

112TH CONGRESS  
2D SESSION

# H. R. 3855

To amend the Immigration and Nationality Act to modify the requirements of the visa waiver program and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2012

Mr. QUIGLEY (for himself, Mr. BURTON of Indiana, Mr. CHABOT, Ms. ROS-LEHTINEN, Mr. DIAZ-BALART, Mr. DOLD, Mr. GRIMM, Mr. KINZINGER of Illinois, Mr. RIVERA, Mr. SHIMKUS, Mr. HIGGINS, Ms. KAPTUR, Mr. LIPINSKI, Mr. MURPHY of Connecticut, Ms. SCHAKOWSKY, and Mr. MEEKS) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to modify the requirements of the visa waiver program 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. SHORT TITLE.**

4 This Act may be cited as the “Visa Waiver Program  
5 Enhanced Security and Reform Act”.

1 **SEC. 2. DEFINITIONS.**

2 (a) DEFINITIONS.—Section 217(c)(1) of the Immi-  
3 gration and Nationality Act (8 U.S.C. 1187(c)(1)) is  
4 amended to read as follows:

5 “(1) AUTHORITY TO DESIGNATE; DEFINI-  
6 TIONS.—

7 “(A) AUTHORITY TO DESIGNATE.—The  
8 Secretary of Homeland Security, in consultation  
9 with the Secretary of State, may designate any  
10 country as a program country if that country  
11 meets the requirements under paragraph (2).

12 “(B) DEFINITIONS.—In this subsection:

13 “(i) APPROPRIATE CONGRESSIONAL  
14 COMMITTEES.—The term ‘appropriate con-  
15 gressional committees’ means—

16 “(I) the Committee on Foreign  
17 Relations, the Committee on Home-  
18 land Security and Governmental Af-  
19 fairs, and the Committee on the Judi-  
20 ciary of the Senate; and

21 “(II) the Committee on Foreign  
22 Affairs, the Committee on Homeland  
23 Security, and the Committee on the  
24 Judiciary of the House of Representa-  
25 tives.

26 “(ii) OVERSTAY RATE.—

1           “(I) INITIAL DESIGNATION.—The  
2 term ‘overstay rate’ means, with re-  
3 spect to a country being considered  
4 for designation in the program, the  
5 ratio of—

6           “(aa) the number of nation-  
7 als of that country who were ad-  
8 mitted to the United States on  
9 the basis of a nonimmigrant visa  
10 under section 101(a)(15)(B)  
11 whose periods of authorized stay  
12 ended during a fiscal year but  
13 who remained unlawfully in the  
14 United States beyond such peri-  
15 ods; to

16           “(bb) the number of nation-  
17 als of that country who were ad-  
18 mitted to the United States on  
19 the basis of a nonimmigrant visa  
20 under section 101(a)(15)(B)  
21 whose periods of authorized stay  
22 ended during that fiscal year.

23           “(II) CONTINUING DESIGNA-  
24 TION.—The term ‘overstay rate’  
25 means, for each fiscal year after ini-

1 tial designation under this section  
2 with respect to a country, the ratio  
3 of—

4 “(aa) the number of nation-  
5 als of that country who were ad-  
6 mitted to the United States  
7 under this section or on the basis  
8 of a nonimmigrant visa under  
9 section 101(a)(15)(B) whose pe-  
10 riods of authorized stay ended  
11 during a fiscal year but who re-  
12 mained unlawfully in the United  
13 States beyond such periods; to

14 “(bb) the number of nation-  
15 als of that country who were ad-  
16 mitted to the United States  
17 under this section or on the basis  
18 of a nonimmigrant visa under  
19 section 101(a)(15)(B) whose pe-  
20 riods of authorized stay ended  
21 during that fiscal year.

22 “(III) COMPUTATION OF OVER-  
23 STAY RATE.—In determining the over-  
24 stay rate for a country, the Secretary  
25 of Homeland Security may utilize in-

1                   formation from any available data-  
2                   bases to ensure the accuracy of such  
3                   rate.

4                   “(iii) PROGRAM COUNTRY.—The term  
5                   ‘program country’ means a country des-  
6                   ignated as a program country under sub-  
7                   paragraph (A).”.

