security and terrorist concerns,[19]
- public charge (e.g., indigence),[20]
- seeking to work without proper labor certification,[21]
- illegal entrants and immigration law violations,
- ineligible for citizenship, and
- aliens previously removed.

In some cases, the foreign national may be successful in overcoming the §212(a) exclusion if new or additional information comes forward. The decision of the consular officer, however, is not subject to judicial appeals.[22]

Consular Screening Procedures

Foreign nationals seeking visas must undergo admissibility reviews performed by DOS consular officers abroad.[23] The visa applicant is required to submit his or her photograph and fingerprints, as well as full name (and any other name used or by which he or she has been known), age, gender, and the date and place of birth. Depending on the visa category, certain documents must be certified by the proper government authorities (e.g., birth certificates and marriage licenses). All prospective LPRs must submit to physical and mental examinations, and prospective nonimmigrants also may be required to have physical and mental examinations. These reviews are intended to ensure that aliens are not ineligible for visas or admission under the INA §212(a) grounds for inadmissibility.

Consular officers use the Consular Consolidated Database (CCD), a biometric and biographic database, to screen all visa applicants. Over 143 million records of visa applications are now automated in the CCD, with some records dating back to the mid-1990s. Since February 2001, the CCD has stored photographs of all visa applicants in electronic form; since 2007, the CCD has

[17] For further discussion, see CRS Report R40570, *Immigration Policies and Issues on Health-Related Grounds for Exclusion*, by Ruth Ellen Wasem.

[18] For further discussion, see CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia.

[19] For further discussion, see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion and Removal of Aliens*, by Michael John Garcia and Ruth Ellen Wasem.

[20] For further discussion, see CRS Report R43220, *Public Charge Grounds of Inadmissibility and Deportability: Legal Overview*, by Kate M. Manuel.

[21] For further discussion, see CRS Report R43223, *The Framework for Foreign Workers' Labor Protections Under Federal Law*, by Margaret Mikyung Lee and Jon O. Shimabukuro; and CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem.

[22] For more complete discussion of INA §212(a), see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem

[23] USCIS adjudicators also conduct admissibility reviews for petitions filed within the United States, and CBP inspectors do so when aliens seek entry to the United States.

begun storing 10-finger scans.[24] The number of visa cases in the CCD surpassed 100 million in 2009, including 75 million photographs.[25]

In addition to indicating the outcome of any prior visa application of the alien in the CCD and comments by consular officers, the system links with other databases to flag problems that may have an impact on the issuance of the visa. These databases linked with the CCD include DHS's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation (FBI) Integrated Automated Fingerprint Identification System (IAFIS) results, and supporting documents. In addition to performing biometric checks of the fingerprints for all visa applicants, DOS uses facial recognition technology to screen visa applicants against a watchlist of photos of known and suspected terrorists obtained from the Terrorist Screening Center (TSC), as well as the entire gallery of visa applicant photos contained in the CCD.

The CCD also links to the DHS's Traveler Enforcement Compliance System (TECS), a substantial database of law enforcement and border inspection information that enables CBP officers at ports of entry to have access to CCD.[26] A limited number of consular officers have been granted access to DHS'Arrival Departure Information System (ADIS).[27] ADIS tracks foreign nationals' entries into and most exits out of the United States. DOS credits access to ADIS with its ability to identify previously undetected cases of illegal overstays in the United States.[28]

Exclusion Trends[29]

As **Figure 1** shows, §212(a) denials for LPR visas have fluctuated over the past 20 years. After spiking during the FY1998-FY1999 years, they declined during the FY2000-FY2003 period. Subsequently they increased during the FY2009-FY2012 period, then dropped in FY2013. The LPR denials inched up to 53,220 in FY2014. In terms of nonimmigrants, §212(a) denials have exhibited a slower, but steadier upward trend during the period examined. FY2014 was the peak year, reaching 71,500 nonimmigrant denials

[24] Consular officers transmit the fingerprints taken during the visa process to CBP officers at ports of entry, enabling them to match the fingerprints of persons entering the United States.

[25] Margaret P. Grafeld, Department of State Privacy Coordinator, *Consular Consolidated Database (CCD) Privacy Impact Assessment (PIA)*, U.S. Department of State, March 22, 2010.

[26] Consular officers do not have direct access to the TECS database.

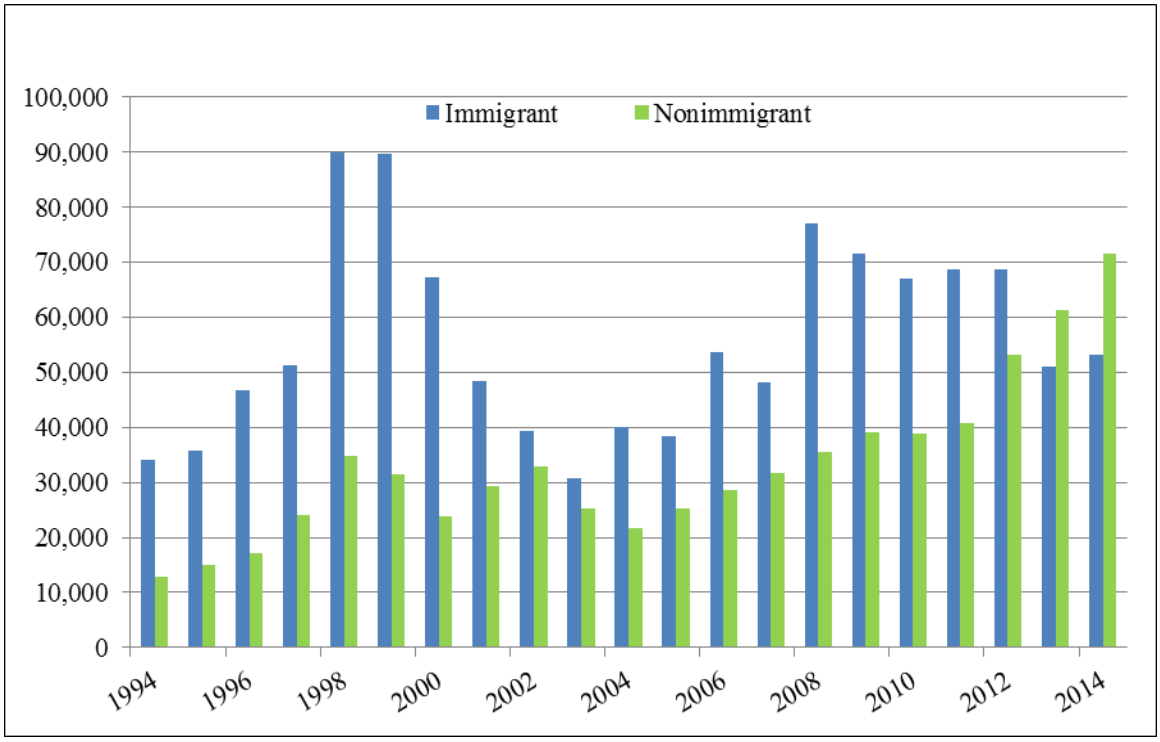
[27] Unclassified congressional staff briefing by Assistant Secretary of State Janice Jacobs, January 11, 2010.

