

Union Calendar No. 308

106TH CONGRESS
2D SESSION

H. R. 3767

[Report No. 106-564]

A BILL

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.

APRIL 6, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2000

Mr. SMITH of Texas (for himself, Ms. JACKSON-LEE of Texas, Mr. MCCOLLUM, Mr. GOODLATTE, Mr. CANADY of Florida, Mr. FRANK of Massachusetts, and Mr. SCARBOROUGH) introduced the following bill; which was referred to the Committee on the Judiciary

APRIL 6, 2000

Additional sponsors: Mr. GALLEGLY, Mr. BENTSEN, Ms. BERKLEY, Mr. MARTINEZ, Ms. MCKINNEY, and Mr. JEFFERSON

APRIL 6, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on March 1, 2000]

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Visa Waiver Permanent*
5 *Program Act”.*

6 **TITLE I—PERMANENT PROGRAM**
7 **AUTHORIZATION**

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

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

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

12 *(2) in subsection (a)—*

13 *(A) in the subsection heading, by striking*
14 *“PILOT”;*

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

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

20 *(D) in paragraph (2), in the paragraph*
21 *heading, by striking “PILOT”;*

22 *(3) in subsection (b), in the matter preceding*
23 *paragraph (1), by striking “pilot”;*

24 *(4) in subsection (c)—*

1 (A) in the subsection heading, by striking
2 “PILOT”;

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

4 (C) in paragraph (2)—

5 (i) by striking “subsection (g)” and in-
6 serting “subsection (f)”; and

7 (ii) by striking “pilot”; and

8 (D) in paragraph (3)—

9 (i) in the matter preceding subpara-
10 graph (A), by striking “(within the pilot
11 program period)”;

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

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

17 (5) in subsection (e)(1)—

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

20 (B) in subparagraph (B), by striking
21 “pilot”;

22 (6) by striking subsection (f) and redesignating
23 subsection (g) as subsection (f); and

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

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

3 (B) in paragraph (1)(C), by striking
4 “pilot”;

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

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

9 (E) in paragraph (4)(A), by striking
10 “pilot”.

11 (b) *CONFORMING AMENDMENTS.*—

12 (1) *DOCUMENTATION REQUIREMENTS.*—Clause
13 (iv) of section 212(a)(7)(B) of the Immigration and
14 Nationality Act (8 U.S.C. 1182(a)(7)(B)(iv)) is
15 amended—

16 (A) in the clause heading, by striking
17 “PILOT”; and

18 (B) by striking “pilot”.

19 (2) *TABLE OF CONTENTS.*—The table of contents
20 for the Immigration and Nationality Act is amended,
21 in the item relating to section 217, by striking
22 “pilot”.

1 **TITLE II—PROGRAM**
2 **IMPROVEMENTS**

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

4 *Section 217(a)(2)(A) of the Immigration and Nation-*
5 *ality Act (8 U.S.C. 1187(a)(2)(A)) is amended by inserting*
6 *“, either on its own or in conjunction with one or more*
7 *other countries that are described in subparagraph (B) and*
8 *that have established with it a common area for immigra-*
9 *tion admissions,” after “to extend”).*

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

11 *(a) REQUIREMENT ON ALIEN.—Section 217(a) of the*
12 *Immigration and Nationality Act (8 U.S.C. 1187(a)) is*
13 *amended—*

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

16 *(2) by inserting after paragraph (2) the fol-*
17 *lowing:*

18 *“(3) MACHINE READABLE PASSPORT.—On and*
19 *after October 1, 2006, the alien at the time of applica-*
20 *tion for admission is in possession of a valid unex-*
21 *pired machine-readable passport that satisfies the*
22 *internationally accepted standard for machine read-*
23 *ability.”.*

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

4 **“(B) MACHINE READABLE PASSPORT PRO-**
5 **GRAM.—**

6 **“(i) IN GENERAL.**—Subject to clause
7 *(ii), the government of the country certifies*
8 *that it issues to its citizens machine-read-*
9 *able passports that satisfy the internation-*
10 *ally accepted standard for machine read-*
11 *ability.*