8           (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
9 Section 217 of the Immigration and Nationality Act (8  
10 U.S.C. 1187) is amended as follows:

11           (1) by striking “Attorney General” each place  
12           the term appears and inserting “Secretary of Home-  
13           land Security”, except in subsection (c)(11)(B);

14           (2) in subsection (c)(2)(C)(iii), by striking  
15           “Committee on the Judiciary and the Committee on  
16           International Relations of the House of Representa-  
17           tives and the Committee on the Judiciary and the  
18           Committee on Foreign Relations of the Senate” and  
19           inserting “appropriate congressional committees”;

20           (3) in subsection (c)(5)(A)(i)(III), by striking  
21           “Committee on the Judiciary, the Committee on  
22           Foreign Affairs, and the Committee on Homeland  
23           Security, of the House of Representatives and the  
24           Committee on the Judiciary, the Committee on For-  
25           eign Relations, and the Committee on Homeland Se-

1 curity and Governmental Affairs of the Senate” and  
2 inserting “appropriate congressional committees”;  
3 and

4 (4) by striking subsection (c)(7)(E).

5 **SEC. 3. DESIGNATION OF PROGRAM COUNTRIES BASED ON**  
6 **OVERSTAY RATES.**

7 (a) IN GENERAL.—Section 217(c)(2)(A) of the Immi-  
8 gration and Nationality Act (8 U.S.C. 1187(c)(2)(A)) is  
9 amended to read as follows:

10 “(A) GENERAL NUMERICAL LIMITA-  
11 TIONS.—

12 “(i) LOW NONIMMIGRANT VISA RE-  
13 FUSAL RATE.—The percentage of nationals  
14 of that country refused nonimmigrant visas  
15 under section 101(a)(15)(B) during the  
16 previous full fiscal year was not more than  
17 3 percent of the total number of nationals  
18 of that country who were granted or re-  
19 fused nonimmigrant visas under such sec-  
20 tion during such year.

21 “(ii) LOW NONIMMIGRANT OVERSTAY  
22 RATE.—The overstay rate for that country  
23 was not more than 3 percent during the  
24 previous fiscal year.”.

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

4 “(3) QUALIFICATION CRITERIA.—After the ini-  
5 tial period, a country may not be designated as a  
6 program country unless the Secretary of Homeland  
7 Security, in consultation with the Secretary of State,  
8 determines, pursuant to the requirements of para-  
9 graph (5), that designation will be continued.”.

10 (c) CONTINUING DESIGNATION.—Section  
11 217(c)(5)(A)(i)(II) of the Immigration and Nationality  
12 Act (8 U.S.C. 1187(c)(5)(A)(i)(II)) is amended to read  
13 as follows:

14 “(II) shall determine, based upon  
15 the evaluation in subclause (I), wheth-  
16 er any such designation under sub-  
17 section (d) or (f), or probation under  
18 subsection (f), ought to be continued  
19 or terminated;”.

20 (d) COMPUTATION OF VISA REFUSAL RATES; JUDI-  
21 CIAL REVIEW.—Section 217(c)(6) of the Immigration and  
22 Nationality Act (8 U.S.C. 1187(c)(6)) is amended to read  
23 as follows:

24 “(6) COMPUTATION OF VISA REFUSAL RATES  
25 AND JUDICIAL REVIEW.—

1           “(A) COMPUTATION OF VISA REFUSAL  
2 RATES.—For purposes of determining the eligi-  
3 bility of a country to be designated as a pro-  
4 gram country, the calculation of visa refusal  
5 rates shall not include any visa refusals which  
6 incorporate any procedures based on, or are  
7 otherwise based on, race, sex, or disability, un-  
8 less otherwise specifically authorized by law or  
9 regulation.

10           “(B) JUDICIAL REVIEW.—No court shall  
11 have jurisdiction under this section to review  
12 any visa refusal, the Secretary of State’s com-  
13 putation of a visa refusal rate, the Secretary of  
14 Homeland Security’s computation of an over-  
15 stay rate, or the designation or nondesignation  
16 of a country as a program country.”.