[28] CRS Report RS22446, *Nonimmigrant Overstays: Brief Synthesis of the Issue*, by Ruth Ellen Wasem.

[29] For a more complete analysis of exclusion trends, see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

Figure 1. Aliens Denied Visas Under §212(a) Inadmissibility

FY1994 through FY2014



Source: CRS presentation of initial determination data from Table XX of the annual reports of the U.S. Department of State, Office of Visa Statistics (multiple years).

Notes: Data are initial determinations of inadmissibility. Some denials may be overcome with additional evidence.

Public charge exclusions accounted for the spike during the period immediately after passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (Division C of P.L. 104-208), as depicted in **Figure 2.** IIRIRA had strengthened the enforceability of the inadmissibility provisions aimed at indigent or low-income people.[30] Public charge exclusions dominated inadmissibility for LPRs until the FY2003-FY2005 period.

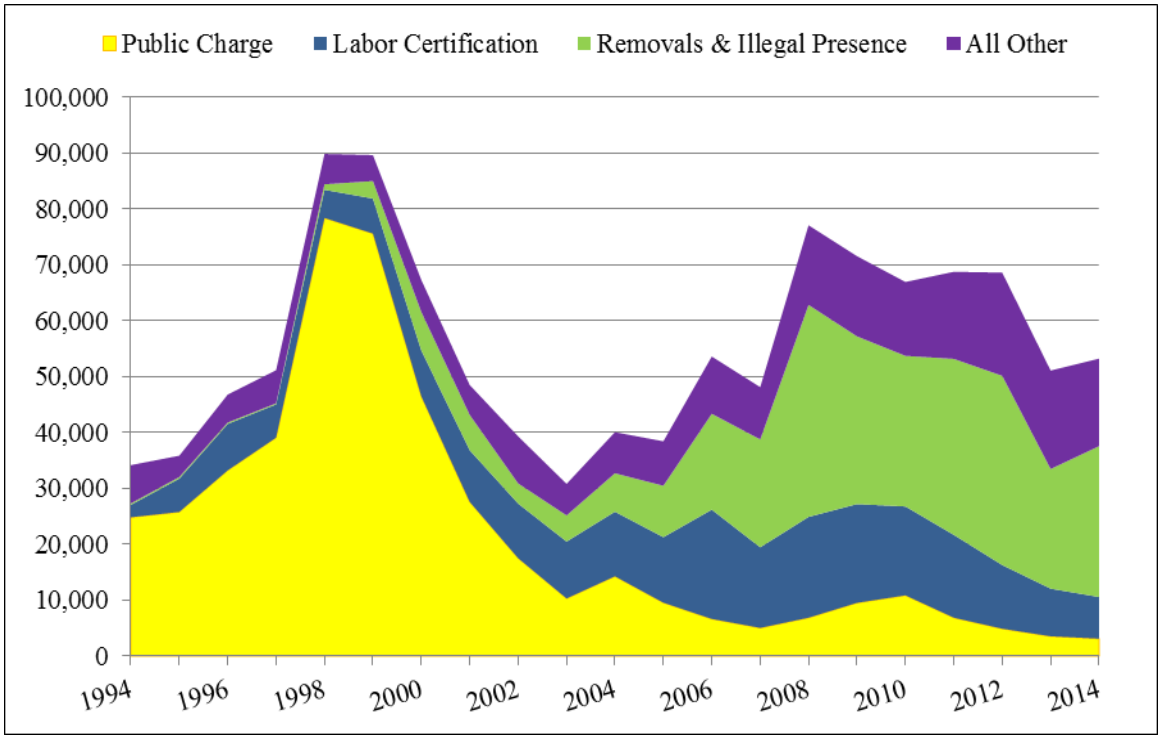
Since FY2008, prior removals/illegal presence has become the top single ground of inadmissibility. IIRIRA had ramped up the consequences for foreign nationals attempting to return to the United States if they had prior orders of removal or had been illegally present in the United States, and the databases monitoring such violations improved over the years. The failure of some employers hiring foreign workers to meet the labor certification ground consistently ranked third over the period examined.[31]

[30] For further discussion, see CRS Report R43220, *Public Charge Grounds of Inadmissibility and Deportability: Legal Overview*, by Kate M. Manuel.

[31] Bureau of Consular Affairs, *Report of the Visa Office*, U.S. Department of State, Table XX (multiple years).

Figure 2. Prospective LPRs Denied Visas by Major §212(a) Inadmissibility Grounds

FY1994 through FY2014



Source: CRS presentation of initial determination data from Table XX of the annual reports of the U.S. Department of State, Office of Visa Statistics (multiple years).

