

a.

#### Establishment of program

The Attorney General and the Secretary of State are authorized to establish a program (hereinafter in this section referred to as the “program”) under which the requirement of paragraph (7)(B)(i)(II) of section 212(a) of this Act [8 U.S.C 1182(a)] may be waived by the Attorney General, in consultation with the Secretary of State and in accordance with this section , in the case of an alien who meets the following requirements:

1.

#### Seeking entry as tourist for 90 days or less

The alien is applying for admission during the program as a nonimmigrant visitor (described in section 101(a)(15)(B) of this Act [8 U.S.C 1101(a)(15)(B)] ) for a period not exceeding 90 days.

2.

#### National of program country

The alien is a national of, and presents a passport issued by, a country which—

A.

extends (or agrees to extend), either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions, reciprocal privileges to citizens and nationals of the United States, and

B.

is designated as a pilot program country under subsection (c) of this section .

3.

#### Machine readable passport

A.

#### In general

Except as provided in subparagraph (B), on or after October 1, 2003, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.

B.

#### Limited waiver authority

For the period beginning October 1, 2003, and ending September 30, 2007, the Secretary of State may waive the requirement of subparagraph (A) with respect to

nationals of a program country (as designated under subsection (c) of this section ), if the Secretary of State finds that the program country—

i.  
is making progress toward ensuring that passports meeting the requirement of subparagraph (A) are generally available to its nationals; and

ii.  
has taken appropriate measures to protect against misuse of passports the country has issued that do not meet the requirement of subparagraph (A).

4.  
Executes immigration forms

The alien before the time of such admission completes such immigration form as the Attorney General shall establish.

5.  
Entry into the United States

If arriving by sea or air, the alien arrives at the port of entry into the United States on a carrier, including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations which has entered into an agreement with the Attorney General pursuant to subsection (e) of this section . The Attorney General is authorized to require a carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a domestic corporation conducting operations under part 91 of that title, to give suitable and proper bond, in such reasonable amount and containing such conditions as the Attorney General may deem sufficient to ensure compliance with the indemnification requirements of this section , as a term of such an agreement.

6.  
Not a safety threat

The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

7.  
No previous violation

If the alien previously was admitted without a visa under this section , the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

8.  
Round-trip ticket

The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Attorney General under regulations or the alien is arriving at the port of entry on an aircraft operated under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations).

9.

Automated system check

The identity of the alien has been checked using an automated electronic database containing information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found.

10.

Electronic transmission of identification information

Operators of aircraft under part 135 of title 14, Code of Federal Regulations, or operators of noncommercial aircraft that are owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, carrying any alien passenger who will apply for admission under this section shall furnish such information as the Attorney General by regulation shall prescribe as necessary for the identification of any alien passenger being transported and for the enforcement of the immigration laws. Such information shall be electronically transmitted not less than one hour prior to arrival at the port of entry for purposes of checking for inadmissibility using the automated electronic database.

11.

Eligibility determination under the electronic travel authorization system

Beginning on the date on which the electronic travel authorization system developed under subsection (h)(3) is fully operational, each alien traveling under the program shall, before applying for admission to the United States, electronically provide to the system biographical information and such other information as the Secretary of Homeland Security shall determine necessary to determine the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States. Upon review of such biographical information, the Secretary of Homeland Security shall determine whether the alien is eligible to travel to the United States under the program.

b.

Waiver of rights

An alien may not be provided a waiver under the program unless the alien has waived any right—

1.  
to review or appeal under this chapter of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

2.  
to contest, other than on the basis of an application for asylum, any action for removal of the alien.

c.  
Designation of program countries

1.  
In general

The Attorney General, in consultation with the Secretary of State, may designate any country as a program country if it meets the requirements of paragraph (2).

2.  
Qualifications

Except as provided in subsection (f) of this section , a country may not be designated as a program country unless the following requirements are met:

A.  
Low nonimmigrant visa refusal rate

Either—

i.  
the average number of refusals of nonimmigrant visitor visas for nationals of that country during—

I.  
the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years; and

II.  
either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year; or

ii.  
such refusal rate for nationals of that country during the previous full fiscal year was less than 3.0 percent.

