

110TH CONGRESS
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To improve the Nation's homeland security by strengthening the security of the visa waiver program under section 217 of the Immigration and Nationality Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 2007

Mr. THOMPSON of Mississippi introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve the Nation's homeland security by strengthening the security of the visa waiver program under section 217 of the Immigration and Nationality Act, and for other purposes.

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. STRENGTHENING SECURITY OF THE VISA**
4 **WAIVER PROGRAM.**

5 (a) SHORT TITLE.—This section may be cited as—

6 (1) the “Secure Visa Waiver and Preventing
7 Terrorist Travel Partnership Act”; or

1 (2) the “Secure Visa Waiver Travel Act”.

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

4 (1) the United States should improve the Na-
5 tion’s homeland security by strengthening the secu-
6 rity of the visa waiver program by—

7 (A) enhancing program security require-
8 ments; and

9 (B) extending visa-free travel privileges to
10 nationals of foreign countries—

11 (i) that are actively cooperating with
12 the United States to prevent terrorist trav-
13 el, including sharing counterterrorism and
14 law enforcement information; and

15 (ii) whose nationals have dem-
16 onstrated their compliance with the provi-
17 sions of the Immigration and Nationality
18 Act regarding the purpose and duration of
19 their admission to the United States; and

20 (2) the improvements described in paragraph
21 (1) will—

22 (A) enhance bilateral cooperation on crit-
23 ical counterterrorism and information sharing
24 initiatives;

1 (B) support and expand tourism and busi-
2 ness opportunities to enhance long-term eco-
3 nomic competitiveness; and

4 (C) strengthen bilateral relationships.

5 (c) DISCRETIONARY VISA WAIVER PROGRAM EXPAN-
6 SION.—Section 217(c) of the Immigration and Nationality
7 Act (8 U.S.C. 1187(c)) is amended by adding at the end
8 the following:

9 “(8) NONIMMIGRANT VISA REFUSAL RATE
10 FLEXIBILITY.—

11 “(A) CERTIFICATION.—On the date on
12 which a biometric air exit border security sys-
13 tem is in place that can verify the departure of
14 not less than 97 percent of foreign nationals
15 that exit through airports of the United States,
16 the Secretary of Homeland Security shall cer-
17 tify to the Congress that such air exit system
18 is in place.

19 “(B) WAIVER.—After certification by the
20 Secretary under subparagraph (A), the Sec-
21 retary of Homeland Security, in consultation
22 with the Secretary of State, may waive the ap-
23 plication of paragraph (2)(A) for a country—

24 “(i) if—

1 “(I) the country meets all exist-
2 ing security requirements and en-
3 hanced security requirements de-
4 scribed in the Secure Visa Waiver
5 Travel Act;

6 “(II) the Secretary of Homeland
7 Security, in consultation with the Sec-
8 retary of State and the Attorney Gen-
9 eral, determines that the totality of
10 the country’s security risk mitigation
11 measures provides assurance that the
12 country’s participation in the program
13 would not compromise the homeland
14 security, law enforcement, or enforce-
15 ment of the immigration laws, of the
16 United States;

17 “(III) there has been a sustained
18 reduction in visa refusal rates for
19 aliens from the country and conditions
20 exist to continue such reduction; and

21 “(IV) the country actively cooper-
22 ated with the Government of the
23 United States to prevent terrorist
24 travel and enhance our border secu-
25 rity, including sharing

1 counterterrorism and law enforcement
2 information, before the date of its des-
3 ignation as a program country, and
4 the Secretary of Homeland Security
5 and the Secretary of State expect
6 such cooperation will continue; and

7 “(ii) if—

8 “(I) the average number of refus-
9 als of nonimmigrant visitor visas
10 under section 101(a)(15)(B) for na-
11 tionals of that country during the pre-
12 vious full fiscal year was less than 6
13 percent; or

14 “(II) the total number of nation-
15 als of that country who were denied
16 admission or who withdrew their ap-
17 plication for admission to the United
18 States, combined with the total num-
19 ber of nationals of that country who
20 were admitted as nonimmigrant visi-
21 tors but who violated the terms of
22 such admission, thereby presenting a
23 potential security risk, was less than 2
24 percent of the total number of nation-
25 als of that country who applied for

1 admission to the United States as
2 nonimmigrant visitors during the pre-
3 vious full fiscal year.

4 “(9) DISCRETIONARY SECURITY-RELATED CON-
5 siderations.—

6 “(A) IN GENERAL.—In determining wheth-
7 er to waive the application of paragraph (2)(A)
8 for a country under paragraph (8), the Sec-
9 retary of Homeland Security, in consultation
10 with the Secretary of State, shall take into con-
11 sideration other factors affecting the homeland
12 security of the United States, including—

13 “(i) airport security standards in the
14 country;

15 “(ii) whether the country assists in
16 the operation of an effective air marshal
17 program;

18 “(iii) the standards of passports and
19 travel documents issued by the country;
20 and

21 “(iv) other security-related factors.

22 “(B) OVERSTAY RATES.—In determining
23 whether to designate a country as a program
24 country, the Secretary of Homeland Security
25 shall consider whether the estimated rate at

1 which nationals of the country overstay their
2 authorized period of stay in the United States
3 exceeds 2 percent.”.