Notes: Data are initial determinations of inadmissibility. Some denials may be overcome with additional evidence.

In terms of nonimmigrants, prior removals/illegal presence[32] has also become the top single ground of inadmissibility; however, the grounds for excluding nonimmigrants have otherwise exhibited a different pattern than that of immigrant exclusions. Two grounds less commonly cited for immigrant exclusions—criminal history and INA violations—have been frequent grounds for denying nonimmigrant visas.

As **Figure 3** shows, criminal history has been one of the leading bases of nonimmigrant exclusion. The FY2014 data indicate that prior removals/illegal presence comprised 41% of the basis of nonimmigrant exclusions and criminal history made up 25% of the basis of nonimmigrant exclusions. In contrast, criminal history comprised only 4% of *immigrant* exclusions in FY2014 and was too small to depict in **Figure 2**. Another top basis of excluding nonimmigrants has been INA violations, i.e., nonimmigrants who sought to procure or had procured either admission into the United States or a benefit under the INA by fraud or willful misrepresentation of a material fact.[33] This latter ground had been the most common basis for nonimmigrant exclusion in the late 1990s, as **Figure 3** depicts.[34]

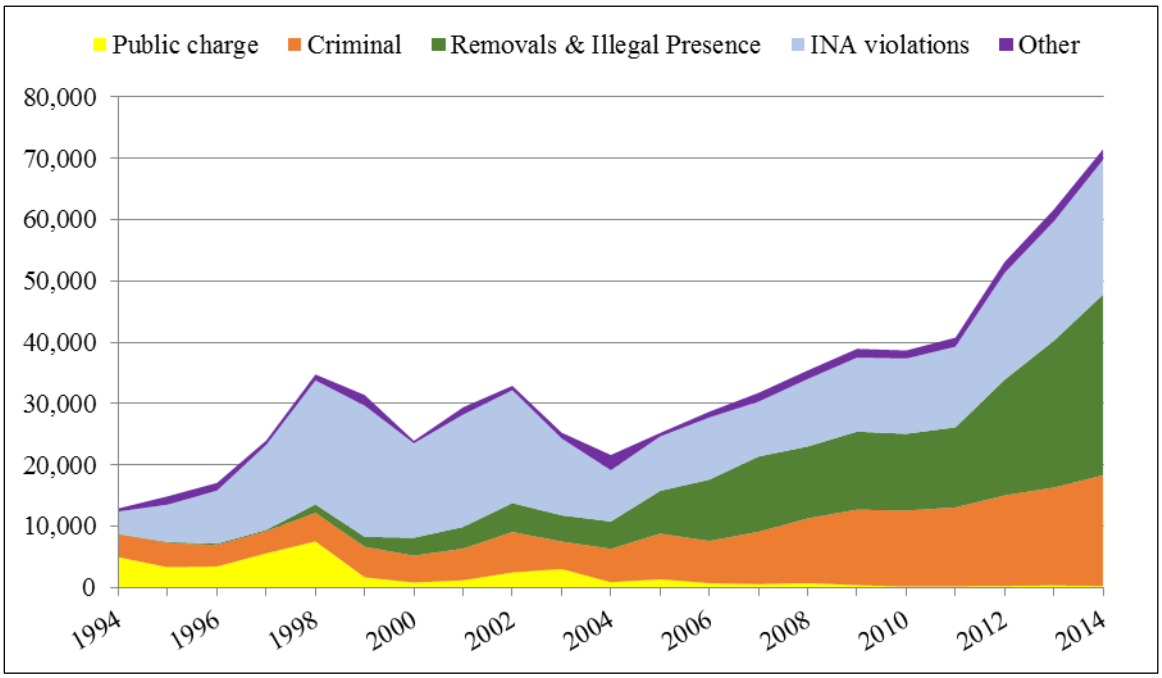
[32] This shorthand encompasses foreign nationals attempting to return to the United States if they had prior orders of removal or had been illegally present in the United States. INA §212(a)(9).

[33] INA §212(a)(6).

[34] Bureau of Consular Affairs, *Report of the Visa Office*, U.S. Department of State, Table XX (multiple years).

Figure 3. Prospective Nonimmigrants Denied Visas by Major §212(a) Inadmissibility Grounds

FY1994 through FY2014



Source: CRS presentation of initial determination data from Table XX of the annual reports of the U.S. Department of State, Office of Visa Statistics (multiple years).

Notes: Data are initial determinations of inadmissibility. Some denials may be overcome with additional evidence. "INA violations" as depicted here have largely been those of misrepresentation under INA §212(a)(6).

National Security and Public Safety Reviews

For some years, consular officers have been required to check the background of all aliens in the "lookout" databases.[35] DOS specifically uses the Consular Lookout and Support System (CLASS) database, which surpassed 42.5 million records in 2012. Consular officers use name-searching algorithms to ensure matches between names of visa applicants and any derogatory information contained in CLASS. DOS reports that about 70% of the records in CLASS come from other agencies, including DHS, the Federal Bureau of Investigation (FBI), and the Drug Enforcement Administration (DEA). DOS also employs an automated CLASS search algorithm that runs the names of all visa applicants against the CCD to check for any prior visa applications, refusals, or issuances.[36]

DOS has relied on the Security Advisory Opinion (SAO) system, which requires a consular officer abroad to refer selected visa cases for greater review by intelligence and law enforcement agencies.[37] The current interagency procedures for alerting officials about foreign nationals who

[35] Lookout databases store information on persons whose entry might pose a threat to the safety or security of the United States.

[36] U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *From the 9/11 Hijackers to Amine El-Khalifi: Terrorists and the Visa Overstay Problem*, testimony of David T. Donahue, Deputy Assistant Secretary for Visa Services, 112th Cong., 2nd sess., March 6, 2012.

