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I want to thank Chairman Smith, Chairman Gallegly, Ranking Member Lofgren and the distinguished members of the subcommittee for inviting me to testify today on the issue of visa security.

The recent killing of Al-Qaeda leader Osama bin Laden reminded us once again of the wake-up call that came with the September 11, 2001 attack. The investigations that followed revealed serious vulnerabilities in the U.S. effort to prevent terrorist attacks on its soil. One of those vulnerabilities was the visa system. All 19 of the hijackers arrived in the United States on legal visas issued by the State Department, despite information that was available in other parts of the government that, had it been fully shared and recognized, would likely have prevented at least some of the 19 from coming to this country.

There has been tremendous progress in improving the security of the visa system since that time, but as we saw in December 2009 with the failed Christmas bombing attempt, there are still real challenges.

The goal of visa security is to use the visa system as a screening tool to identify and deny visas to those the United States suspects of having terrorist or criminal links. Successful screening requires pulling together all of the information available to the government and checking the identities of visa applicants against that information. The question of which agency is in charge, or where the individuals doing the screening are located, is less important than having an effective system in place.

I have four key points. First, to the greatest extent possible, the security review system should be both comprehensive and efficient, allowing for accurate determinations in a timely manner. As senior homeland security officials in both the Obama and Bush administrations have said many times, but not always acted on consistently, the issue is not one of “balancing” security and travel facilitation. Security done effectively will improve, not detract from, facilitation, because it will allow scarce consular and intelligence resources to be focused on those who may pose a threat, while allowing the vast majority of lawful travelers to receive visas promptly.

Second, the screening tools available have improved immensely over the past decade, and must be fully utilized. In the immediate aftermath of the 9/11 attacks, there were few good options for improving security screening without considerable disruption to many lawful travelers. The necessary information systems, and in particular the necessary sharing of information within the U.S. government, were not in place. The United States had little choice but to scrutinize certain visa applicants on the basis of general profile characteristics – nationality, age, gender etc – that were loosely connected to the actual risk posed by an individual. That is no longer the case. The government now has the capability to do initial background checks on all visa applicants in an extremely timely fashion. This system allows for individuals to be checked against all the information available in the government's terrorism, criminal, border and visa databases, and can identify more quickly and with greater precision those who require additional scrutiny.

Third, it is time therefore to streamline some of the redundant and inefficient security review programs that were put in place after 9/11 when better options did not exist. The Security Advisory Opinion (SAO) system, in which detailed background checks are done each year on several hundred thousand visa applicants, should become more targeted and focused.

Fourth, the costs of the current system are extremely high for the U.S. economy. Visa delays – and not all of these are associated with security, though many are – have a price for the United States, and not just for the individuals delayed. The U.S. tourist industry – which is our largest single goods or services export – has missed out on a decade of explosive growth in world travel. Visas are currently required for about 35 percent of travelers to the United States, but that number is expected to rise to more than 50 percent by 2020 because of the rising number of travelers from Brazil, India and China. In a report that will be released this week that I strongly recommend to your attention, the U.S. Travel Association estimates that simply regaining our pre-9/11 share of world travel – which has fallen from 17 per cent to just 12 percent – would add \$859 billion to U.S. GDP and create 1.3 million jobs.¹ The Commerce Department has said that visa delays are discouraging foreign investment and keeping business travelers – many coming here on buying missions – away from the United States.² While foreign investment is driven by many different economic and political factors, it is probably not a coincidence that the U.S. share of inward foreign direct investment (FDI) peaked just before 9/11 and has fallen in half since that time, even while other advanced economies have seen their shares remain stable. The result is still more jobs lost to the United States at a time when unemployment is still near double digit levels.

¹ U.S. Travel Association, *Ready for Takeoff: A Plan to Create 1.3 Million U.S. Jobs By Welcoming Millions of International Travelers*, May 2011.

² U.S. Department of Commerce, “Visas and Foreign Direct Investment: Supporting U.S. Competitiveness by Facilitating International Travel,” November 2007, at <http://trade.gov/media/publications/pdf/visas07.pdf>.

Finally, I must note that unnecessary visa delays do great damage to the United States' reputation as a country that champions fairness and due process. I have come to know many of the innocent individuals caught up in lengthy delays because of poorly designed visa security measures. They are scientists and engineers and business people – most of whom have lived in the United States for years – who faced delays of months and in some cases years simply because they went home for a visit and triggered the background check when they tried to get their visa stamped for return. Often they have wives and children waiting for them to return to the United States.