4 (d) SECURITY ENHANCEMENTS TO THE VISA WAIV-
5 ER PROGRAM.—

6 (1) IN GENERAL.—Section 217 of the Immigra-
7 tion and Nationality Act (8 U.S.C. 1187) is amend-
8 ed—

9 (A) in subsection (a)—

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

12 “(10) ELECTRONIC TRANSMISSION OF IDENTI-
13 FICATION INFORMATION.—Operators of aircraft”;
14 and

15 (ii) by adding at the end the fol-
16 lowing:

17 “(11) ELIGIBILITY DETERMINATION UNDER
18 THE ELECTRONIC TRAVEL AUTHORIZATION SYS-
19 TEM.—Beginning on the date on which the elec-
20 tronic travel authorization system developed under
21 subsection (h)(3) is fully operational, each alien
22 traveling under the program shall, before applying
23 for admission, electronically provide to the system
24 biographical information and such other information
25 as the Secretary of Homeland Security shall deem

1 necessary to determine the eligibility of, and whether
2 there exists a law enforcement or security risk in
3 permitting, the alien to travel to the United States.
4 Upon review of such information, the Secretary of
5 Homeland Security shall determine whether the
6 alien is eligible to travel to the United States under
7 the program.”;

8 (B) in subsection (c), as amended by sub-
9 section (c) of this section—

10 (i) in paragraph (2)—

11 (I) by amending subparagraph

12 (D) to read as follows:

13 “(D) REPORTING LOST AND STOLEN PASS-
14 PORTS.—The government of the country enters
15 into an agreement with the United States to re-
16 port, or make available through Interpol, to the
17 United States Government information about
18 the theft or loss of passports within a strict
19 time limit, not to exceed one week, and in a
20 manner specified in the agreement.”; and

21 (II) by adding at the end the fol-

22 lowing:

23 “(E) REPATRIATION OF ALIENS.—The
24 government of a country accepts for repatri-
25 ation any citizen, former citizen, or national

1 against whom a final executable order of re-
2 removal is issued not later than 3 weeks after the
3 issuance of the final order of removal. Nothing
4 in this subparagraph creates any duty for the
5 United States or any right for any alien with
6 respect to removal or release. Nothing in this
7 subparagraph gives rise to any cause of action
8 or claim under this paragraph or any other law
9 against any official of the United States or of
10 any State to compel the release, removal, or
11 consideration for release or removal of any
12 alien.

13 “(F) PASSENGER INFORMATION EX-
14 CHANGE.—The government of the country en-
15 ters into an agreement with the United States
16 to share information regarding whether nation-
17 als of that country traveling to the United
18 States represent a threat to the security or wel-
19 fare of the United States or its citizens.”;

20 (ii) in paragraph (5)—

21 (I) by striking “Attorney Gen-
22 eral” each place such term appears
23 and inserting “Secretary of Homeland
24 Security”; and

25 (II) in subparagraph (A)(i)—

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

3 (bb) in subclause (III)—

4 (AA) by striking the pe-
5 riod at the end and inserting
6 “; and”; and

7 (BB) by striking “Com-
8 mittee on International Re-
9 lations” and inserting
10 “Committee on Foreign Af-
11 fairs”; and

12 (cc) by adding at the end
13 the following:

14 “(IV) shall submit to the Con-
15 gress a report regarding the participa-
16 tion of new countries in the program
17 through a waiver under paragraph
18 (8).”; and

19 (iii) by adding at the end the fol-
20 lowing:

21 “(10) TECHNICAL ASSISTANCE.—The Secretary
22 of Homeland Security, in consultation with the Sec-
23 retary of State, shall provide technical assistance to
24 program countries to assist those countries in meet-
25 ing the requirements under this section. The Sec-

1 retary of Homeland Security shall ensure that the
2 program office within the Department of Homeland
3 Security is adequately staffed and has resources to
4 be able to provide such technical assistance, in addi-
5 tion to its duties to effectively monitor compliance of
6 the countries participating in the program with all
7 the requirements of the program, including the new
8 requirements imposed under the amendments to this
9 section made by the Secure Visa Waiver Travel
10 Act.”;

11 (C) in subsection (f)(5), by striking “of
12 blank” and inserting “or loss of”; and

13 (D) in subsection (h), by adding at the end
14 the following:

15 “(3) ELECTRONIC TRAVEL AUTHORIZATION
16 SYSTEM.—

17 “(A) SYSTEM.—The Secretary of Home-
18 land Security, in consultation with the Sec-
19 retary of State, is authorized to develop and im-
20 plement a fully automated electronic travel au-
21 thorization system (referred to in this para-
22 graph as the ‘System’) to collect such bio-
23 graphical and other information as the Sec-
24 retary of Homeland Security determines to be
25 necessary to determine, in advance of travel,

1 whether an alien may present a law enforce-
2 ment or security risk and is eligible to travel to
3 the United States under the program.

4 “(B) REGULATIONS.—The Secretary of
5 Homeland Security shall promulgate regulations
6 describing this System and the information to
7 be collected before implementation of the Sys-
8 tem.