[37] U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on International Operations and Terrorism,

may be suspected terrorists, referred to in State Department nomenclature as Visa Viper, began after the 1993 World Trade Center bombing and were institutionalized by enactment of the Enhanced Border Security and Visa Entry Reform Act of 2002. If consular officials receive information about a foreign national that causes concern, they send a Visa Viper cable (which is a dedicated and secure communication) to the National Counterterrorism Center (NCTC).

In a similar set of SAO procedures, consular officers send suspect names, identified by law enforcement and intelligence information, to the FBI for a name check program called Visa Condor.[38] There is also the "Terrorist Exclusion List" (TEL), which lists organizations designated as terrorist-supporting and includes the names of individuals associated with these organizations.[39]

In June 2013, DOS began "Kingfisher Expansion" (KFE) in partnership with the NCTC for conducting interagency counterterrorism screening of all visa applicants.[40] The consular official submits the visa applicants' electronic visa applications as a "vetting package" to the NCTC. In turn NCTC uses an automated process to compare the vetting package with its holdings, most notably the Terrorist Identities Datamart Environment (TIDE) on known and suspected terrorists and terrorist groups. A "hit" in KFE triggers a Washington-based interagency review of the visa application. KFE also conducts post-issuance reviews of valid visas to check for new information on emerging threats.[41]

The impact KFE has had on national security screenings for visa applicants was underscored in the testimony of NCTC Director Matthew G. Olsen before the Senate Homeland Security Committee.

> KFE examines 100 percent of the approximately 11 million visa applicants each year to identify any connections to terrorism by comparing applicant data to the classified data holdings in TIDE, reducing unwarranted counterterrorism security advisory opinions (SAOs) by 80 percent and saving State Department millions of dollars annually in SAO processing costs. KFE is an interagency program with a secure on-line vetting platform that allows FBI, DHS, and the Terrorist Screening Center to participate in the applicant reviews. This allows for a more comprehensive and coordinated response back to State Department.[42]

Despite dipping somewhat in FY2013, the number of aliens denied nonimmigrant visas under terrorist grounds of inadmissibility has increased since the 1990s and mid-2000s. In terms of immigrant denials based upon national security grounds, the peak year was FY2012. As **Figure 4** shows, the general trends hold for immigrant and nonimmigrant exclusions.[43]

The Post 9/11 Visa Reforms and New Technology: Achieving the Necessary Security Improvements in a Global Environment, hearing, October 23, 2003.

[38] U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on International Operations and Terrorism, *The Post 9/11 Visa Reforms and New Technology: Achieving the Necessary Security Improvements in a Global Environment*, hearing, October 23, 2003.

[39] For further discussion of terrorist screening, see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion and Removal of Aliens*, by Michael John Garcia and Ruth Ellen Wasem.

[40] KFE also coordinates with DHS (including CBP and U.S. Immigration and Customs Enforcement (ICE), the FBI, and the FBI's Terrorist Screening Center.

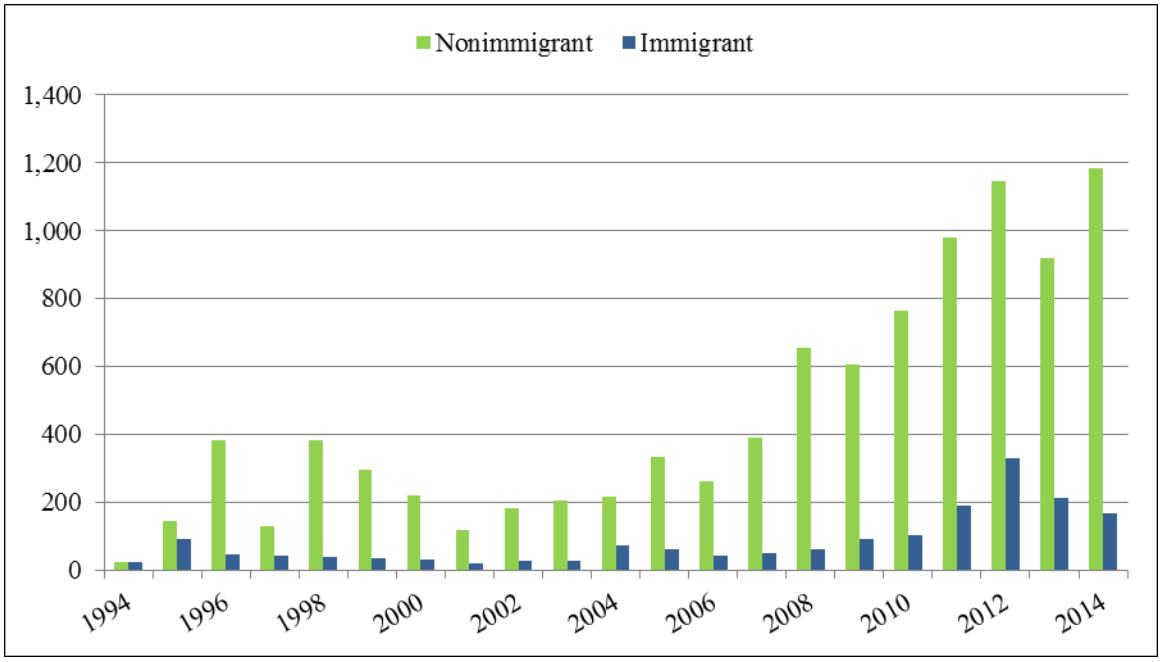
[41] U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on National Security, *Hearing on Securing the U.S. Border, B1/B2 Visas and Border Crossing Cards*, testimony of Edward J. Ramotowski, Deputy Assistant Secretary for Visa Services, 113th Cong., 1st sess., November 14, 2013.

[42] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *The Homeland Threat Landscape and U.S. Response*, hearing, 113th Cong., 2nd sess., November 14, 2013.

[43] Bureau of Consular Affairs, *Report of the Visa Office*, U.S. Department of State, Table XX (multiple years).

