

Subtitle B—Visa Waiver

SEC. 711. MODERNIZATION OF THE VISA WAIVER PROGRAM.

(a) **SHORT TITLE.**—This section may be cited as the “Secure Travel and Counterterrorism Partnership Act of 2007”.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) the United States should modernize and strengthen the security of the visa waiver program under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) by simultaneously—

(A) enhancing program security requirements; and

(B) extending visa-free travel privileges to nationals of foreign countries that are partners in the war on terrorism—

(i) that are actively cooperating with the United States to prevent terrorist travel, including sharing

8 USC 1187 note.

8 USC 1101 note.

Secure Travel

and

Counterterrorism

Partnership Act

of 2007.

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counterterrorism and law enforcement information;
and

(ii) whose nationals have demonstrated their compliance with the provisions of the Immigration and Nationality Act regarding the purpose and duration of their admission to the United States; and

(2) the modernization described in paragraph (1) will—

(A) enhance bilateral cooperation on critical counterterrorism and information sharing initiatives;

(B) support and expand tourism and business opportunities to enhance long-term economic competitiveness;
and

(C) strengthen bilateral relationships.

(c) **DISCRETIONARY VISA WAIVER PROGRAM EXPANSION.**—Section 217(c) of the Immigration and Nationality Act (8 U.S.C. 1187(c)) is amended by adding at the end the following new paragraphs:

“(8) **NONIMMIGRANT VISA REFUSAL RATE FLEXIBILITY.**—

“(A) **CERTIFICATION.**—

“(i) **IN GENERAL.**—On the date on which an air exit system is in place that can verify the departure of not less than 97 percent of foreign nationals who exit through airports of the United States and the electronic travel authorization system required under subsection (h)(3) is fully operational, the Secretary of Homeland Security shall certify to Congress that such air exit system and electronic travel authorization system are in place.

“(ii) **NOTIFICATION TO CONGRESS.**—The Secretary shall notify Congress in writing of the date on which the air exit system under clause (i) fully satisfies the biometric requirements specified in subsection (i).

“(iii) **TEMPORARY SUSPENSION OF WAIVER**

AUTHORITY.—Notwithstanding any certification made under clause (i), if the Secretary has not notified Congress in accordance with clause (ii) by June 30, 2009, the Secretary's waiver authority under subparagraph (B) shall be suspended beginning on July 1, 2009, until such time as the Secretary makes such notification.

“(iv) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as in any way abrogating the reporting requirements under subsection (i)(3).

“(B) WAIVER.—After certification by the Secretary under subparagraph (A), the Secretary, in consultation with the Secretary of State, may waive the application of paragraph (2)(A) for a country if—

“(i) the country meets all security requirements of this section;

“(ii) the Secretary of Homeland Security determines that the totality of the country's security risk mitigation measures provide assurance that the country's participation in the program would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States;

“(iii) there has been a sustained reduction in the rate of refusals for nonimmigrant visas for nationals

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of the country and conditions exist to continue such reduction;

“(iv) the country cooperated with the Government of the United States on counterterrorism initiatives, information sharing, and preventing terrorist travel before the date of its designation as a program country, and the Secretary of Homeland Security and the Secretary of State determine that such cooperation will continue; and

“(v)(I) the rate of refusals for nonimmigrant visitor visas for nationals of the country during the previous full fiscal year was not more than ten percent; or
“(II) the visa overstay rate for the country for the previous full fiscal year does not exceed the maximum visa overstay rate, once such rate is established under subparagraph (C).

“(C) MAXIMUM VISA OVERSTAY RATE.—

“(i) REQUIREMENT TO ESTABLISH.—After certification by the Secretary under subparagraph (A), the Secretary and the Secretary of State jointly shall use information from the air exit system referred to in such subparagraph to establish a maximum visa overstay rate for countries participating in the program pursuant to a waiver under subparagraph (B). The Secretary of Homeland Security shall certify to Congress that such rate would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States.

“(ii) VISA OVERSTAY RATE DEFINED.—In this paragraph

the term 'visa overstay rate' means, with respect to a country, the ratio of—

“(I) the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa whose periods of authorized stays ended during a fiscal year but who remained unlawfully in the United States beyond such periods; to

“(II) the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa during that fiscal year.

“(iii) REPORT AND PUBLICATION.—The Secretary of Homeland Security shall on the same date submit to Congress and publish in the Federal Register information relating to the maximum visa overstay rate established under clause (i). Not later than 60 days after such date, the Secretary shall issue a final maximum visa overstay rate above which a country may not participate in the program.

