

106TH CONGRESS
2D SESSION

H. R. 3767

AN ACT

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To amend the Immigration and Nationality Act to make improvements to, and permanently authorize, the visa waiver pilot program under section 217 of such Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Visa Waiver Perma-
3 nent Program Act”.

4 **TITLE I—PERMANENT PROGRAM**
5 **AUTHORIZATION**

6 **SEC. 101. ELIMINATION OF PILOT PROGRAM STATUS.**

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

9 (1) in the section heading, by striking “PILOT”;

10 (2) in subsection (a)—

11 (A) in the subsection heading, by striking
12 “PILOT”;

13 (B) in the matter preceding paragraph (1),
14 by striking “pilot” both places it appears;

15 (C) in paragraph (1), by striking “pilot
16 program period (as defined in subsection (e))”
17 and inserting “program”; and

18 (D) in paragraph (2), in the paragraph
19 heading, by striking “PILOT”;

20 (3) in subsection (b), in the matter preceding
21 paragraph (1), by striking “pilot”;

22 (4) in subsection (c)—

23 (A) in the subsection heading, by striking
24 “PILOT”;

25 (B) in paragraph (1), by striking “pilot”;

26 (C) in paragraph (2)—

1 (i) by striking “subsection (g)” and
2 inserting “subsection (f)”; and

3 (ii) by striking “pilot”; and

4 (D) in paragraph (3)—

5 (i) in the matter preceding subpara-
6 graph (A), by striking “(within the pilot
7 program period)”;

8 (ii) in subparagraph (A), in the mat-
9 ter preceding clause (i), by striking “pilot”
10 both places it appears; and

11 (iii) in subparagraph (B), by striking
12 “pilot”;

13 (5) in subsection (e)(1)—

14 (A) in the matter preceding subparagraph
15 (A), by striking “pilot”; and

16 (B) in subparagraph (B), by striking
17 “pilot”;

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

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

21 (A) in paragraph (1)(A) by striking
22 “pilot”;

23 (B) in paragraph (1)(C), by striking
24 “pilot”;

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

3 (D) in paragraph (3), by striking “pilot”;
4 and

5 (E) in paragraph (4)(A), by striking
6 “pilot”.

7 (b) CONFORMING AMENDMENTS.—

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

12 (A) in the clause heading, by striking
13 “PILOT”; and

14 (B) by striking “pilot”.

15 (2) TABLE OF CONTENTS.—The table of con-
16 tents for the Immigration and Nationality Act is
17 amended, in the item relating to section 217, by
18 striking “pilot”.

19 **TITLE II—PROGRAM**
20 **IMPROVEMENTS**

21 **SEC. 201. EXTENSION OF RECIPROCAL PRIVILEGES.**

22 Section 217(a)(2)(A) of the Immigration and Nation-
23 ality Act (8 U.S.C. 1187(a)(2)(A)) is amended by insert-
24 ing “, either on its own or in conjunction with one or more
25 other countries that are described in subparagraph (B)

1 and that have established with it a common area for immi-
2 gration admissions,” after “to extend”).

3 **SEC. 202. MACHINE READABLE PASSPORT PROGRAM.**

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

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

9 (2) by inserting after paragraph (2) the fol-
10 lowing:

11 “(3) MACHINE READABLE PASSPORT.—On and
12 after October 1, 2006, the alien at the time of appli-
13 cation for admission is in possession of a valid unex-
14 pired machine-readable passport that satisfies the
15 internationally accepted standard for machine read-
16 ability.”.

17 (b) REQUIREMENT ON COUNTRY.—Section
18 217(c)(2)(B) of the Immigration and Nationality Act (8
19 U.S.C. 1187(c)(2)(B)) is amended to read as follows:

20 “(B) MACHINE READABLE PASSPORT PRO-
21 GRAM.—

22 “(i) IN GENERAL.—Subject to clause
23 (ii), the government of the country certifies
24 that it issues to its citizens machine-read-
25 able passports that satisfy the internation-

1 ally accepted standard for machine read-
2 ability.

3 “(ii) DEADLINE FOR COMPLIANCE
4 FOR CERTAIN COUNTRIES.—In the case of
5 a country designated as a program country
6 under this subsection prior to May 1,
7 2000, as a condition on the continuation of
8 that designation, the country—

9 “(I) shall certify, not later than
10 October 1, 2000, that it has a pro-
11 gram to issue machine-readable pass-
12 ports to its citizens not later than Oc-
13 tober 1, 2003; and

14 “(II) shall satisfy the require-
15 ment of clause (i) not later than Octo-
16 ber 1, 2003.”.