Figure 4. Aliens Denied Visas Under Terrorist Grounds of Inadmissibility

FY1994 through FY2014



Source: CRS presentation of initial determination data from Table XX of the annual reports of the U.S. Department of State, Office of Visa Statistics (multiple years).

Notes: Data are initial determinations of inadmissibility. Some denials may be overcome with additional evidence. The primary axis scale here is set at 1,400 (rather than 100,000 of Figures 1-3) to better illustrate the trends.

Visa Revocation

After a visa has been issued, the consular officer as well as the Secretary of State has the discretionary authority to revoke a visa at any time.[44] A consular officer must revoke a visa if

- the alien is ineligible under the INA §212(a) grounds of inadmissibility to receive such a visa, or was issued a visa and overstayed the time limits of the visa;
- the alien is not entitled to the nonimmigrant visa classification under INA §101(a)(15) definitions specified in such visa;
- the visa has been physically removed from the passport in which it was issued; or
- the alien has been issued an immigrant visa.[45]

This applies, for example, to findings of ineligibility under "misrepresentation," "terrorist activity" or "foreign policy."[46] The Foreign Affairs Manual (FAM) further instructs: "pending receipt of the Department's advisory opinion, the consular officer must enter the alien's name in

[44] §221(i) of the INA; 8 U.S.C. §1201(i); §1201(i); 9 FAM 41.122 N1.

[45] 9 F.A.M. §41.122 Notes N1.

[46] Testimony of Janice L. Jacobs, Deputy Assistant Secretary of State for Visa Services, in U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Border Security and Citizenship, *Visa Issuance, Information Sharing and Enforcement in a Post-9/11 Environment: Are We Ready Yet?* hearing, July 15, 2003.

the CLASS under a quasi-refusal code, if warranted."[47] According to DOS officials, they sometimes prudentially revoke visas (i.e., they revoke a visa as a safety precaution).[48]

When a consular officer suspects that a visa revocation may involve U.S. law enforcement interests, FAM instructs the consular officer to consult with law enforcement agencies at the consular post and inform the State officials of the case, to permit consultations with potentially interested entities before a revocation is made.[49] The rationale for this consultation is that there may be legal or intelligence investigations that would be compromised if the visa were revoked and that law enforcement and intelligence officials may prefer to monitor the individual to further investigate their actions and associates.

Visa revocation has been a ground for removal in the INA §237(a)(1)(B) since enactment of P.L. 108-458 in December 2004. This provision (§5304 of P.L. 108-458) permits limited judicial review of removal if visa revocation is the sole basis of the removal.

On April 27, 2011, the DOS promulgated regulations that broadened the revocation authority.

> (a) Grounds for revocation by consular officers. A consular officer, the Secretary, or a Department official to whom the Secretary has delegated this authority is authorized to revoke a nonimmigrant visa at any time, in his or her discretion.
>
> (b) Provisional revocation. A consular officer, the Secretary, or any Department official to whom the Secretary has delegated this authority may provisionally revoke a nonimmigrant visa while considering information related to whether a visa holder is eligible for the visa. Provisional revocation shall have the same force and effect as any other visa revocation under INA 221(i).
>
> (c) Notice of revocation. Unless otherwise instructed by the Department, a consular officer shall, if practicable, notify the alien to whom the visa was issued that the visa was revoked or provisionally revoked. Regardless of delivery of such notice, once the revocation has been entered into the Department's Consular Lookout and Support System (CLASS), the visa is no longer to be considered valid for travel to the United States. The date of the revocation shall be indicated in CLASS and on any notice sent to the alien to whom the visa was issued.
>
> (d) Procedure for physically canceling visas. A nonimmigrant visa that is revoked shall be canceled by writing or stamping the word ``REVOKED" plainly across the face of the visa, if the visa is available to the consular officer. The failure or inability to physically cancel the visa does not affect the validity of the revocation.[50]

These regulations sought to address a series of concerns that have been raised in recent years about the visa revocation process, especially relating to the timely transmission of information among federal agencies.[51]

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[47] 22 C.F.R. §41.122 Notes PN3.

[48] Testimony of Janice L. Jacobs, Deputy Assistant Secretary of State for Visa Services, in U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Border Security and Citizenship, *Visa Issuance, Information Sharing and Enforcement in a Post-9/11 Environment: Are We Ready Yet?* hearing, July 15, 2003.

[49] 22 C.F.R. §41.122 Notes PN9.2-1.

[50] U.S. Department of State, "Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, As Amended," 76 *Federal Register* 23477-23479, April 27, 2011.

[51] For examples of past critiques, see U.S. General Accounting Office, *New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process*, GAO 03-798, June 18, 2003; and U.S. General Accounting Office, *Border Security: Additional Actions Needed to Eliminate Weaknesses in the Visa Revocation Process*, GAO-04-795, July 13, 2004.

DHS Visa Security Program

As discussed more fully in **Appendix**, §428 of the Homeland Security Act (HSA) gave the Secretary of DHS the authority to assign DHS employees to diplomatic and consular posts. The duties of these DHS employees were delineated in HSA §428 as

- provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications;
- review any such applications, either on the initiative of DHS or upon request by a consular officer or other person charged with adjudicating such applications; and
- conduct investigations with respect to consular matters under the jurisdiction of the Secretary of DHS.

This statutory language established what is currently known as the Visa Security Program (VSP). The Immigration and Customs Enforcement (ICE) Office of International Affairs (OIA) operates the VSP in consular posts deemed to be high-risk. As described by DHS, the VSP sends ICE special agents with expertise in immigration law and counterterrorism to diplomatic posts overseas to perform visa security activities, which aim to complement the DOS visa screening process with law enforcement resources not available to consular officers.