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

12 “(i) set at a level that will ensure re-
13 covery of the full costs of providing and
14 administering the System; and

15 “(ii) available to pay the costs in-
16 curred to administer the System.

17 “(D) VALIDITY.—

18 “(i) PERIOD.—The Secretary of
19 Homeland Security, in consultation with
20 the Secretary of State shall prescribe regu-
21 lations that provide for a period, not to ex-
22 ceed 3 years, during which a determination
23 of eligibility to travel under the program
24 will be valid. Notwithstanding any other
25 provision under this section, the Secretary

1 of Homeland Security may revoke any
2 such determination at any time and for
3 any reason and shall revoke such deter-
4 mination if the country of the traveler's
5 nationality becomes no longer qualified to
6 continue in the program.

7 “(ii) LIMITATION.—A determination
8 that an alien is eligible to travel to the
9 United States under the program is not a
10 determination that the alien is admissible
11 to the United States.

12 “(iii) NOT A DETERMINATION OF VISA
13 ELIGIBILITY.—A determination by the Sec-
14 retary of Homeland Security that an alien
15 who applied for authorization to travel to
16 the United States through the System is
17 not eligible to travel under the program is
18 not a determination of ineligibility for a
19 visa to travel to the United States and
20 shall not preclude the alien from applying
21 for a visa.

22 “(iv) JUDICIAL REVIEW.—Notwith-
23 standing any other provision of law, no
24 court shall have jurisdiction to review an
25 eligibility determination under the System.

1 “(E) REPORTS ON THE ELECTRONIC TRAV-
2 EL AUTHORIZATION SYSTEM.—

3 “(i) INITIAL REPORT.—Not later than
4 60 days before publishing regulations re-
5 garding the implementation of the System
6 in the Federal Register, the Secretary of
7 Homeland Security shall submit a report
8 to the Congress regarding the implementa-
9 tion of the System.

10 “(ii) SECOND REPORT.—The Sec-
11 retary shall also report to the Congress on
12 the implementation of the system 18
13 months after implementation.”.

14 (2) EFFECTIVE DATE.—Section 217(a)(11) of
15 the Immigration and Nationality Act, as added by
16 paragraph (1)(A)(ii), shall take effect on the date
17 which is 60 days after the date on which the Sec-
18 retary of Homeland Security publishes notice in the
19 Federal Register of the requirement under such
20 paragraph.

21 (e) EXIT SYSTEM.—

22 (1) IN GENERAL.—Not later than 1 year after
23 the date of the enactment of this Act, the Secretary
24 of Homeland Security shall establish a biometric exit
25 system that records the departure on a flight leaving

1 the United States of every alien who departs by air
2 who is participating in the visa waiver program es-
3 tablished under section 217 of the Immigration and
4 Nationality Act (8 U.S.C. 1187).

5 (2) SYSTEM REQUIREMENTS.—The system es-
6 tablished under paragraph (1) shall—

7 (A) match biometric information of the
8 alien against relevant watch lists and immigra-
9 tion information; and

10 (B) compare such biometric information
11 against manifest information collected by air
12 carriers on passengers departing the United
13 States to confirm such individuals have de-
14 parted the United States.

15 (3) REPORT ON EXIT SYSTEM.—Not later than
16 180 days after the date of the enactment of this Act,
17 the Secretary shall submit a report to the Congress
18 that describes—

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

22 (B) the procedures by which the Secretary
23 will improve the manner of calculating the rates
24 of nonimmigrants who overstay their authorized
25 period of stay in the United States.

1 (4) ANNUAL REPORT ON EXIT DATA.—Com-
2 mencing not later than 2 years after the date of the
3 enactment of this Act, the Secretary shall submit an
4 annual report to the Congress that provides entry
5 and exit data and overstay rates for nationals of
6 each of the countries participating in the visa waiver
7 program. The report shall also designate which, if
8 any, countries are no longer eligible to participate in
9 the such program under the provisions of section
10 217(c)(3)(A) of the Immigration and Nationality
11 Act (8 U.S.C. 1187(c)(3)(A)).

12 (f) REPORTS TO CONGRESS.—Any report to the Con-
13 gress required by this section, or any amendment made
14 by this section, shall be made to the following committees:

15 (1) The Committee on Homeland Security and
16 Governmental Affairs of the Senate.

17 (2) The Committee on the Judiciary of the Sen-
18 ate.

19 (3) The Select Committee on Intelligence of the
20 Senate.

21 (4) The Committee on Appropriations of the
22 Senate.

23 (5) The Committee on Homeland Security of
24 the House of Representatives.

1 (6) The Committee on the Judiciary of the
2 House of Representatives.

3 (7) The Permanent Select Committee on Intel-
4 ligence of the House of Representatives.

5 (8) The Committee on Appropriations of the
6 House of Representatives.

7 (9) The Committee on Foreign Affairs of the
8 House of Representatives.

9 (10) The Committee on Foreign Relations of
10 the Senate.

11 (g) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to such sums as may
13 be necessary to carry out this section and the amendments
14 made by this section.

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