17 **SEC. 203. DENIAL OF PROGRAM WAIVER BASED ON**
18 **GROUND OF INADMISSIBILITY.**

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

23 “(9) AUTOMATED SYSTEM CHECK.—The iden-
24 tity of the alien has been checked using an auto-
25 mated electronic database containing information

1 about the inadmissibility of aliens to uncover any
2 grounds on which the alien may be inadmissible to
3 the United States, and no such ground has been
4 found.”.

5 (b) VISA APPLICATION SOLE METHOD TO DISPUTE
6 DENIALS OF WAIVER BASED ON GROUND OF INADMIS-
7 SIBILITY.—Section 217 of the Immigration and Nation-
8 ality Act (8 U.S.C. 1187), as amended by section
9 101(a)(6) of this Act, is further amended by adding at
10 the end the following:

11 “(g) VISA APPLICATION SOLE METHOD OF DIS-
12 PUTING GROUND OF INADMISSIBILITY FOUND IN AUTO-
13 MATED SYSTEM.—In the case of an alien denial a waiver
14 under the program by reason of a ground of inadmis-
15 sibility uncovered through a written or verbal statement
16 by the alien or a use of an automated electronic database
17 required under subsection (a)(9), the alien may apply for
18 a visa at an appropriate consular office outside the United
19 States. There shall be no other means of administrative
20 or judicial review of such a denial, and no court or person
21 otherwise shall have jurisdiction to consider any claim at-
22 tacking the validity of such a denial.”.

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

1 (1) in subparagraph (A), by striking “subpara-
 2 graph (B)” and inserting “subparagraph (B) or
 3 (C)”;

4 (2) by adding at the end the following:

5 “(C) The Attorney General may not parole into
 6 the United States an alien who has applied under section
 7 217 for a waiver of the visa requirement, and has been
 8 denied such waiver by reason of a ground of inadmis-
 9 sibility uncovered through a written or verbal statement
 10 by the alien or a use of an automated electronic database
 11 required under section 217(a)(9), unless the Attorney
 12 General determines that compelling reasons in the public
 13 interest, or compelling health considerations, with respect
 14 to that particular alien require that the alien be paroled
 15 into the United States.”.

16 **SEC. 204. EVALUATION OF EFFECT OF COUNTRY’S PARTICI-**
 17 **PATION ON LAW ENFORCEMENT AND SECU-**
 18 **RITY.**

19 (a) INITIAL DESIGNATION.—Section 217(e)(2)(C) of
 20 the Immigration and Nationality Act (8 U.S.C.
 21 1187(e)(2)(C)) is amended to read as follows:

22 “(C) LAW ENFORCEMENT AND SECURITY
 23 INTERESTS.—The Attorney General, in con-
 24 sultation with the Secretary of State—

1 “(i) evaluates the effect that the coun-
2 try’s designation would have on the law en-
3 forcement and security interests of the
4 United States (including the interest in en-
5 forcement of the immigration laws of the
6 United States);

7 “(ii) determines that such interests
8 would not be compromised by the designa-
9 tion of the country; and

10 “(iii) submits a written report to the
11 Committee on the Judiciary of the United
12 States House of Representatives and of the
13 Senate regarding the country’s qualifica-
14 tion for designation that includes an expla-
15 nation of such determination.”.

16 (b) CONTINUATION OF DESIGNATION.—Section
17 217(c) of the Immigration and Nationality Act (8 U.S.C.
18 1187(c)) is amended by adding at the end the following:

19 “(5) WRITTEN REPORTS ON CONTINUING QUAL-
20 IFICATION; DESIGNATION TERMINATIONS.—

21 “(A) PERIODIC EVALUATIONS.—

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

1 “(I) shall evaluate the effect of
2 each program country’s continued
3 designation on the law enforcement
4 and security interests of the United
5 States (including the interest in en-
6 forcement of the immigration laws of
7 the United States);

8 “(II) shall determine whether any
9 such designation ought to be contin-
10 ued or terminated under subsection
11 (d); and

12 “(III) shall submit a written re-
13 port to the Committee on the Judici-
14 ary of the United States House of
15 Representatives and of the Senate re-
16 garding the continuation or termi-
17 nation of the country’s designation
18 that includes an explanation of such
19 determination and the effects de-
20 scribed in subclause (I).

21 “(ii) EFFECTIVE DATE.—A termi-
22 nation of the designation of a country
23 under this subparagraph shall take effect
24 on the date determined by the Attorney
25 General, but may not take effect before the

1 end of the 30-day period beginning on the
2 date on which notice of the termination is
3 published in the Federal Register.