The first VSP units were established in Saudi Arabia, as required by HSA §428. There were 21 VSP units in over a dozen countries as of June 2015.[52]

One of the major tasks of the VSP agents is to screen visa applicants to determine the applicant's risk profile. Unlike consular officers, VSP agents have access to DHS's Traveler Enforcement Compliance System (TECS). The ICE agent further vets visa applicants who are possible matches, performing additional research and investigation of the visa applicant (e.g., in-depth searches in law enforcement databases and other information systems, examining documents, and consulting with consular, law enforcement, or other officials).[53]

VSP agents are supposed to engage in informal discussions with consular officers, as well as develop formal, targeted training and briefings to inform consular officers and others about threats to the visa process. They "identify and monitor the threat environment and trends in the visa applicant pool specific to their post and host country.... Examples of topics covered in these briefings include fraud trends in specific visa categories and how to identify fraudulent documents and imposters."[54]

More recently, VSP has implemented a screening system called Pre-Adjudicated Threat Recognition Intelligence Operations Team (PATRIOT) at all of the Visa Security Units. This initiative provides the automated screening of visa application information against DHS holdings prior to the applicant's interview. VSP reports that PATRIOT performs 100% screening of nonimmigrant visas at these posts.[55]

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[52] Office of Inspector General, *U.S. Immigration and Customs Enforcement Visa Security Program*, U.S. Department of Homeland Security, July 2008. (Hereafter OIG, *Visa Security Program*, July 2008.)

[53] Office of the Inspector General, *The DHS Visa Security Program*, U.S. Department of Homeland Security, OIG-14-137, September 2014, https://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-137_Sep14.pdf.

[54] OIG, *Visa Security Program*, July 2008.

[55] U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *The Outer Ring of Border Security: DHS's International Security Programs*, hearing testimony of Lev J. Kubiak, Assistant

Competing Administrative Concerns

Some have expressed the view that DOS retains too much power and control over visa security. They maintain the Homeland Security Act of 2002 intended DHS to be the lead department and that DOS was to merely administer the visa issuances. They warn that consular officers are too concerned about facilitating tourism and trade to scrutinize visa applicants thoroughly. [56] Some argue that visa issuance is the real "front line" of homeland security against terrorists and that the principal responsibility should be in DHS, which does not have competing priorities of diplomatic relations and reciprocity with foreign governments.[57]

Others have indicated satisfaction with current law, arguing that it strikes the proper balance between the two departments and reflects the bifurcation envisioned in the act. They maintain that it plays off the strengths of the two departments and allows for refinement of the implementation in the future.[58] Proponents of DOS playing the lead role in visa issuances assert that only consular officers in the field have the country-specific knowledge to make decisions about whether an alien is admissible and that staffing 250 diplomatic and consular posts around the world would stretch DHS beyond its capacity.[59]

Congressional Activity[60]

The 114th Congress has been concerned about visa security issues even prior to the November 13 terrorist attacks in Paris. Most notably, the House Committee on Homeland Security, Subcommittee on Border and Maritime Security held a hearing titled "The Outer Ring of Border Security: DHS's International Security Programs, "on June 2, 2015.

Visa security provisions are included in legislation that the House Committee on the Judiciary ordered reported on March 18, 2015. More specifically, Title IV of the Michael Davis, Jr. in Honor of State and Local Law Enforcement Act (H.R. 1148), as ordered to be reported, would give the Secretary of Homeland Security "exclusive authority to issue regulations, establish policy, and administer and enforce the provisions of the [INA] and all other immigration or nationality laws relating to the functions of consular officers of the United States in connection with the granting and refusal of a visa." The bill would broaden the exception to the confidentiality requirement relating to the sharing of information with foreign governments, including by allowing such sharing for purposes of "determining a person's deportability or eligibility for a visa, admission, or other immigration benefit," or any other instance when "the Secretary of State determines that it is in the national interest." Also, a Senate provision in S.

Director for ICE International Operations, Department of Homeland Security, 114th Cong., 1st sess., June 2, 2015; U.S. Department of Homeland Security, *FY2016 DHS Budget in Brief*, 2015, pp. 47-56, http://www.dhs.gov/sites/default/files/publications/FY_2016_DHS_Budget_in_Brief.pdf.

[56] Proponents of this view often cite Office of Inspector General, *Review of Nonimmigrant Visa Issuance Policy and Procedures*, U.S. Department of State, Memorandum Report ISP-I-03-26, December 2002, http://oig.state.gov/documents/organization/16215.pdf.

[57] Former Senator Joseph Lieberman appearing on ABC's "This Week," January 3, 2010.

[58] U.S. Congress, Senate Committee on the Judiciary, *Securing America's Safety: Improving the Effectiveness of Anti-Terrorism Tools and Inter-Agency Communication*, Statement of Senator Patrick Leahy, 111th Cong., 2nd sess., January 20, 2010.

[59] Proponents of this view often cite the conclusions of this report: U.S. Government Accountability Office, *Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing*, GAO-05-859, September, 2005.

[60] For legislative tracking of the major immigration bills, see CRS Report R44230, *Immigration Legislation and Issues in the 114th Congress*, coordinated by Andorra Bruno.

1635 (§401) would broaden the conditions under which the Secretary of State may release records pertaining to visa applications.

H.R. 1148 would narrow DOS's authority to waive personal interviews for visa applicants and add national security and "high risk of degradation of visa program integrity" as reasons for requiring a personal interview. The legislation also would give consular officers the authority not to interview visa applicants deemed to be ineligible for the visas they are seeking. In addition, H.R. 1148 would give DHS the authority to refuse or revoke any visa if the Secretary determines that such refusal or revocation is necessary or advisable in the security interests of the United States.

H.R. 1148 would seek to expand the VSP by requiring DHS to conduct an onsite review of all visa applications and supporting documentation before adjudication at the top 30 visa-issuing posts designated jointly by the Secretaries of State and Homeland Security as high-risk posts. It also would call for expedited clearance and placement of DHS personnel at overseas embassies and consular posts.