One of them, Jay Sarkar, is a microchip designer who helped create Intel's latest generation of chips. He had earned a PhD at the University of Texas, and almost gave up on the United States after facing a four-month security review in 2008. Today, thankfully, he works for Qualcomm in San Francisco and was awarded one of the small number of green cards given to "outstanding researchers." Another whom I wrote about recently, Lakshmi Ganti – an electrical engineer with an MBA from Babson College – faced an 18-month security review in trying to return to his job in Boston in 2008-2009.³ He wrote to me 15 months into his ordeal: "For a few months I was ok with the delay, and in my mind justified it as—greater good—national security/safety procedures...but 15+ months of background checks...on someone who has a clean record? Impossible to rationalize." By the time his review was completed and his visa was approved, he had lost his job. Five months ago he got a new job offer in the United States, and went to the U.S. embassy in New Delhi to re-apply, but was again thrown into a security review. He is still waiting for an answer. For too long, we have wrongly equated processing delays with security. The U.S. government has developed a better system, and should move ahead promptly to implement it fully.

Background

The effort to improve the security of the visa system did not begin after 9/11. The State Department created the first terrorist watch list established by any of the border security agencies, known as TIPOFF, in 1987, and pressed the intelligence community to share information on suspected terrorists so their names could be added to the list. But the system was far from adequate. Indeed, in 1993 a visa was mistakenly issued in Sudan to Sheikh Omar Abdel-Rahman, known as the "Blind Sheikh", who masterminded the first attack on the World Trade Center towers in 1993. Rahman was a well-known Islamic radical, and his name was on the TIPOFF watch list. But at the time the list was only on microfiche, and the local hire in the embassy in Khartoum failed to check the list before Rahman's visa was issued. Following the 1993 attacks, the State Department moved to transform TIPOFF into a modern, computer-based watch list system, and then integrated it into the larger Consular Lookout and Support System (CLASS) database that is available to all consular officers and also contains the names of anyone denied a U.S. visa in the past.

In the wake of 9/11, the government initiated an additional series of background checks aimed at identifying terrorists seeking visas to come to the United States. The most significant, created in January 2002, is known as Visas Condor. The checks are done routinely for most male nationals of more than two dozen countries (the so-called "List of 26") that are seen as posing a potential terrorist threat, and for others at the discretion of the consular officers. In some posts such as Syria, every applicant is normally referred for an SAO.

³ Edward Alden, "America's National Suicide: The U.S. needs this man, but it won't let him in. The Orwellian tale of an immigration ordeal." *Newsweek*, April 10, 2011 at <http://www.newsweek.com/2011/04/10/america-s-national-suicide.html>.

A second review known as Visas Donkey provides additional scrutiny for those whose names come up as a hit against a name listed in CLASS. After 9/11, the number of names in CLASS roughly doubled – to nearly 20 million today – because the FBI’s National Criminal Information Center (NCIC) database on convicted criminals was added to the CLASS database. The NCIC data includes both serious criminals and minor offenders like DUIs or shoplifters. If the name of the visa applicant matches a name in the database, then an SAO background check is initiated. The “Donkey” review poses particular problems due to the number of “false positives” – i.e. Names that are similar but not the same person as someone listed in CLASS. This is particularly so in countries such as India, China and Pakistan where certain surnames are extremely common. The CLASS system does not include dates of birth that would help to resolve false positives more quickly. I have been given estimates by government officials that anywhere from 90 to 99 per cent of the “hits” under CLASS are false positives, but the consular officer does not know this. All he or she knows is that a hit has occurred and the case must be sent back to the FBI and other relevant agencies in Washington for clearance before the visa can be issued.

The other large category of SAO checks is known as Visas Mantis, and it applies to individuals who have some sort of scientific or technical expertise. Established in 1998, the goal is to prevent espionage or the transfer of information that could be useful in foreign weapons programs, the same set of concerns dealt with through what are known as the “deemed export” requirements. Individuals studying or working with an array of “sensitive” technologies as enumerated in the U.S. Technology Alert List are normally subject to this review. After 9/11, however, amid growing fears over weapons proliferation, the number of individuals checked under Mantis each year rose from about 1,000 to more than 20,000 by 2003, and has grown further since then.

The SAO process requires that a request go out from the consulate or embassy to all U.S. government agencies that may have relevant information about the visa applicant. The State Department cannot issue a visa to that applicant until it receives an affirmative response from each of these agencies (a different procedure currently exists for Mantis, as will be explained below). The applicants are told only that their visa application has been suspended while it undergoes “administrative processing.” In total, the State Department refers nearly 300,000 visa applicants each year for SAOs, a not insignificant number given that the United States issues about 6 million visas each year. In some embassies, the numbers are much higher. In Kuala Lumpur, Malaysia, according a recent State Department Inspector General report, SAO requirements affect more than 13 per cent of even successful applicants.⁴

In most cases the SAO checks are carried out promptly. Condor checks, for instance, average just three days. But individual cases can take much longer, and there have been times when the backlogs have grown significantly. In 2003 and 2004, the GAO reported, the average processing time for SAOs rose to more than two months, and many cases took far longer.⁵ Significant backlogs, though not as long, arose again in 2008 and early 2009. And currently there appears to be a smaller new spike in delays, though this is based on anecdotal evidence.