4 “(iii) REDESIGNATION.—In the case
5 of a termination under this subparagraph,
6 the Attorney General shall redesignate the
7 country as a program country, without re-
8 gard to subsection (f) or paragraph (2) or
9 (3), when the Attorney General, in con-
10 sultation with the Secretary of State, de-
11 termines that all causes of the termination
12 have been eliminated.

13 “(B) AUTOMATIC TERMINATION.—

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

21 “(ii) EFFECTIVE DATE.—A termi-
22 nation of the designation of a country
23 under this subparagraph shall take effect
24 on the last day of the 5-year period de-
25 scribed in clause (i).

1 “(iii) REDESIGNATION.—In the case
2 of a termination under this subparagraph,
3 the Attorney General shall redesignate the
4 country as a program country, without re-
5 gard to subsection (f) or paragraph (2) or
6 (3), when the required report is submitted,
7 if the report includes a determination by
8 the Attorney General that the country
9 should continue as a program country.

10 “(C) EMERGENCY TERMINATION.—

11 “(i) IN GENERAL.—In the case of a
12 program country in which an emergency
13 occurs that the Attorney General, in con-
14 sultation with the Secretary of State, de-
15 termines threatens the law enforcement or
16 security interests of the United States (in-
17 cluding the interest in enforcement of the
18 immigration laws of the United States),
19 the Attorney General shall immediately
20 terminate the designation of the country as
21 a program country.

22 “(ii) DEFINITION.—For purposes of
23 clause (i), the term ‘emergency’ means—

24 “(I) the overthrow of a democrat-
25 ically elected government;

1 “(II) war (including undeclared
2 war, civil war, or other military activ-
3 ity);

4 “(III) disruptive social unrest;

5 “(IV) a severe economic or finan-
6 cial crisis; or

7 “(V) any other extraordinary
8 event that threatens the law enforce-
9 ment or security interests of the
10 United States (including the interest
11 in enforcement of the immigration
12 laws of the United States).

13 “(iii) REDESIGNATION.—The Attorney
14 General may redesignate the country as a
15 program country, without regard to sub-
16 section (f) or paragraph (2) or (3), when
17 the Attorney General determines that—

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

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

23 “(III) the average number of re-
24 fusals of nonimmigrant visitor visas
25 for nationals of that country during

1 the period of termination under this
2 subparagraph was less than 3.0 per-
3 cent of the total number of non-
4 immigrant visitor visas for nationals
5 of that country which were granted or
6 refused during such period.

7 “(D) TREATMENT OF NATIONALS AFTER
8 TERMINATION.—For purposes of this
9 paragraph—

10 “(i) nationals of a country whose des-
11 ignation is terminated under subparagraph
12 (A), (B), or (C) shall remain eligible for a
13 waiver under subsection (a) until the effec-
14 tive date of such termination; and

15 “(ii) a waiver under this section that
16 is provided to such a national for a period
17 described in subsection (a)(1) shall not, by
18 such a designation termination, be deemed
19 to have been rescinded or otherwise ren-
20 dered invalid, if the waiver is granted prior
21 to such termination.”.

22 **SEC. 205. USE OF INFORMATION TECHNOLOGY SYSTEMS.**

23 (a) IN GENERAL.—Section 217 of the Immigration
24 and Nationality Act (8 U.S.C. 1187), as amended by sec-

1 tion 203(b), is further amended by adding at the end the
2 following:

3 “(h) USE OF INFORMATION TECHNOLOGY SYS-
4 TEMS.—

5 “(1) AUTOMATED ENTRY-EXIT CONTROL SYS-
6 TEM.—

7 “(A) SYSTEM.—Not later than October 1,
8 2001, the Attorney General shall develop and
9 implement a fully automated entry and exit
10 control system that will collect a record of ar-
11 rival and departure for every alien who arrives
12 by sea or air at a port of entry into the United
13 States and is provided a waiver under the pro-
14 gram.

15 “(B) REQUIREMENTS.—The system under
16 subparagraph (A) shall satisfy the following re-
17 quirements:

18 “(i) DATA COLLECTION BY CAR-
19 RIERS.—Not later than October 1, 2001,
20 the records of arrival and departure de-
21 scribed in subparagraph (A) shall be
22 based, to the maximum extent practicable,
23 on passenger data collected and electroni-
24 cally transmitted to the automated entry
25 and exit control system by each carrier

1 that has an agreement under subsection
2 (a)(4).