17           (e) VISA WAIVER INFORMATION.—Section 217(c)(7)  
18 of the Immigration and Nationality Act (8 U.S.C.  
19 1187(c)(7)) is amended—

20           (1) by striking subparagraphs (B) through (E);

21           and

22           (2) by striking “WAIVER INFORMATION—” and  
23 all that follows through “In refusing” and inserting  
24 “WAIVER INFORMATION—In refusing”.



1 (f) WAIVER AUTHORITY.—Section 217(c)(8) of the  
2 Immigration and Nationality Act (8 U.S.C. 1187(c)(8))  
3 is amended to read as follows:

4 “(8) WAIVER AUTHORITY.—The Secretary of  
5 Homeland Security, in consultation with the Sec-  
6 retary of State, may waive the application of para-  
7 graph (2)(A)(i) for a country if—

8 “(A) the country meets all other require-  
9 ments of paragraph (2);

10 “(B) the Secretary of Homeland Security  
11 determines that the totality of the country’s se-  
12 curity risk mitigation measures provide assur-  
13 ance that the country’s participation in the pro-  
14 gram would not compromise the law enforce-  
15 ment, security interests, or enforcement of the  
16 immigration laws of the United States;

17 “(C) there has been a general downward  
18 trend in the percentage of nationals of the  
19 country refused nonimmigrant visas under sec-  
20 tion 101(a)(15)(B);

21 “(D) the country consistently cooperated  
22 with the Government of the United States on  
23 counterterrorism initiatives, information shar-  
24 ing, preventing terrorist travel, and extradition  
25 of the country’s nationals to the United States

1 before the date of its designation as a program  
2 country, and the Secretary of Homeland Secu-  
3 rity and the Secretary of State assess that such  
4 cooperation is likely to continue; and

5 “(E) the percentage of nationals of the  
6 country refused a nonimmigrant visa under sec-  
7 tion 101(a)(15)(B) during the previous full fis-  
8 cal year was not more than 10 percent of the  
9 total number of nationals of that country who  
10 were granted or refused such nonimmigrant  
11 visas.”.

12 **SEC. 4. TERMINATION OF DESIGNATION; PROBATION.**

13 Section 217(f) of the Immigration and Nationality  
14 Act (8 U.S.C. 1187(f)) is amended to read as follows:

15 “(f) **TERMINATION OF DESIGNATION; PROBATION.**—

16 “(1) **DEFINITIONS.**—In this subsection:

17 “(A) **PROBATIONARY PERIOD.**—The term  
18 ‘probationary period’ means the fiscal year in  
19 which a probationary country is placed in pro-  
20 bationary status under this subsection.

21 “(B) **PROGRAM COUNTRY.**—The term ‘pro-  
22 gram country’ has the meaning given that term  
23 in subsection (c)(1)(B).

24 “(2) **DETERMINATION, NOTICE, AND INITIAL**  
25 **PROBATIONARY PERIOD.**—

1           “(A) DETERMINATION OF PROBATIONARY  
2 STATUS AND NOTICE OF NONCOMPLIANCE.—As  
3 part of each program country’s periodic evalua-  
4 tion required by subsection (c)(5)(A), the Sec-  
5 retary of Homeland Security shall determine  
6 whether a program country is in compliance  
7 with the program requirements under subpara-  
8 graphs (A)(ii) through (F) of subsection (c)(2).

9           “(B) INITIAL PROBATIONARY PERIOD.—If  
10 the Secretary of Homeland Security determines  
11 that a program country visa is not in compli-  
12 ance with the program requirements under sub-  
13 paragraphs (A)(ii) through (F) of subsection  
14 (c)(2), the Secretary of Homeland Security  
15 shall place the program country in probationary  
16 status for the fiscal year following the fiscal  
17 year in which the periodic evaluation is com-  
18 pleted.

