

TESTIMONY OF

JOHN WAGNER
Acting Deputy Assistant Commissioner
Office of Field Operations

U.S. Customs and Border Protection
Department of Homeland Security

BEFORE

House Committee on Oversight and Government Reform, Subcommittee on National Security

ON

“Border Security Oversight, Part III: Border Crossing Cards and B-1/B-2 Visas”

November 14, 2013
Washington, DC

Chairman Chaffetz, Ranking Member Tierney, and distinguished Members of the Subcommittee, thank you for the opportunity to appear before you on behalf of the dedicated men and women of U.S. Customs and Border Protection (CBP) to discuss our efforts to detect and deter nonimmigrant visa violations, while securing and facilitating legitimate international travel. We appreciate the Subcommittee's leadership and your continued efforts to ensure the security of the American people.

As the unified border security agency of the United States, CBP is responsible for securing our Nation's borders while facilitating the flow of legitimate international travel and trade that is so vital to our Nation's economy. Within this broad responsibility, our priority mission remains to prevent terrorists and terrorist weapons from entering the United States. We recognize that those who pose a national security or public safety threat may seek to violate immigration laws, by way of overstaying the authorized period of admission, in order to remain in the United States.

To detect and deter fraudulent visa activity and nonimmigrant status violations, CBP works in close partnership with our Federal partners, including U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and the Department of State (DOS). We also work closely with state and local law enforcement, the private sector, and our foreign counterparts to improve our ability to identify and address risks, including potential overstays at the earliest possible point.

In concert with our partners, CBP strives to ensure that those seeking to visit the United States for short term business or pleasure are appropriately vetted, and any document deficiencies are addressed before boarding a flight or other conveyance bound for the United States, and before admission at a United States port of entry (POE).

CBP processes nearly one million travelers each day as they enter the United States. CBP and its partners work daily to address risk at multiple stages: the initial application to travel and pre-departure targeting; the arrival at a POE; and finally, the exit or departure from the United States.

Application to Travel to the United States

In general, foreign nationals wishing to travel to the United States need to either apply for a visa from DOS at a U.S. Embassy or Consulate, or a travel authorization from CBP via the Electronic System for Travel Authorization (ESTA). CBP and the National Counterterrorism Center play an important role in each of these processes.

Nonimmigrant Visa Process

Travelers seeking nonimmigrant visas (NIVs) to temporarily travel to the United States must apply to DOS under specific visa categories, including those for business, pleasure, study, and employment-based purposes. Visitor visas include nonimmigrant visas for persons who seek to enter the United States temporarily for business (the B-1 visa), pleasure (e.g., tourism) (the B-2 visa), or a combination of both purposes (B-1/B-2 visas). The U.S. government desired to increase its ability to facilitate legitimate travel to the United States while simultaneously reduce the risk of issuing a visa to a known or suspected terrorist (KST). The Kingfisher Expansion (KFE) program leverages technology to provide speed and accuracy to the visa adjudication

process. KFE reviews 100% of all visa applicants to identify any connections to terrorism by comparing applicant data to classified data holdings. In addition, KFE enables classified collaborative terrorist dossier containing input from multiple federal partners. As of 15 June 2013, the State Department uses KFE to vet all visa applicants. In most instances, the DOS consular officer will interview the visa applicant to determine eligibility. In every case, DOS vets visa applicants through a number of systems. DOS consular officers then adjudicate the visa application. Applicants for B-1 and B-2 visas must demonstrate that they have ties to their home country that would compel them to return after a temporary stay in the United States.

In order to identify persons whose eligibility for a visa or entry to the United States has changed since the issuance of that visa, CBP operates and monitors the “Visa Hot List,” a tool to re-vet previously issued visas against lookout records containing derogatory information. Relevant information that is uncovered is passed to DOS, ICE, or other agencies as appropriate. This continuous re-vetting by CBP has resulted in the revocation by DOS of more than 6,300 visas since the program’s inception in March 2010, including 3,814 referrals that were matches to records in the Terrorist Screening Database (TSDB). In addition, NCTC’s Kingfisher Expansion program also conducts recurrent vetting by continuously comparing visa applicant biographic data against NCTC’s classified holdings.