In the 113th Congress, a series of hearings were held that discussed visa issuances and security policy.[61] One piece of legislation with provisions aimed at visa security (H.R. 2278) received action in the 113th Congress but was not enacted.[62] The Senate-passed comprehensive immigration reform legislation, the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), did not include provisions on visa security, but it did include provisions aimed at enhanced processing of certain visas.[63]

Concluding Comments

Preventing terrorist travel to the United States is front and center after the coordinated terrorist attacks at six locations in Paris on November 13, 2015, that killed at least 129 people and left over 350 people injured. Visa security procedures are viewed by some as one of the most effective tools to stymie the admission of foreign nationals who pose security threats to the United States, presuming sound intelligence data are available. In an optimal situation, visa security builds on "proactive intelligence, monitoring, information-sharing and investigations."[64]

In an effort to improve intelligence gathering, some maintain that broadening the exception to the confidentiality requirement relating to the sharing of information on the visa application with foreign governments is essential. Others point out, however, that governments have a responsibility to protect the privacy of personal information in their custody. A principal concern

[61] These hearings included the following: Senate Committee on the Judiciary hearing on the Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, April 22, 2013; House Committee on Homeland Security, Subcommittee on Border and Maritime Security hearing titled "Visa Security and Overstays: How Secure is America?" May 13, 2013; House Committee on the Judiciary hearing on H.R. 2278, the Strengthen and Fortify Enforcement Act, June 13, 2013; and, House Committee on Oversight and Government Reform, Subcommittee on National Security hearing on Securing the U.S. Border, B1/B2 Visas and Border Crossing Cards, November 14, 2013.

[62] For a legal analysis of this legislation, see CRS Report R43192, *Immigration Enforcement: Major Provisions in H.R. 2278, the Strengthen and Fortify Enforcement Act (SAFE Act)*, by Michael John Garcia and Kate M. Manuel.

[63] For a discussion of these provisions, see CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*, by Ruth Ellen Wasem, pp. 50-51.

[64] For examples, see Asa Hutchinson, "Analysis: Visa Security is Critical to Preventing Terrorist Attacks," *Government Executive*, February 9, 2010; and James Carafano, "Don't Link Terror to Immigration Policy," Heritage Foundation, May 6, 2013.

is that once personal information is shared with a foreign government, that private data could move easily and without adequate oversight.[65]

Also at issue is whether visa security procedures should be applied more broadly. While some are proposing to make all foreign nationals who seek to come to the United States subject to the scrutiny of the consular screening procedures, others warn that such a move may create unnecessary hurdles and backlogs for many travelers who do not pose a threat.[66] Still others see holes in the current visa issuance process that they argue should be addressed, such as limiting the circumstances under which a personal interview is waived. Congressional oversight of visa security is ongoing, and possible legislative reforms are under consideration.

[65] This debate has already occurred in Canada. Colin Freeze and Josh Wingrove, "Ottawa prepares to share personal data with foreign governments," *The Globe and Mail*, July 14, 2014.

[66] For a more complete discussion of these issues, see CRS Insight IN10246, *Balancing Tourism Against Terrorism: The Visa Waiver Program*, by Michaela D. Platzer and Alison Siskin.

Appendix. Respective Roles of the Departments of State and Homeland Security

When the 107th Congress weighed the creation of the Department of Homeland Security, considerable debate surfaced about whether or not any or all visa issuance functions should be located in the new agency. Enactment of the Homeland Security Act of 2002 (P.L. 107-293) resolved most of these issues, but concerns over the roles and responsibilities of the two departments have frequently arisen.

Immigration and Nationality Act

The powers and duties of the Secretary of State are delineated in §104 of the INA. Most significantly, §104 (a) states: "The Secretary of State shall be charged with the administration and the enforcement of the provisions of this Act and all other immigration and nationality laws relating to (1) the powers, duties and functions of diplomatic and consular officers of the United States, *except those powers, duties and functions conferred upon the consular officers relating to the granting or refusal of visas;....* "[67] The INA specifically gives consular officers the sole authority to issue visas in §221 of the act.[68] Over the years, the courts have held that consular decisions are not appealable.[69] Under proscribed circumstances, the Secretary of State may direct a consular officer to deny a visa to a particular inadmissible alien.[70]

Enhanced Border Security and Visa Entry Reform Act of 2002

After the terrorist attacks on September 11, 2001, Congress enacted the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173), which aimed to improve the visa issuance process abroad, as well as immigration inspections at the border. It expressly increased consular officers' access to electronic information needed for alien screening. Specifically, it required the development of an interoperable electronic data system to be used to share information relevant to alien admissibility and removability and the implementation of an integrated entry-exit data system. It also required that all visas issued by October 2004 have biometric identifiers.[71] In addition to increasing consular officers' access to electronic information needed for visa issuances, it expanded the training requirements for consular officers who issue visas.

§428 of the Homeland Security Act of 2002

The Homeland Security Act of 2002 (HSA) contained language stating that DHS is responsible for formulating regulations on visa issuances. In §428, the Secretary of DHS is expressly tasked as follows:

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[67] 8 U.S.C. 1104.

[68] 8 U.S.C. 1201.

[69] Some critics of transferring the visa function to DHS warned that visa issuance "adjudication" might become subject to judicial appeals or other due process considerations if a stateside agency, such as DHS, assumed responsibility. As a result, §428(f) of the HSA stated: "Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa."

[70] §428(c) of the Homeland Security Act of 2002 (P.L. 107-296).

[71] DOS met the 2004 deadline for biometric visas.