B.  
Machine readable passport program

i.  
In general

Subject to clause (ii), the government of the country certifies that it issues to its citizens machine-readable passports that satisfy the internationally accepted standard for machine readability.

ii.  
Deadline for compliance for certain countries

In the case of a country designated as a program country under this subsection prior to May 1, 2000, as a condition on the continuation of that designation, the country—

I.  
shall certify, not later than October 1, 2000, that it has a program to issue machine-readable passports to its citizens not later than October 1, 2003; and

II.  
shall satisfy the requirement of clause (i) not later than October 1, 2003.

C.  
Law enforcement and security interests

The Attorney General, in consultation with the Secretary of State—

i.  
evaluates the effect that the country's designation would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

ii.  
determines that such interests would not be compromised by the designation of the country; and

iii.  
submits a written report to the Committee on the Judiciary and the Committee on International Relations of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate regarding the country's qualification for designation that includes an explanation of such determination.

D.

## Reporting lost and stolen passports

The government of the country enters into an agreement with the United States to report, or make available through Interpol or other means as designated by the Secretary of Homeland Security, to the United States Government information about the theft or loss of passports within a strict time limit and in a manner specified in the agreement.

### E.

#### Repatriation of aliens

The government of the country accepts for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued not later than three weeks after the issuance of the final order of removal. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release. Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

### F.

#### Passenger information exchange

The government of the country enters into an agreement with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens.

## 3.

### Continuing and subsequent qualifications

For each fiscal year after the initial period—

#### A.

##### Continuing qualification

In the case of a country which was a program country in the previous fiscal year, a country may not be designated as a program country unless the sum of—

##### i.

the total of the number of nationals of that country who were denied admission at the time of arrival or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

##### ii.

the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

B.

New countries

In the case of another country, the country may not be designated as a program country unless the following requirements are met:

i.

Low nonimmigrant visa refusal rate in previous 2-year period

The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

ii.

Low nonimmigrant visa refusal rate in each of the 2 previous years

The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

4.

Initial period

For purposes of paragraphs (2) and (3) , the term “initial period” means the period beginning at the end of the 30-day period described in subsection (b)(1) of this section and ending on the last day of the first fiscal year which begins after such 30-day period.

5.

Written reports on continuing qualification; designation terminations

A.

Periodic evaluations

i.

In general

The Secretary of Homeland Security, in consultation with the Secretary of State, periodically (but not less than once every 2 years)—

I.

shall evaluate the effect of each program country's continued designation on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

II.

shall determine, based upon the evaluation in subclause (I) , whether any such designation ought to be continued or terminated under subsection (d) of this section ;

III.

shall submit a written report to the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Homeland Security, of the House of Representatives and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate regarding the continuation or termination of the country's designation that includes an explanation of such determination and the effects described in subclause (I); and

IV.

shall submit to Congress a report regarding the implementation of the electronic travel authorization system under subsection (h)(3) and the participation of new countries in the program through a waiver under paragraph (8).

ii.

Effective date

A termination of the designation of a country under this subparagraph shall take effect on the date determined by the Secretary of Homeland Security, in consultation with the Secretary of State.

iii.

Redesignation

In the case of a termination under this subparagraph, the Secretary of Homeland Security shall redesignate the country as a program country, without regard to subsection (f) of this section or paragraph (2) or (3), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that all causes of the termination have been eliminated.

B.

Emergency termination

i.

In general

In the case of a program country in which an emergency occurs that the Secretary of Homeland Security, in consultation with the Secretary of State, determines threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States), the Secretary of Homeland Security shall immediately terminate the designation of the country as a program country.

ii.

Definition

For purposes of clause (i), the term “emergency” means—

I.

the overthrow of a democratically elected government;

II.

war (including undeclared war, civil war, or other military activity) on the territory of the program country;

III.

a severe breakdown in law and order affecting a significant portion of the program country's territory;

IV.

a severe economic collapse in the program country; or

V.

any other extraordinary event in the program country that threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States) and where the country's participation in the program could contribute to that threat.

iii.