To further enhance visa-screening efforts, ICE, CBP and DOS are collaborating on an automated visa application screening process that broadens the scope for identifying potential derogatory information prior to visa adjudication and issuance, and synchronizes reviews of the information across these agencies. The program is presently being piloted at 20 posts overseas where ICE officers assigned to the Visa Security Program are able to monitor the efficacy of the program. This process can be used as a precursor to, and in conjunction with, the current DOS Security Advisory Opinion (SAO) and Advisory Opinion (AO) programs. The joint program leverages the three agencies’ expertise, authorities, and technologies, including CBP’s Automated Targeting System (ATS), to vet visa applicants prior to the adjudication of their applications by DOS. This program significantly enhances the U.S. Government’s anti-terrorism and anti-fraud efforts by improving the existing visa-application process and denying inadmissible applicants the ability to travel to the United States. Since the program began in pilot in January 2013, over 2.2 million visa applications have been screened and 1,386 have been identified for consular officer review for SAOs, AOs or refusal, including 1,013 for security related reasons.

Electronic System for Travel Authorization (ESTA)

The Visa Waiver Program (VWP) allows citizens of participating countries¹ to travel to the United States without a visa for stays of 90 days or less, if they meet all requirements. Visitors

¹ The 37 countries currently designated for participation in the Visa Waiver Program are: Andorra, Australia, Austria, Belgium, Brunei, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, South Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom. With respect to all references to “country” or “countries” in this document, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96-8, Section 4(b)(1), provides that “[w]hen the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.” 22 U.S.C. § 3303(b)(1).

traveling to the United States by air or sea and intending to apply for admission in accordance with the VWP must first apply for travel authorization through CBP's online application system, ESTA. Through this process, CBP incorporates targeting and database checks to identify individuals who are ineligible to enter the United States under the VWP and those who may pose an overstay risk, or who may present a national security or criminal threat if allowed to travel. CBP also continuously reviews ESTA applications for new derogatory information, to identify persons whose eligibility for entry into the United States has changed since the ESTA authorization was initially approved.

Traveling with a B-1/B-2 Nonimmigrant Visa

The issuance of a B-1/B-2 pleasure or business nonimmigrant visa allows the bearer to apply for admission at any designated air, land or sea POE but does not guarantee admission to the United States. Aliens admitted to the United States may travel in a B-1/B-2 status. These nonimmigrant visas can be issued to individuals of any nationality, who may generally stay up to six months and travel anywhere within the United States.

It is important to clarify the difference between the visa expiration date and the length of time a visitor is granted permission to remain in the United States. A visa is issued to a traveler by a DOS consular officer at an American embassy or consulate; it authorizes the individual to travel to a United States POE within a specific period of time, to apply for admission in the stated nonimmigrant classification, such as a visitor for business or pleasure. The traveler must apply for admission on or before the expiration date of the visa. While some visas may be used only once, others authorize multiple uses. CBP officers are authorized to admit a traveler into the United States if the individual is admissible, or determine that the traveler is inadmissible. If a visitor is admitted to the United States, the CBP officer will determine the length of the traveler's stay in the United States. On the passport admission stamp or paper Form I-94, the CBP officer records both the date admitted and the date by which the visitor must depart the United States; the length of time between the admission date and the required departure date is known as the *period of admission* (which in certain circumstances may be extended).

Importantly, there are circumstances that can serve to void or cancel the period of visa validity. If a visitor violates the terms of his or her admission, by overstaying the date of his or her authorized stay, the visa becomes void per Section 222(g)(1) of the Immigration and Nationality Act (INA). If a person engages in activities inconsistent with the visa classification (such as engaging in unauthorized employment), on the next application for admission, the traveler could be found to be inadmissible to enter the United States; and processed accordingly.² If in the case of an applicant who files an application for an extension of stay or a change of status before the expiration of his period of admission, pursuant to Department of Homeland Security (DHS) policy, the alien is considered not to have overstayed in that event. In any event, the burden of

Accordingly, all references to "country" or "countries" in the Visa Waiver Program authorizing legislation, Section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, are read to include Taiwan.