12 **“(ii) DEADLINE FOR COMPLIANCE FOR**
13 **CERTAIN COUNTRIES.**—In the case of a
14 *country designated as a program country*
15 *under this subsection prior to May 1, 2000,*
16 *as a condition on the continuation of that*
17 *designation, the country—*

18 **“(I) shall certify, not later than**
19 *October 1, 2000, that it has a program*
20 *to issue machine-readable passports to*
21 *its citizens not later than October 1,*
22 *2003; and*

23 **“(II) shall satisfy the requirement**
24 *of clause (i) not later than October 1,*
25 *2003.”.*

1 **SEC. 203. DENIAL OF PROGRAM WAIVER BASED ON GROUND**
2 **OF INADMISSIBILITY.**

3 (a) *IN GENERAL.*—Section 217(a) of the Immigration
4 and Nationality Act (8 U.S.C. 1187(a)), as amended by sec-
5 tion 202, is further amended by adding at the end the fol-
6 lowing:

7 “(9) *AUTOMATED SYSTEM CHECK.*—The identity
8 of the alien has been checked using an automated elec-
9 tronic database containing information about the in-
10 admissibility of aliens to uncover any grounds on
11 which the alien may be inadmissible to the United
12 States, and no such ground has been found.”.

13 (b) *VISA APPLICATION SOLE METHOD TO DISPUTE*
14 *DENIALS OF WAIVER BASED ON GROUND OF INADMIS-*
15 *SIBILITY.*—Section 217 of the Immigration and Nationality
16 Act (8 U.S.C. 1187), as amended by section 101(a)(6) of
17 this Act, is further amended by adding at the end the fol-
18 lowing:

19 “(g) *VISA APPLICATION SOLE METHOD OF DISPUTING*
20 *GROUND OF INADMISSIBILITY FOUND IN AUTOMATED SYS-*
21 *TEM.*—In the case of an alien denial a waiver under the
22 program by reason of a ground of inadmissibility uncovered
23 through a written or verbal statement by the alien or a use
24 of an automated electronic database required under sub-
25 section (a)(9), the alien may apply for a visa at an appro-
26 priate consular office outside the United States. There shall

1 *be no other means of administrative or judicial review of*
2 *such a denial, and no court or person otherwise shall have*
3 *jurisdiction to consider any claim attacking the validity*
4 *of such a denial.”.*

5 *(c) PAROLE AUTHORITY.—Section 212(d)(5) of the Im-*
6 *migration and Nationality Act (8 U.S.C. 1182(d)(5)) is*
7 *amended—*

8 *(1) in subparagraph (A), by striking “subpara-*
9 *graph (B)” and inserting “subparagraph (B) or (C)”;*
10 *and*

11 *(2) by adding at the end the following:*

12 *“(C) The Attorney General may not parole*
13 *into the United States an alien who has applied*
14 *under section 217 for a waiver of the visa re-*
15 *quirement, and has been denied such waiver by*
16 *reason of a ground of inadmissibility uncovered*
17 *through a written or verbal statement by the*
18 *alien or a use of an automated electronic data-*
19 *base required under section 217(a)(9), unless the*
20 *Attorney General determines that compelling*
21 *reasons in the public interest, or compelling*
22 *health considerations, with respect to that par-*
23 *ticular alien require that the alien be paroled*
24 *into the United States.”.*

1 **SEC. 204. EVALUATION OF EFFECT OF COUNTRY'S PARTICI-**
2 **PATION ON LAW ENFORCEMENT AND SECUR-**
3 **RITY.**

4 (a) *INITIAL DESIGNATION.*—Section 217(c)(2)(C) of
5 the *Immigration and Nationality Act* (8 U.S.C.
6 1187(c)(2)(C)) is amended to read as follows:

7 “(C) *LAW ENFORCEMENT AND SECURITY IN-*
8 *TERESTS.*—The Attorney General, in consulta-
9 tion with the Secretary of State—

10 “(i) *evaluates the effect that the coun-*
11 *try’s designation would have on the law en-*
12 *forcement and security interests of the*
13 *United States (including the interest in en-*
14 *forcement of the immigration laws of the*
15 *United States);*