Redesignation

The Secretary of Homeland Security may redesignate the country as a program country, without regard to subsection (f) of this section or paragraph (2) or (3), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that—

I.

at least 6 months have elapsed since the effective date of the termination;

II.  
the emergency that caused the termination has ended; and

III.  
the average number of refusals of nonimmigrant visitor visas for nationals of that country during the period of termination under this subparagraph was less than 3.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such period.

iv.  
Program suspension authority

The Director of National Intelligence shall immediately inform the Secretary of Homeland Security of any current and credible threat which poses an imminent danger to the United States or its citizens and originates from a country participating in the visa waiver program. Upon receiving such notification, the Secretary, in consultation with the Secretary of State—

I.  
may suspend a country from the visa waiver program without prior notice;

II.  
shall notify any country suspended under subclause (I) and, to the extent practicable without disclosing sensitive intelligence sources and methods, provide justification for the suspension; and

III.  
shall restore the suspended country's participation in the visa waiver program upon a determination that the threat no longer poses an imminent danger to the United States or its citizens.

C.  
Treatment of nationals after termination

For purposes of this paragraph—

i.  
nationals of a country whose designation is terminated under subparagraph (A) or (B) shall remain eligible for a waiver under subsection (a) of this section until the effective date of such termination; and

ii.  
a waiver under this section that is provided to such a national for a period described in subsection (a)(1) of this section shall not, by such termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.

6.

#### Computation of visa refusal rates

For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, or disability, unless otherwise specifically authorized by law or regulation. No court shall have jurisdiction under this paragraph to review any visa refusal, the denial of admission to the United States of any alien by the Attorney General, the Secretary's computation of the visa refusal rate, or the designation or nondesignation of any country.

7.

#### Visa waiver information

A.

##### In general

In refusing the application of nationals of a program country for United States visas, or the applications of nationals of a country seeking entry into the visa waiver program, a consular officer shall not knowingly or intentionally classify the refusal of the visa under a category that is not included in the calculation of the visa refusal rate only so that the percentage of that country's visa refusals is less than the percentage limitation applicable to qualification for participation in the visa waiver program.

B.

##### Reporting requirement

On May 1 of each year, for each country under consideration for inclusion in the visa waiver program, the Secretary of State shall provide to the appropriate congressional committees—

i.

the total number of nationals of that country that applied for United States visas in that country during the previous calendar year;

ii.

the total number of such nationals who received United States visas during the previous calendar year;

iii.

the total number of such nationals who were refused United States visas during the previous calendar year;

iv.

the total number of such nationals who were refused United States visas during the previous calendar year under each provision of this chapter under which the visas were refused; and

v.

the number of such nationals that were refused under section 214(b) of this Act [8 U.S.C 1184(b)] as a percentage of the visas that were issued to such nationals.

C.

Certification

Not later than May 1 of each year, the United States chief of mission, acting or permanent, to each country under consideration for inclusion in the visa waiver program shall certify to the appropriate congressional committees that the information described in subparagraph (B) is accurate and provide a copy of that certification to those committees.

D.

Consideration of countries in the visa waiver program

Upon notification to the Attorney General that a country is under consideration for inclusion in the visa waiver program, the Secretary of State shall provide all of the information described in subparagraph (B) to the Attorney General.

E.

Definition

In this paragraph, the term “appropriate congressional committees” means the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and the Committee on International Relations of the House of Representatives.

8.

Nonimmigrant visa refusal rate flexibility

A.

Certification

i.

In general

On the date on which an air exit system is in place that can verify the departure of not less than 97 percent of foreign nationals who exit through airports of the United States and the electronic travel authorization system required under subsection (h)(3) is fully operational, the Secretary of Homeland Security shall certify to Congress that such air exit system and electronic travel authorization system are in place.

ii.

#### Notification to Congress

The Secretary shall notify Congress in writing of the date on which the air exit system under clause (i) fully satisfies the biometric requirements specified in subsection (i) .

iii.

#### Temporary suspension of waiver authority

Notwithstanding any certification made under clause (i), if the Secretary has not notified Congress in accordance with clause (ii) by June 30, 2009, the Secretary's waiver authority under subparagraph (B) shall be suspended beginning on July 1, 2009, until such time as the Secretary makes such notification.

iv.

#### Rule of construction

Nothing in this paragraph shall be construed as in any way abrogating the reporting requirements under subsection (i)(3) .

B.