19           “(3) ACTIONS AT THE END OF THE INITIAL  
20 PROBATIONARY PERIOD.—At the end of the initial  
21 probationary period of a country under paragraph  
22 (2)(B), the Secretary of Homeland Security shall  
23 take one of the following actions:

24           “(A) COMPLIANCE DURING INITIAL PROBA-  
25 TIONARY PERIOD.—If the Secretary determines

1 that all instances of noncompliance with the  
2 program requirements under subparagraphs  
3 (A)(ii) through (F) of subsection (c)(2) that  
4 were identified in the latest periodic evaluation  
5 have been remedied by the end of the initial  
6 probationary period, the Secretary shall end the  
7 country's probationary period.

8 “(B) NONCOMPLIANCE DURING INITIAL  
9 PROBATIONARY PERIOD.—If the Secretary de-  
10 termines that any instance of noncompliance  
11 with the program requirements under subpara-  
12 graphs (A)(ii) through (F) of subsection (c)(2)  
13 that were identified in the latest periodic eval-  
14 uation has not been remedied by the end of the  
15 initial probationary period—

16 “(i) the Secretary may terminate the  
17 country's participation in the program; or

18 “(ii) on an annual basis, the Secretary  
19 may continue the country's probationary  
20 status if the Secretary, in consultation  
21 with the Secretary of State, determines  
22 that the country's continued participation  
23 in the program is in the national interest  
24 of the United States.

1           “(4) ACTIONS AT THE END OF ADDITIONAL  
2           PROBATIONARY PERIODS.—At the end of all proba-  
3           tionary periods granted to a country pursuant to  
4           paragraph (3)(B)(ii), the Secretary shall take one of  
5           the following actions:

6                   “(A) COMPLIANCE DURING ADDITIONAL  
7                   PERIOD.—The Secretary shall end the country’s  
8                   probationary status if the Secretary determines  
9                   during the latest periodic evaluation required by  
10                  subsection (c)(5)(A) that the country is in com-  
11                  pliance with the program requirements under  
12                  subparagraphs (A)(ii) through (F) of subsection  
13                  (c)(2).

14                  “(B) NONCOMPLIANCE DURING ADDI-  
15                  TIONAL PERIODS.—The Secretary shall termi-  
16                  nate the country’s participation in the program  
17                  if the Secretary determines during the latest  
18                  periodic evaluation required by subsection  
19                  (c)(5)(A) that the program country continues to  
20                  be in non-compliance with the program require-  
21                  ments under subparagraphs (A)(ii) through (F)  
22                  of subsection (c)(2).

23                  “(5) EFFECTIVE DATE.—The termination of a  
24                  country’s participation in the program under para-  
25                  graph (3)(B) or (4)(B) shall take effect on the first

1 day of the first fiscal year following the fiscal year  
2 in which the Secretary determines that such partici-  
3 pation shall be terminated. Until such date, nation-  
4 als of the country shall remain eligible for a waiver  
5 under subsection (a).

6 “(6) TREATMENT OF NATIONALS AFTER TERMI-  
7 NATION.—For purposes of this subsection and sub-  
8 section (d)—

9 “(A) nationals of a country whose designa-  
10 tion is terminated under paragraph (3) or (4)  
11 shall remain eligible for a waiver under sub-  
12 section (a) until the effective date of such ter-  
13 mination; and

14 “(B) a waiver under this section that is  
15 provided to such a national for a period de-  
16 scribed in subsection (a)(1) shall not, by such  
17 termination, be deemed to have been rescinded  
18 or otherwise rendered invalid, if the waiver is  
19 granted prior to such termination.

20 “(7) CONSULTATIVE ROLE OF THE SECRETARY  
21 OF STATE.—In this subsection, references to sub-  
22 paragraphs (A)(ii) through (F) of subsection (c)(2)  
23 and subsection (c)(5)(A) carry with them the con-  
24 sultative role of the Secretary of State as provided  
25 in those provisions.”.

1 **SEC. 5. REVIEW OF OVERSTAY TRACKING METHODOLOGY.**

2 Not later than 180 days after the date of the enact-  
3 ment of this Act, the Comptroller General of the United  
4 States shall conduct a review of the methods used by the  
5 Secretary of Homeland Security—

6 (1) to track aliens entering and exiting the  
7 United States; and

8 (2) to detect any such alien who stays longer  
9 than such alien's period of authorized admission.

○