16 “(ii) *determines that such interests*
17 *would not be compromised by the designa-*
18 *tion of the country; and*

19 “(iii) *submits a written report to the*
20 *Committee on the Judiciary of the United*
21 *States House of Representatives and of the*
22 *Senate regarding the country’s qualification*
23 *for designation that includes an expla-*
24 *nation of such determination.”.*

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

4 “(5) **WRITTEN REPORTS ON CONTINUING QUALI-**
5 **FICATION; DESIGNATION TERMINATIONS.**—

6 “(A) **PERIODIC EVALUATIONS.**—

7 “(i) **IN GENERAL.**—*The Attorney Gen-*
8 *eral, in consultation with the Secretary of*
9 *State, periodically (but not less than once*
10 *every 5 years)—*

11 “(I) *shall evaluate the effect of*
12 *each program country’s continued des-*
13 *ignation on the law enforcement and*
14 *security interests of the United States*
15 *(including the interest in enforcement*
16 *of the immigration laws of the United*
17 *States);*

18 “(II) *shall determine whether any*
19 *such designation ought to be continued*
20 *or terminated under subsection (d);*
21 *and*

22 “(III) *shall submit a written re-*
23 *port to the Committee on the Judiciary*
24 *of the United States House of Rep-*
25 *resentatives and of the Senate regard-*

1 *ing the continuation or termination of*
2 *the country’s designation that includes*
3 *an explanation of such determination*
4 *and the effects described in subclause*
5 *(I).*

6 “(ii) *EFFECTIVE DATE.*—*A termi-*
7 *nation of the designation of a country*
8 *under this subparagraph shall take effect on*
9 *the date determined by the Attorney Gen-*
10 *eral, but may not take effect before the end*
11 *of the 30-day period beginning on the date*
12 *on which notice of the termination is pub-*
13 *lished in the Federal Register.*

14 “(iii) *REDESIGNATION.*—*In the case of*
15 *a termination under this subparagraph, the*
16 *Attorney General shall redesignate the coun-*
17 *try as a program country, without regard*
18 *to subsection (f) or paragraph (2) or (3),*
19 *when the Attorney General, in consultation*
20 *with the Secretary of State, determines that*
21 *all causes of the termination have been*
22 *eliminated.*

23 “(B) *AUTOMATIC TERMINATION.*—

24 “(i) *REQUIREMENT.*—*On and after Oc-*
25 *tober 1, 2005, the designation of any pro-*

1 *gram country with respect to a report de-*
2 *scribed in subparagraph (A)(i)(III) has not*
3 *been submitted in accordance with such sub-*
4 *paragraph during the preceding 5 years*
5 *shall be considered terminated.*

6 “(ii) *EFFECTIVE DATE.*—*A termi-*
7 *nation of the designation of a country*
8 *under this subparagraph shall take effect on*
9 *the last day of the 5-year period described*
10 *in clause (i).*

11 “(iii) *REDESIGNATION.*—*In the case of*
12 *a termination under this subparagraph, the*
13 *Attorney General shall redesignate the coun-*
14 *try as a program country, without regard*
15 *to subsection (f) or paragraph (2) or (3),*
16 *when the required report is submitted, if the*
17 *report includes a determination by the At-*
18 *torney General that the country should con-*
19 *tinue as a program country.*

20 “(C) *EMERGENCY TERMINATION.*—

21 “(i) *IN GENERAL.*—*In the case of a*
22 *program country in which an emergency oc-*
23 *curs that the Attorney General, in consulta-*
24 *tion with the Secretary of State, determines*
25 *threatens the law enforcement or security*

1 *interests of the United States (including the*
2 *interest in enforcement of the immigration*
3 *laws of the United States), the Attorney*
4 *General shall immediately terminate the*
5 *designation of the country as a program*
6 *country.*

7 “(ii) *DEFINITION.—For purposes of*
8 *clause (i), the term ‘emergency’ means—*

9 “(I) *the overthrow of a democrat-*
10 *ically elected government;*

11 “(II) *war (including undeclared*
12 *war, civil war, or other military activ-*
13 *ity);*