“(9) DISCRETIONARY SECURITY-RELATED CONSIDERATIONS.— In determining whether to waive the application of paragraph (2)(A) for a country, pursuant to paragraph (8), the Secretary of Homeland Security, in consultation with the Secretary of State, shall take into consideration other factors affecting the security of the United States, including—

“(A) airport security standards in the country;

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“(B) whether the country assists in the operation of an effective air marshal program;

“(C) the standards of passports and travel documents issued by the country; and

“(D) other security-related factors, including the country's cooperation with the United States' initiatives toward combating terrorism and the country's cooperation with the United States intelligence community in sharing information regarding terrorist threats.”.

(d) SECURITY ENHANCEMENTS TO THE VISA WAIVER PROGRAM.—

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

(A) in subsection (a), in the flush text following paragraph (9)—

(i) by striking “Operators of aircraft” and inserting the following:

“(10) ELECTRONIC TRANSMISSION OF IDENTIFICATION INFORMATION.—Operators of aircraft”; and

(ii) by adding at the end the following new paragraph:

“(11) ELIGIBILITY DETERMINATION UNDER THE ELECTRONIC TRAVEL AUTHORIZATION SYSTEM.—Beginning on the date on which the electronic travel authorization system developed under subsection (h)(3) is fully operational, each alien traveling

under the program shall, before applying for admission to the United States, electronically provide to the system biographical information and such other information as the Secretary of Homeland Security shall determine necessary to determine the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States. Upon review of such biographical information, the Secretary of Homeland Security shall determine whether the alien is eligible to travel to the United States under the program.”;

(B) in subsection (c)—

(i) in paragraph (2)—

(I) by amending subparagraph (D) to read as follows:

“(D) REPORTING LOST AND STOLEN PASSPORTS.—The government of the country enters into an agreement with the United States to report, or make available through Interpol or other means as designated by the Secretary of Homeland Security, to the United States Government information about the theft or loss of passports within a strict time limit and in a manner specified in the agreement.”;

and

(II) by adding at the end the following new subparagraphs:

“(E) REPATRIATION OF ALIENS.—The government of the country accepts for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued not later than three weeks after the issuance of the final order of removal. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release. Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State

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to compel the release, removal, or consideration for release or removal of any alien.

“(F) PASSENGER INFORMATION EXCHANGE.—The government of the country enters into an agreement with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens.”;

(ii) in paragraph (5)—

(I) by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”; and

(II) in subparagraph (A)(i)—

(aa) in subclause (II), by striking “and” at the end;

(bb) in subclause (III)—

(AA) by striking “and the Committee on International Relations” and inserting “, the Committee on Foreign Affairs, and the Committee on Homeland Security,”

and by striking “and the Committee on Foreign Relations” and inserting “, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs”; and

(BB) by striking the period at the end and inserting “; and”; and

(cc) by adding at the end the following new subclause:

“(IV) shall submit to Congress a report regarding the implementation of the electronic travel authorization system under subsection (h)(3) and the participation of new countries in the program through a waiver under paragraph (8).”; and

(III) in subparagraph (B), by adding at the end the following new clause:

“(iv) PROGRAM SUSPENSION AUTHORITY.—The Director of National Intelligence shall immediately inform the Secretary of Homeland Security of any current and credible threat which poses an imminent danger to the United States or its citizens and originates from a country participating in the visa waiver program. Upon receiving such notification, the Secretary, in consultation with the Secretary of State—

“(I) may suspend a country from the visa waiver program without prior notice;

“(II) shall notify any country suspended under subclause (I) and, to the extent practicable without disclosing sensitive intelligence sources and methods, provide justification for the suspension; and

“(III) shall restore the suspended country’s participation in the visa waiver program upon a determination that the threat no longer poses an imminent danger to the United States or its citizens.”;

and

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(iii) by adding at the end the following new paragraphs:

“(10) TECHNICAL ASSISTANCE.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall provide technical assistance to program countries to assist those countries in meeting the requirements under this section. The Secretary of Homeland Security shall ensure that the program office within the Department of Homeland Security is adequately staffed and has resources to be able to provide such technical assistance, in addition to its duties to effectively monitor compliance of the countries participating in the program with all the requirements of the program.

“(11) INDEPENDENT REVIEW.—

“(A) IN GENERAL.—Prior to the admission of a new country into the program under this section, and in conjunction with the periodic evaluations required under subsection

(c)(5)(A), the Director of National Intelligence shall conduct an independent intelligence assessment of a nominated country and member of the program.

“(B) REPORTING REQUIREMENT.—The Director shall provide to the Secretary of Homeland Security, the Secretary of State, and the Attorney General the independent intelligence assessment required under subparagraph (A).