> [The Secretary of DHS] shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, *except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien*. [72]

The HSA also enabled DHS to assign staff to consular posts abroad to advise, review, and conduct investigations, which is discussed more fully below. It further stated that DOS's Consular Affairs continued to be responsible for issuing visas. The HSA required DHS and DOS to reach an understanding on how the details of this division of responsibilities would be implemented.[73]

2003 Memorandum of Understanding

On September 28, 2003, then-Secretary of State Colin Powell and then-Secretary of Homeland Security Thomas Ridge signed the memorandum of understanding (MOU) implementing §428 of the HSA. The MOU described each department's responsibilities in the area of visa issuances. Among its major elements, the MOU stated that DOS may propose and issue visa regulations subject to DHS consultation and final approval. It further stated that DHS shall assign personnel to diplomatic posts, but that DOS will determine who, how many, and the scope of their functions.[74]

Then-Assistant Secretary of State for Consular Affairs Maura Harty described several key responsibilities that remain with the DOS.

> The Secretary of State will have responsibility over certain visa decisions, including decisions of a foreign policy nature.... He will also be responsible for establishing visa validity periods and fees based on reciprocity. In the case of visa validity periods, however, he will consult with Homeland Security before lengthening them, and Homeland Security will have authority to determine that certain persons or classes of persons cannot benefit from the maximum validity period for security reasons. The Secretary of State will also exercise all the foreign policy-related grounds of visa denial enumerated in Section 428 and the additional provision, not specifically enumerated, under which we deny visas to persons who have confiscated the property of American citizens without just compensation.[75]

She emphasized that the MOU "recognizes that the Secretary of State must have control over officers in his chain of command." She further stated that "DHS officers assigned visa duties abroad may provide input related to the evaluations of consular officers doing visa work, but the evaluations themselves will be written by State Department consular supervisors," and that

[72] §428 (b)(1) of the Homeland Security Act (P.L. 107-296).

[73] For a complete account of this debate, see CRS Report R41093, *Visa Security Policy: Roles of the Departments of State and Homeland Security*, by Ruth Ellen Wasem.

[74] Colin L. Powell and Thomas J. Ridge, *Memorandum of Understanding between the Secretaries of State and Homeland Security Concerning the Implementation of Section 428 of the Homeland Security Act of 2002*, September 29, 2003.

[75] U.S. Congress, Senate Committee on the Judiciary, Subcommittee On Immigration, Border Security and Citizenship, *Visa Issuance: Our First Line of Defense for Homeland Security*, hearing, September 30, 2003.

"direction to consular officers will come from their State Department supervisors, and all officers assigned abroad, including DHS, come under the authority of the Chief of Mission."[76]

In congressional testimony during October 2003, C. Stewart Verdery, Jr., as then-DHS Assistant Secretary for Border and Transportation Security Policy and Planning, discussed DHS' role in visa security. Verdery reported that DHS officers were already in Saudi Arabia reviewing all visa applications prior to adjudication (as required by §428(i) of P.L. 107-296). He indicated that officers in Riyadh and Jeddah also provided assistance, expert advice and training to consular officers on fraudulent documents, fingerprinting techniques and identity fraud. More specifically, he stated:

> As part of the review process, DHS officers at home and abroad have full access to a variety of law enforcement databases, including the National Crime Information Center (NCIC); Treasury Enforcement Communication System (TECS); Interagency Border Inspections System (IBIS); National Security Entry Exit System (NSEERS); Student Exchange and Visitor Information System (SEVIS); Biometric 2-print fingerprint system (IDENT); and Advanced Passenger Information System (APIS). They also have access to selected legacy-INS automated adjudications data and certain commercial databases.[77]

Visa Security Program Memoranda of Understanding

Additionally, §428 of the HSA gave the Secretary of DHS the authority to assign DHS employees to diplomatic and consular posts, which became the statutory basis of the Visa Security Program (VSP). In 2004, DHS and DOS signed a MOU on administrative aspects of assigning personnel overseas as part of the VSP. Among other things, this MOU described administrative support, security, facilities, security awareness training, and information systems for VSP personnel.

On January 11, 2011, DHS and DOS signed another MOU which further delineates the roles, responsibilities, and collaboration of VSP agents, consular officers, and diplomatic security officers in daily operations of VSP at posts overseas.[78] The 2011 MOU discusses general collaboration between ICE and State for VSP operations; roles and responsibilities of VSP agents and consular officers and routine interaction between the officers and agents; development of formal, targeted training and briefings by VSP agents for consular officers and other U.S. government officials at post; clarification of the dispute resolution process; and collaboration between diplomatic security officers and VSP agents on visa and passport fraud investigations.[79]

Intelligence Reform and Terrorism Prevention Act of 2004

Congress also relied on recommendations made by the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) to revise visa security policies. The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) mandated improvements in technology and training to assist consular and immigration officers in detecting

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[76] Ibid.

[77] U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on International Operations and Terrorism, *The Post 9/11 Visa Reforms and New Technology: Achieving the Necessary Security Improvements in a Global Environment*, hearing, Oct. 23, 2003.

[78] *Memorandum of Understanding Among U.S. Immigration and Customs Enforcement of the Department of Homeland Security and the Bureau of Consular Affairs and Diplomatic Security of the Department of State on Roles, Responsibilities, and Collaboration at Visa Security Units Abroad*, January 11, 2011.

[79] For further discussion on the issues leading up to this MOU, see U.S. Government Accountability Office, *Border Security: DHS's Visa Security Program Needs to Improve Performance Evaluation and Better Address Visa Risk Worldwide*, GAO-11-315, March 31, 2011, http://www.gao.gov/products/GAO-11-315.

and combating terrorist travel. Among other provisions, it required the Secretary of Homeland Security, in consultation with the Director of the National Counter Terrorism Center, to establish a program to oversee DHS's responsibilities with respect to terrorist travel and required the Secretary of State to establish a Visa and Passport Security Program within the Bureau of Diplomatic Security at the Department of State.

The Intelligence Reform and Terrorism Prevention Act added requirements for an in-person consular interview of most applicants for nonimmigrant visas between the ages of 14 and 79. It further mandated that an alien applying for a nonimmigrant visa must completely and accurately respond to any request for information contained in his or her application.

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