14 “(III) *disruptive social unrest;*

15 “(IV) *a severe economic or finan-*
16 *cial crisis; or*

17 “(V) *any other extraordinary*
18 *event that threatens the law enforce-*
19 *ment or security interests of the United*
20 *States (including the interest in en-*
21 *forcement of the immigration laws of*
22 *the United States).*

23 “(iii) *REDESIGNATION.—The Attorney*
24 *General may redesignate the country as a*
25 *program country, without regard to sub-*

1 *section (f) or paragraph (2) or (3), when*
2 *the Attorney General determines that—*

3 *“(I) at least 6 months have*
4 *elapsed since the effective date of the*
5 *termination;*

6 *“(II) the emergency that caused*
7 *the termination has ended; and*

8 *“(III) the average number of re-*
9 *fusals of nonimmigrant visitor visas*
10 *for nationals of that country during*
11 *the period of termination under this*
12 *subparagraph was less than 3.0 percent*
13 *of the total number of nonimmigrant*
14 *visitor visas for nationals of that coun-*
15 *try which were granted or refused dur-*
16 *ing such period.*

17 *“(D) TREATMENT OF NATIONALS AFTER*
18 *TERMINATION.—For purposes of this*
19 *paragraph—*

20 *“(i) nationals of a country whose des-*
21 *ignation is terminated under subparagraph*
22 *(A), (B), or (C) shall remain eligible for a*
23 *waiver under subsection (a) until the effec-*
24 *tive date of such termination; and*

1 “(ii) a waiver under this section that
2 is provided to such a national for a period
3 described in subsection (a)(1) shall not, by
4 such a designation termination, be deemed
5 to have been rescinded or otherwise rendered
6 invalid, if the waiver is granted prior to
7 such termination.”.

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

9 (a) *IN GENERAL.*—Section 217 of the Immigration
10 and Nationality Act (8 U.S.C. 1187), as amended by section
11 203(b), is further amended by adding at the end the fol-
12 lowing:

13 “(h) *USE OF INFORMATION TECHNOLOGY SYSTEMS.*—

14 “(1) *AUTOMATED ENTRY-EXIT CONTROL SYS-*
15 *TEM.*—

16 “(A) *SYSTEM.*—Not later than October 1,
17 2001, the Attorney General shall develop and im-
18 plement a fully automated entry and exit control
19 system that will collect a record of arrival and
20 departure for every alien who arrives by sea or
21 air at a port of entry into the United States and
22 is provided a waiver under the program.

23 “(B) *REQUIREMENTS.*—The system under
24 subparagraph (A) shall satisfy the following re-
25 quirements:

1 “(i) *DATA COLLECTION BY CARRIERS.*—Not later than October 1, 2001, the
2 records of arrival and departure described
3 in subparagraph (A) shall be based, to the
4 maximum extent practicable, on passenger
5 data collected and electronically transmitted
6 to the automated entry and exit control sys-
7 tem by each carrier that has an agreement
8 under subsection (a)(4).
9

10 “(ii) *DATA PROVISION BY CARRIERS.*—
11 Not later than October 1, 2002, no waiver
12 may be provided under this section to an
13 alien arriving by sea or air at a port of
14 entry into the United States on a carrier
15 unless the carrier is electronically transmit-
16 ting to the automated entry and exit control
17 system passenger data determined by the
18 Attorney General to be sufficient to permit
19 the Attorney General to carry out this para-
20 graph.

21 “(iii) *CALCULATION.*—The system shall
22 contain sufficient data to permit the Attor-
23 ney General to calculate, for each program
24 country and each fiscal year, the portion of
25 nationals of that country who are described

1 *in subparagraph (A) and for whom no*
2 *record of departure exists, expressed as a*
3 *percentage of the total number of such na-*
4 *tionals who are so described.*

5 “(C) *REPORTING.*—

6 “(i) *PERCENTAGE OF NATIONALS LACK-*
7 *ING DEPARTURE RECORD.*—*Not later than*
8 *January 30 of each year (beginning with*
9 *the year 2003), the Attorney General shall*
10 *submit a written report to the Committee*
11 *on the Judiciary of the United States House*
12 *of Representatives and of the Senate con-*
13 *taining the calculation described in sub-*
14 *paragraph (B)(iii) for each program coun-*
15 *try for the previous fiscal year.*