⁴ United States Department of State, Office of Inspector General, Report of Inspection, Embassy, Kuala Lumpur, Malaysia, Report Number ISP-I-10-74A, August 2010, at <http://oig.state.gov/documents/organization/147028.pdf>

⁵ Government Accountability Office, *Border Security: Improvements Needed to Reduce Time Taken to Adjudicate Visas for Science Students and Scholars*, GAO 04-371, February 2004 at <http://www.gao.gov/new.items/d04371.pdf>; and the follow-on report *Streamlined Visas Mantis Program Has Lowered Burden on Foreign Science Students and Scholars, but Further Refinements Needed*, GAO 05-198, February 2005.

Improvements to the Visa Security Process

The central conclusion from the investigations of the 9/11 Commission and other evaluations was that the lack of effective information sharing within the U.S. government was at the heart of the breakdown that allowed the attacks to occur. With respect to visa security, the challenge is to use information systems to ensure that any intelligence available to the U.S. government about a visa applicant can be accessed, and acted upon, promptly.

While I am not aware of all the details, over the past two years the administration has been running pilot tests on a more comprehensive system that could do much to improve information sharing and streamline the current SAO procedures. This new system allows for all visa applicants to be checked routinely against databases that include all of the terrorist watch list, criminal, arrival/departure, overstay and other information available to the U.S. government. The goal is to search for actual intelligence or criminal information on each individual visa applicant, rather than checking applicants simply because they fit a certain profile or because their name matches as a hit in CLASS. This new system has been tested to run alongside the current security review system, and the pilot tests showed that not only did it identify everyone who was deemed to pose a risk under the current SAO process, the computer checks also identified additional individuals who had been missed under the current process.

The system is also highly efficient. The checks take no longer than 72 hours, which means they can be initiated upon receipt of the visa application and in almost all cases are completed before the visa interview is held. False positives under CLASS are resolved much more quickly than under the current system. Those applicants who produce derogatory information under the new system are then referred for the detailed background checks required under the SAO process. Instead of the several hundred thousand SAO reviews currently done each year, the new system would likely reduce that number into the low thousands. This would free up valuable government staff time that is currently being devoted to reviewing applicants who pose no risk, and instead allow for greater investigation of those who may pose such a risk. In other words, the new system would be better for both security and facilitation.

My understanding is that there remain some issues to iron out before the system can be fully implemented, but the administration should be encouraged to move to full implementation as quickly as possible.

Once the new system is in place, it will make the current Condor and Donkey checks redundant, and these should be phased out. The administration has already indicated a positive willingness to move in this direction. Two weeks ago, DHS announced in a Federal Register notice that it would largely end still another layer of routine border screening for most visitors from countries of concern. This system, known as the National Security Entry-Exit Registration System (NSEERS), was created in 2002. The NSEERS system held some logic in 2002, by requiring that most travelers from the List of 26 countries be automatically subject to secondary screening upon arrival in the United States. But it has since been superseded by other, better security screening procedures. These occur not only through the visa process, but for travelers from visa waiver countries through the Electronic System for Travel Authorization (ESTA), for all incoming travelers as a result of CBP's Automated Targeting System, and at the point of inspection as a result of US-VISIT. As DHS said last week in announcing the changes to NSEERS, "DHS has determined that

recapturing this data manually when a nonimmigrant is seeking admission to the United States is redundant and no longer provides any increase in security.”⁶

Similarly, when the administration gets the new visa check system up and running – which some government officials tell me will take as much as a year but others insist could be done almost immediately – the administration should in the same fashion eliminate the routine, post-9/11 security background checks under the Condor and Donkey programs.

The one exception should be the Visas Mantis checks, which target people who would not necessarily be identified in the course of terrorism or criminal-related background checks. I would like to take the opportunity here to praise both DHS and State for an initiative implemented two years ago that remains in place. As a result of careful internal analysis of the data on those undergoing Mantis reviews, the two departments discovered that, in the cases where other agencies identified security risks with a particular applicant, such information came to light very quickly. There was simply no reason for these determinations to take months, because if there was derogatory information, it generally appeared within 10 business days or less. So the departments have set a sensible internal deadline, under which visa applicants who are screened under Mantis now have their cases moved forward if no agency raises an issue within two weeks after the SAO process is initiated.