² See INA § 235(b)(1) and 8 C.F.R. § 235.3 (regarding processing procedures).

proof is upon the applicant that he/she is eligible to enter the United States under the classification for which they applied admission.³

National Targeting Center

CBP leverages all available advance passenger data, including the Passenger Name Record (PNR) and Advance Passenger Information System (APIS) data, previous crossing information, intelligence, and law enforcement information, as well as open source information in its visa security efforts at the National Targeting Center (NTC). Starting with the earliest indications of potential travel, including United States-bound travel reservations, ESTA applications, visa applications, and passenger manifests, and continuing through the inspection and arrivals process, the NTC is continually analyzing information gleaned from these sources using CBP's Automated Targeting System (ATS).

With pre-departure targeting support from the NTC, the CBP Regional Carrier Liaison Group (RCLG) in Miami, New York, and Honolulu, and Immigration Advisory Program (IAP)⁴ officers work in partnership with foreign law enforcement officials to evaluate potential risks, including possible overstays, presented by non-watchlisted travelers, and then work in coordination with commercial air carriers to issue no-board recommendations to the airline to keep suspected high-risk passengers from traveling to the United States. In FY 2012, CBP identified 9,506 passengers who were inadmissible to the United States and were denied boarding at foreign departure locations and has already identified 5,212 thus far in FY 2013. The NTC vetting process for international passengers continues while the flight is en route to the United States in order to identify any travelers who, although they may not be national security risks, may need to be referred for a more thorough inspection at the POE upon arrival in the United States.

Admission to the United States

In accordance with the Immigration and Nationality Act⁵ and other federal laws applicable at the border, all persons arriving at a POE to the United States are subject to inspection by CBP officers. If a traveler qualifies for an exemption to the inspection requirement, the examination continues for other laws and regulations that CBP enforces.⁶ CBP officers conduct the immigration, customs, and agriculture portions of the inspection and examination process.

For all nonimmigrants, the CBP officer must determine why the individual is coming to the United States, what documents are required, and how long the individual should be permitted to stay in the United States. A traveler seeking to enter the United States but who is not a U.S. citizen, national, or Lawful Permanent Resident is generally required to present a valid passport and valid U.S. visa, unless the traveler qualifies for an exemption to the visa requirement listed in 8 C.F.R. § 212.1. Exceptions to the visa requirements exist for, among others, nationals of

³ See INA §214(b).

⁴ The IAP is currently operational at eleven airports in nine countries including Amsterdam, Doha, Frankfurt, London Heathrow and Gatwick, Madrid, Manchester, Mexico City, Panama City, Tokyo, and Paris.

⁵ See INA § 235, codified at 8 U.S.C. § 1225.

⁶ See 8 C.F.R. § 235.1 (noting requirements for individuals such as members of NATO forces).

countries designated under the VWP and certain citizens of Canada.⁷ Travelers entering the United States under the VWP by air or sea must have a valid passport and an approved ESTA. The ESTA must be obtained prior to travel to the United States.

Canadian citizens must present a valid passport when entering the United States by air. But Canadian citizens arriving to the United States from Canada, Mexico, the Caribbean or Bermuda, by land or sea, are not required to do so and may instead present one of the following travel documents: Enhanced Driver's License (EDL), Trusted Traveler Card (NEXUS, SENTRI or FAST), or approved documentation such as an Enhanced Tribal Card or Secure Certificate of Indian Status.

Border Crossing Cards (BCC)

While citizens of Mexico are generally required to present both a passport and U.S. visa when applying for admission, an exemption from the passport requirement exists when a Mexican citizen presents a valid Border Crossing Card (BCC) at a land or sea port of entry. A BCC, which is a form of B-1/B-2 nonimmigrant visa, may be issued by DOS to Mexican citizens who reside in Mexico and who wish to cross into the United States temporarily for purpose of business or pleasure. The BCC also allows Mexican citizens to enter the United States at the land border without issuance of a Form I-94, Arrival/Departure Record if they plan to remain within a defined border zone along the U.S. southern border. BCC holders enter the United States under the same terms as a B-1 or B-2 nonimmigrant, except that their period of admission is limited to 30 days if they are admitted without a Form I-94. If a citizen of Mexico who is admitted as a visitor for business or pleasure desires to travel outside of the border zone, he or she presents the BCC and is issued a Form I-94. This border zone is defined in terms of miles from the U.S.-Mexico land border and varies depending on the state. The border zone was established in 1953 to promote the economic stability of the border region by allowing for freer flow of travel for Mexican visitors with secure documents.⁸ The current BCC border zone is within 25 miles of the border in California and Texas; within 55 miles of the border in New Mexico; and within 75 miles of the border in Arizona.⁹