“(C) CONTENTS.—The independent intelligence assessment conducted by the Director shall include—

“(i) a review of all current, credible terrorist threats of the subject country;

“(ii) an evaluation of the subject country’s counterterrorism efforts;

“(iii) an evaluation as to the extent of the country’s sharing of information beneficial to suppressing terrorist movements, financing, or actions;

“(iv) an assessment of the risks associated with including the subject country in the program; and

“(v) recommendations to mitigate the risks identified in clause (iv).”;

(C) in subsection (d)—

(i) by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

(ii) by adding at the end the following new sentence:

“The Secretary of Homeland Security may not waive any eligibility requirement under this section unless the Secretary notifies, with respect to the House of Representatives, the Committee on Homeland Security, the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Appropriations, and with respect to the Senate, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Appropriations not later than 30 days before the effective date of such waiver.”;

(D) in subsection (f)(5)—

(i) by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”;

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(ii) by striking “of blank” and inserting “or loss of”;

(E) in subsection (h), by adding at the end the following new paragraph:

“(3) ELECTRONIC TRAVEL AUTHORIZATION SYSTEM.—

“(A) SYSTEM.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a fully automated electronic travel authorization system (referred to in this paragraph as the ‘System’) to collect such biographical and other information as the Secretary of Homeland Security determines necessary

to determine, in advance of travel, the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States.

“(B) FEES.—The Secretary of Homeland Security may charge a fee for the use of the System, which shall be—

“(i) set at a level that will ensure recovery of the full costs of providing and administering the System; and

“(ii) available to pay the costs incurred to administer the System.

“(C) VALIDITY.—

“(i) PERIOD.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall prescribe regulations that provide for a period, not to exceed three years, during which a determination of eligibility to travel under the program will be valid.

Notwithstanding any other provision under this section, the Secretary of Homeland Security may revoke any such determination at any time and for any reason.

“(ii) LIMITATION.—A determination by the Secretary of Homeland Security that an alien is eligible to travel to the United States under the program is not a determination that the alien is admissible to the United States.

“(iii) NOT A DETERMINATION OF VISA ELIGIBILITY.—

A determination by the Secretary of Homeland Security that an alien who applied for authorization to travel to the United States through the System is not eligible to travel under the program is not a determination of eligibility for a visa to travel to the United States and shall not preclude the alien from applying for a visa.

“(iv) JUDICIAL REVIEW.—Notwithstanding any other provision of law, no court shall have jurisdiction to review an eligibility determination under the System.

“(D) REPORT.—Not later than 60 days before publishing notice regarding the implementation of the System in the Federal Register, the Secretary of Homeland Security shall submit a report regarding the implementation of the system to—

“(i) the Committee on Homeland Security of the House of Representatives;

“(ii) the Committee on the Judiciary of the House of Representatives;

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“(iii) the Committee on Foreign Affairs of the House of Representatives;

“(iv) the Permanent Select Committee on Intelligence of the House of Representatives;

“(v) the Committee on Appropriations of the House of Representatives;

“(vi) the Committee on Homeland Security and Governmental Affairs of the Senate;

“(vii) the Committee on the Judiciary of the Senate;

“(viii) the Committee on Foreign Relations of the Senate;

“(ix) the Select Committee on Intelligence of the Senate; and

“(x) the Committee on Appropriations of the Senate.”; and

(F) by adding at the end the following new subsection:

“(i) EXIT SYSTEM.—

“(1) IN GENERAL.—Not later than one year after the date of the enactment of this subsection, the Secretary of Homeland Security shall establish an exit system that records the departure on a flight leaving the United States of every alien participating in the visa waiver program established under this section.

“(2) SYSTEM REQUIREMENTS.—The system established under paragraph (1) shall—

“(A) match biometric information of the alien against relevant watch lists and immigration information; and

“(B) compare such biometric information against manifest information collected by air carriers on passengers departing the United States to confirm such aliens have departed the United States.

“(3) REPORT.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall submit to Congress a report that describes—

“(A) the progress made in developing and deploying the exit system established under this subsection; and

“(B) the procedures by which the Secretary shall improve the method of calculating the rates of nonimmigrants who overstay their authorized period of stay in the United States.”.

(2) EFFECTIVE DATE.—Section 217(a)(11) of the Immigration and Nationality Act, as added by paragraph (1)(A)(ii), shall take effect on the date that is 60 days after the date on which the Secretary of Homeland Security publishes notice in the Federal Register of the requirement under such paragraph.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this section and the amendments made by this section.

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8 USC 1187 note.

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