16 “(ii) *SYSTEM EFFECTIVENESS.*—*Not*
17 *later than October 1, 2004, the Attorney*
18 *General shall submit a written report to the*
19 *Committee on the Judiciary of the United*
20 *States House of Representatives and of the*
21 *Senate containing the following:*

22 “(I) *The conclusions of the Attor-*
23 *ney General regarding the effectiveness*
24 *of the automated entry and exit control*

1 *system to be developed and imple-*
2 *mented under this paragraph.*

3 *“(II) The recommendations of the*
4 *Attorney General regarding the use of*
5 *the calculation described in subpara-*
6 *graph (B)(iii) as a basis for evaluating*
7 *whether to terminate or continue the*
8 *designation of a country as a program*
9 *country.*

10 *“(2) AUTOMATED DATA SHARING SYSTEM.—*

11 *“(A) SYSTEM.—The Attorney General and*
12 *the Secretary of State shall develop and imple-*
13 *ment an automated data sharing system that*
14 *will permit them to share data in electronic form*
15 *from their respective records systems regarding*
16 *the admissibility of aliens who are nationals of*
17 *a program country.*

18 *“(B) REQUIREMENTS.—The system under*
19 *subparagraph (A) shall satisfy the following re-*
20 *quirements:*

21 *“(i) SUPPLYING INFORMATION TO IM-*
22 *MIGRATION OFFICERS CONDUCTING INSPEC-*
23 *TIONS AT PORTS OF ENTRY.—Not later than*
24 *October 1, 2002, the system shall enable im-*
25 *migration officers conducting inspections at*

1 ports of entry under section 235 to obtain
2 from the system, with respect to aliens seek-
3 ing a waiver under the program—

4 “(I) any photograph of the alien
5 that may be contained in the records of
6 the Department of State or the Service;
7 and

8 “(II) information on whether the
9 alien has ever been determined to be
10 ineligible to receive a visa or ineligible
11 to be admitted to the United States.

12 “(ii) SUPPLYING PHOTOGRAPHS OF IN-
13 ADMISSIBLE ALIENS.—The system shall per-
14 mit the Attorney General electronically to
15 obtain any photograph contained in the
16 records of the Secretary of State pertaining
17 to an alien who is a national of a program
18 country and has been determined to be in-
19 eligible to receive a visa.

20 “(iii) MAINTAINING RECORDS ON AP-
21 PLICATIONS FOR ADMISSION.—The system
22 shall maintain, for a minimum of 10 years,
23 information about each application for ad-
24 mission made by an alien seeking a waiver
25 under the program, including the following:

1 “(I) *The name of each immigra-*
2 *tion officer conducting the inspection*
3 *of the alien at the port of entry.*

4 “(II) *Any information described*
5 *in clause (i) that is obtained from the*
6 *system by any such officer.*

7 “(III) *The results of the applica-*
8 *tion.*”.

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

12 (1) *in subparagraph (B), by striking “and” at*
13 *the end;*

14 (2) *in subparagraph (C), by striking the period*
15 *at the end and inserting “, and”; and*

16 (3) *by adding at the end the following:*

17 “(D) *to collect, provide, and share passenger*
18 *data as required under subsection (h)(1)(B).*”.

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

20 *Section 217(e) of the Immigration and Nationality Act*
21 *(8 U.S.C. 1187(e)), as amended by section 204(b) of this*
22 *Act, is further amended by adding at the end the following:*

23 “(6) *COMPUTATION OF VISA REFUSAL RATES.—*

24 *For purposes of determining the eligibility of a coun-*
25 *try to be designated as a program country, the cal-*

1 *culatation of visa refusal rates shall not include any*
2 *visa refusals which incorporate any procedures based*
3 *on, or are otherwise based on, race, sex, sexual ori-*
4 *entation, or disability, unless otherwise specifically*
5 *authorized by law or regulation.”.*