3 “(ii) DATA PROVISION BY CAR-
4 RIERS.—Not later than October 1, 2002,
5 no waiver may be provided under this sec-
6 tion to an alien arriving by sea or air at
7 a port of entry into the United States on
8 a carrier unless the carrier is electronically
9 transmitting to the automated entry and
10 exit control system passenger data deter-
11 mined by the Attorney General to be suffi-
12 cient to permit the Attorney General to
13 carry out this paragraph.

14 “(iii) CALCULATION.—The system
15 shall contain sufficient data to permit the
16 Attorney General to calculate, for each
17 program country and each fiscal year, the
18 portion of nationals of that country who
19 are described in subparagraph (A) and for
20 whom no record of departure exists, ex-
21 pressed as a percentage of the total num-
22 ber of such nationals who are so described.

23 “(C) REPORTING.—

24 “(i) PERCENTAGE OF NATIONALS
25 LACKING DEPARTURE RECORD.—Not later

1 than January 30 of each year (beginning
2 with the year 2003), the Attorney General
3 shall submit a written report to the Com-
4 mittee on the Judiciary of the United
5 States House of Representatives and of the
6 Senate containing the calculation described
7 in subparagraph (B)(iii) for each program
8 country for the previous fiscal year.

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

15 “(I) The conclusions of the At-
16 torney General regarding the effec-
17 tiveness of the automated entry and
18 exit control system to be developed
19 and implemented under this para-
20 graph.

21 “(II) The recommendations of
22 the Attorney General regarding the
23 use of the calculation described in
24 subparagraph (B)(iii) as a basis for
25 evaluating whether to terminate or

1 continue the designation of a country
2 as a program country.

3 “(2) AUTOMATED DATA SHARING SYSTEM.—

4 “(A) SYSTEM.—The Attorney General and
5 the Secretary of State shall develop and imple-
6 ment an automated data sharing system that
7 will permit them to share data in electronic
8 form from their respective records systems re-
9 garding the admissibility of aliens who are na-
10 tionals of a program country.

11 “(B) REQUIREMENTS.—The system under
12 subparagraph (A) shall satisfy the following re-
13 quirements:

14 “(i) SUPPLYING INFORMATION TO IM-
15 MIGRATION OFFICERS CONDUCTING IN-
16 SPECTIONS AT PORTS OF ENTRY.—Not
17 later than October 1, 2002, the system
18 shall enable immigration officers con-
19 ducting inspections at ports of entry under
20 section 235 to obtain from the system,
21 with respect to aliens seeking a waiver
22 under the program—

23 “(I) any photograph of the alien
24 that may be contained in the records

1 of the Department of State or the
2 Service; and

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

7 “(ii) SUPPLYING PHOTOGRAPHS OF
8 INADMISSIBLE ALIENS.—The system shall
9 permit the Attorney General electronically
10 to obtain any photograph contained in the
11 records of the Secretary of State per-
12 taining to an alien who is a national of a
13 program country and has been determined
14 to be ineligible to receive a visa.

15 “(iii) MAINTAINING RECORDS ON AP-
16 PPLICATIONS FOR ADMISSION.—The system
17 shall maintain, for a minimum of 10 years,
18 information about each application for ad-
19 mission made by an alien seeking a waiver
20 under the program, including the following:

21 “(I) The name of each immigra-
22 tion officer conducting the inspection
23 of the alien at the port of entry.

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

4 “(III) The results of the applica-
5 tion.”.

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

9 (1) in subparagraph (B), by striking “and” at
10 the end;

11 (2) in subparagraph (C), by striking the period
12 at the end and inserting “, and”; and

13 (3) by adding at the end the following:

14 “(D) to collect, provide, and share pas-
15 senger data as required under subsection
16 (h)(1)(B).”.

17 **SEC. 206. CONDITIONS FOR VISA REFUSAL ELIGIBILITY.**

18 Section 217(c) of the Immigration and Nationality
19 Act (8 U.S.C. 1187(c)), as amended by section 204(b) of
20 this Act, is further amended by adding at the end the fol-
21 lowing:

22 “(6) COMPUTATION OF VISA REFUSAL RATES.—
23 For purposes of determining the eligibility of a coun-
24 try to be designated as a program country, the cal-
25 culation of visa refusal rates shall not include any

1 visa refusals which incorporate any procedures based
2 on, or are otherwise based on, race, sex, sexual ori-
3 entation, or disability, unless otherwise specifically
4 authorized by law or regulation.”.

Passed the House of Representatives April 11, 2000.

Attest:

Clerk.