I would urge the administration to reduce the number of Mantis reviews, however. There is no plausible security reason that the number of individuals subject to those checks to has risen to the current levels. The security of scientific information has long been a difficult issue for the United States. We gain tremendously as a country from scientific openness, in part because the quality of our universities and of our most innovative companies attracts many of the world's best and brightest. It is of no small importance that half of the companies founded in Silicon Valley had immigrant founders or co-founders. This matters not only for America's economic success, but for its national security as well, which depends on maintaining the lead in the technology of modern warfare. The United States must ensure that efforts to improve security of some sensitive scientific information do not undermine the free flow of scientific information from which we as a country benefit immensely.⁷

I want to be clear that such security reviews – whether under the current SAO system or in the alternative being pilot-tested – are not intended as a substitute for the judgment of the consular officers in an overseas post. Most applicants are rejected for visas not because of hits against criminal or terrorist databases, but because the consular officer has reason to believe that they will overstay their visa, or is otherwise not persuaded that the purpose of their intended travel to the United States is legitimate. Security reviews are not intended to replace consular judgment, but to offer an additional, valuable tool for enhancing security in the visa process.

⁶ Department of Homeland Security, Office of the Secretary. Removing Designated Countries From the National Security Entry-Exit Registration System (NSEERS), Federal Register / Vol. 76, No. 82 / Thursday, April 28, 2011 / Notices p. 23830.

⁷ See *Beyond Fortress America: National Security Controls on Science and Technology in a Globalized World*, Committee on Science, Security, and Prosperity; Committee on Scientific Communication and National Security; National Research Council, 2009.

The Costs of the Status Quo

Delays in visa processing have been a chronic problem over the past decade, though one in which there has been some real improvement, albeit inconsistent. Visa security reviews are only one factor in those delays, which can also stem from wait times for interviews or other elements of routine processing. And visa delays are only one reason that the United States has become a less attractive destination for overseas travelers. But the economic consequences are significant.

Over the past decade, the United States has lost a third of its market share in international travel, even as Europe has seen its share increase. Gary Locke, the Secretary of Commerce nominated to become U.S. ambassador to China, has said in talking about visa delays that “the United States often makes it too difficult for foreign company executives to enter here to do business—a shortcoming that has had a tangible cost for American businesses by shutting out some of their best customers.” The United States has increasingly lost its attractiveness as a location for international business, scientific, and even religious conventions because too many participants cannot obtain visas in a timely fashion. One example cited in the forthcoming U.S. Travel report – Houston lost the 2014 World Petroleum Congress to Moscow, at a cost of 9,000 visitors and \$10.7 million in revenue for the city.

There also appears to be an increasing flow of talented Indians and Chinese who were educated at U.S. universities returning home; fewer are seeking visas to work in the United States, and more are taking their American degrees and returning home.⁸ Much of this is no doubt driven by increased economic opportunities in those countries, but visa and immigration issues appear to play a role as well. In a highly competitive global economy, the United States simply cannot afford to drive people away through measures that are not needed for enhanced security.

And I want to emphasize that many of the people who get caught up in the security review process are exactly the sort of people the United States wants here. They are mostly educated, reasonably well off people who have chosen to come to the United States to study, or to work, to visit or to do business. Many of them only trigger the security review because they have returned home for a visit, or due to the death of family member, after years of living legally in the United States. Yet as a result of the current security review process, we have thrown many of them into a nightmare worthy of Kafka. They are never told why their visa applications are delayed, only that they are subject to “administrative processing”; they are given no timetable for how long that processing will take; if they have questions, they are told to either check a website that tells them nothing or call a hotline that tells them nothing. And this experience can go on for many months.

What amazes me about many of these individuals is how little anger or bitterness they express towards the United States. They are frustrated of course, and saddened by the inability of our government to do a better job of distinguishing between friends and enemies. But they love the United States for the opportunities it has offered them in their lives, and they want nothing more than to return.

⁸ Miriam Jordan, “Long Prized Tech Visas for U.S. Entry Lose Cachet,” *Wall Street Journal*, May 7, 2011.

Conclusion

Alan Bersin, the commissioner of Customs and Border Protection at DHS, observed in a recent speech that “security and the facilitation of trade are two sides of the same coin. Each reinforces the other. We can secure *and* expedite legitimate trade and travel through risk segmentation.” The same applies to the visa process. Through effective use of intelligence, screening and data analysis, we can better identify and scrutinize the small number of individuals who may pose a security threat to the United States, without disrupting the timely issuance of visas for the vast majority of those we want to come to this country.

It is time to move past worn-out notions that delays in visa processing are necessary for security. They are not. Delays are simply costs with no benefits. It is possible for the U.S. government to do better on both security and facilitation, and Congress and the administration should work together to make this happen as quickly as possible.

Thank you, and I would be happy to respond to your questions.

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