To obtain a BCC, applicants are vetted extensively by DOS. The vetting process includes collection of biometric and biographic information, such as fingerprints, photographs, and other information regarding residence, employment and reason for border crossing; an interview; and security checks to identify any terrorism concerns, disqualifying criminal history, or previous immigration violations. The BCC includes many security features such as vicinity-read Radio Frequency Identification (RFID) technology and a machine-readable zone. Using these features, CBP is able to electronically authenticate the BCC and compare the biometrics of the individual presenting the BCC against DOS issuance records in order to confirm that the document is currently valid and that the person presenting the document is the one to whom it was issued. The BCC is acceptable as a stand-alone document only for travel from Mexico by land, pleasure

⁷ See 8 C.F.R. § 212.1(a)(1) (describing visa exemptions for Canadian citizens).

⁸ See 78 Fed. Reg. 35,103 (June 12, 2013) (amending the border zone in New Mexico).

⁹ See 8 C.F.R. § 235.1(h)(1) (describing the border zone).

vessel, or ferry. Together with a valid Mexican passport, it meets the documentary requirements for entry at all land, air, and sea POEs.

BCCs have increased security in processing travelers by providing CBP with an enhanced ability to affirmatively identify an individual and conduct admissibility checks. Additionally, in each southern border state, CBP Border Patrol immigration checkpoints within the border zone assist in preventing individuals traveling with a BCC but no Form I-94 from continuing beyond the border zone.

Departure from the United States and Overstays

The vast majority of individuals who enter the United States depart prior to the end of their authorized period of admission. Foreign nationals who remain in the United States beyond their authorized period of admission are referred to as “overstays”. To support determinations on who has left the country within their authorized period of admission, DHS has recently enhanced its biographic entry/exit system and is working to further refine statistics related to entry/exit. The 2013 DHS Appropriations Act transferred the entry/exit mission to CBP from the former DHS US-VISIT program. Since obtaining this mission in March, CBP has created an entry/exit transformation office dedicated to enhancing the ability of CBP and DHS to better match entry and exit records and identify overstays.

DHS relies on information in the Arrival and Departure Information System (ADIS) to indicate when a B-1 or B-2 nonimmigrant alien has overstayed his or her authorized period of admission. ADIS aggregates data from multiple source systems, such as TECS, APIS, the Student and Exchange Visitor Information System (SEVIS), and the Computer Linked Application Information Management System (CLAIMS3). ICE analysts use these databases to determine if an alien is, in fact, out of status and has not moved into another visa category or received additional immigration benefits. ICE then prioritizes and addresses overstay leads for national security and public safety risks. Individuals who overstay their period of admission may be subject to sanctions, such as revocation of existing visas, denial of visa renewals, and denial of admission to the United States.

Enhanced Biographic Exit System

The Department has in place a functioning and robust exit/entry system, and is continuing to improve this enhanced biographic system in various ways. These improvements will significantly enhance DHS’s existing capability to identify and target for enforcement action those who have overstayed their period of admission and who represent a public safety and/or national security threat.

Currently, CBP collects nearly 100% of all departure data from foreign nationals who depart the United States via air and sea ports of entry. Air and sea carriers provide manifest data as to who is on an aircraft or vessel leaving the United States. They are required to provide specific sets of data, including name and passport number, and they must report the data within strict time frames or face significant fines for delay or inaccuracy.

CBP closely monitors APIS data accuracy and there are approximately 250,000 arriving and 250,000 departing air passengers processed through APIS each day. Over 99.6% of the date of birth information transmitted in APIS is correct and confirmed by CBP officers during Primary inspection. Overall, 92% of arrival APIS records are confirmed as transmitted during the Primary inspection, and in most cases the remaining modifications are merely technical changes from a Passport to a Lawful Permanent Resident card. CBP has made substantial progress improving APIS data quality over the last several years and will continue these efforts.

The data collected from the carriers is matched against entry data to determine who has overstayed their authorized period of admission to the United States. DHS maintains ADIS specifically for this purpose. ADIS receives other DHS data pertinent to a person's lawful presence—such as immigration benefit information from CLAIMS3 or information from SEVIS on nonimmigrant students in the United States.

The enhanced biographic exit system that is being implemented will further build on these capabilities by, among other things:

- Taking full advantage of and enhance the existing automated entry-exit capability that produces information on individual overstays;
- Incorporating and using biometric information, as technologies mature and DHS can implement an affordable biometric air exit system;
- Allowing DHS to take administrative action against confirmed overstays through visa revocation, prohibiting VWP travel, and placing individuals on lookout lists;
- Further supporting the administration and enforcement of U.S. immigration laws by identifying those who overstay in the United States; and
- Better enabling DHS to maintain a focus on individuals who may wish to do us harm while facilitating the legitimate travel of those who do not.

The first phase of the enhancement to the biographic exit system was completed in April 2013, and included automating connections between DHS data systems, thereby refining ICE's ability to more effectively target and prioritize overstay leads of concern. Subsequent phases of the enhanced biographic exit plan are in motion and include database modernization; further investments in targeting and prioritization capabilities; and increased functionality between biometric and biographic repositories including document validation, which will dramatically improve the ability to successfully match entry and exit records biographically.

As part of these efforts, CBP has developed innovative ways to collect biographic exit information in the land environment. For example, CBP and the Canada Border Services Agency (CBSA) have partnered to create a biographic entry/exit system on the shared land border by exchanging entry information, so that information collected on entry to one country is automatically recorded as an exit from the other.

This program began on June 30, 2013. CBP since has collected over one million records from Canada. We receive approximately 10,000 to 15,000 new records per day from our Canadian counterparts that are matched with U.S. entry information at a rate of over 98 percent. The program currently exchanges data only on third country nationals (including those who may be lawful permanent residents), but will expand to include citizens of both countries in June 2014.

Using available interfaces which already existed with Canada, this was developed at virtually no cost.

CBP is developing a southern border strategy plan that will analyze the existing opportunities and short and long term options for the development of out-bound exit capability on the southern border. The strategy is designed to complement the current CBP national outbound strategy, with its focus on interdiction of illegal currency, firearms, and drugs by introducing new tools and operations designed to identify overstays.

The strategy will be similar to the Canadian effort in that we will seek new ways to partner with Mexico to obtain critical biographic information without negatively affecting trade and travel. For example, CBP is working with Mexico on exchanging Mexican data collected as part of flight departures from Mexico—where we can identify travelers who have departed via the southern land border but then flew internationally from Mexico. Unfortunately, it is not feasible to simply replicate the northern border solution at the southern border. Mexico does not have fixed physical structures at ports of entry to process travelers entering Mexico for immigration purposes, nor does it have data collection procedures similar to the United States and Canada.

As DHS continues to implement its enhanced biographic system, it is also exploring ways to incorporate additional biometric technologies into its entry/exit systems. For instance, CBP has partnered with the DHS Science and Technology Directorate (S&T) to develop a test facility which will allow CBP to test a series of operational concepts for biometric exit (as well as additional entry concepts) in a closed environment. This facility will be complete in early 2014 and CBP will commence testing at that time using new emerging biometric technologies, such as facial recognition technology and iris scans. The objective of the testing is to identify biometric technology that can fit seamlessly into the existing operational environment for travelers departing the United States from international airports. As noted above, the Department's continuing efforts to improve the entry/exit system a system should not be construed to mean that DHS does not already have a functioning exit/entry system in place.

Despite significant challenges, over the past several years, DHS has implemented and now manages a fully-functioning entry/exit system in the air and sea environments, and is continuing to enhance capability for land. While the United States did not build its border, aviation, or immigration infrastructure with exit processing in mind, the Department of Homeland Security has worked to bring the existing biographic system to a level of fidelity equal to, or nearly equal to, a biometric system while continuing to pursue a more cost-effective biometric solution.

Conclusion

Visa security is a critical element of CBP's layered approach to securing our borders. DHS, in cooperation with its Federal partners, foreign counterparts, and the travel industry, is working to apply innovative solutions and make strategic security investment decisions that enhance current efforts to address terrorism and visa violation activities today while prioritizing the capabilities needed for the implementation of a future biometric exit system. These efforts enhance CBP's multilayered approach to screening and identifying potential travelers to the United States who may pose a threat to the homeland.

Thank you for allowing me the opportunity to testify before you today. I look forward to answering your questions.