#### Waiver

After certification by the Secretary under subparagraph (A), the Secretary, in consultation with the Secretary of State, may waive the application of paragraph (2)(A) for a country if—

i.

the country meets all security requirements of this section ;

ii.

the Secretary of Homeland Security determines that the totality of the country's security risk mitigation measures provide assurance that the country's participation in the program would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States;

iii.

there has been a sustained reduction in the rate of refusals for nonimmigrant visas for nationals of the country and conditions exist to continue such reduction;

iv.

the country cooperated with the Government of the United States on counterterrorism initiatives, information sharing, and preventing terrorist travel before the date of its designation as a program country, and the Secretary of Homeland Security and the Secretary of State determine that such cooperation will continue; and

v.

I. the rate of refusals for nonimmigrant visitor visas for nationals of the country during the previous full fiscal year was not more than ten percent; or

II.

the visa overstay rate for the country for the previous full fiscal year does not exceed the maximum visa overstay rate, once such rate is established under subparagraph (C).

C.

Maximum visa overstay rate

i.

Requirement to establish

After certification by the Secretary under subparagraph (A), the Secretary and the Secretary of State jointly shall use information from the air exit system referred to in such subparagraph to establish a maximum visa overstay rate for countries participating in the program pursuant to a waiver under subparagraph (B). The Secretary of Homeland Security shall certify to Congress that such rate would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States.

ii.

Visa overstay rate defined

In this paragraph the term “visa overstay rate” means, with respect to a country, the ratio of—

I.

the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa whose periods of authorized stays ended during a fiscal year but who remained unlawfully in the United States beyond such periods; to

II.

the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa during that fiscal year.

iii.

Report and publication

The Secretary of Homeland Security shall on the same date submit to Congress and publish in the Federal Register information relating to the maximum visa overstay rate established under clause (i). Not later than 60 days after such date, the Secretary shall issue a final maximum visa overstay rate above which a country may not participate in the program.

9.

Discretionary security-related considerations

In determining whether to waive the application of paragraph (2)(A) for a country, pursuant to paragraph (8), the Secretary of Homeland Security, in consultation with the Secretary of State, shall take into consideration other factors affecting the security of the United States, including—

A.

airport security standards in the country;

B.

whether the country assists in the operation of an effective air marshal program;

C.

the standards of passports and travel documents issued by the country; and

D.

other security-related factors, including the country's cooperation with the United States' initiatives toward combating terrorism and the country's cooperation with the United States intelligence community in sharing information regarding terrorist threats.

10.

Technical assistance

The Secretary of Homeland Security, in consultation with the Secretary of State, shall provide technical assistance to program countries to assist those countries in meeting the requirements under this section . The Secretary of Homeland Security shall ensure that the program office within the Department of Homeland Security is adequately staffed and has resources to be able to provide such technical assistance, in addition to its duties to effectively monitor compliance of the countries participating in the program with all the requirements of the program.

11.

Independent review

A.

In general

Prior to the admission of a new country into the program under this section , and in conjunction with the periodic evaluations required under subsection (c)(5)(A) , the Director of National Intelligence shall conduct an independent intelligence assessment of a nominated country and member of the program.

B.

Reporting requirement

The Director shall provide to the Secretary of Homeland Security, the Secretary of State, and the Attorney General the independent intelligence assessment required under subparagraph (A).

C.  
Contents

The independent intelligence assessment conducted by the Director shall include—

- i.  
a review of all current, credible terrorist threats of the subject country;
- ii.  
an evaluation of the subject country's counterterrorism efforts;
- iii.  
an evaluation as to the extent of the country's sharing of information beneficial to suppressing terrorist movements, financing, or actions;
- iv.  
an assessment of the risks associated with including the subject country in the program; and
- v.  
recommendations to mitigate the risks identified in clause (iv).

d.  
Authority

Notwithstanding any other provision of this section , the Secretary of Homeland Security, in consultation with the Secretary of State, may for any reason (including national security) refrain from waiving the visa requirement in respect to nationals of any country which may otherwise qualify for designation or may, at any time, rescind any waiver or designation previously granted under this section . The Secretary of Homeland Security may not waive any eligibility requirement under this section unless the Secretary notifies, with respect to the House of Representatives, the Committee on Homeland Security, the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Appropriations, and with respect to the Senate, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Appropriations not later than 30 days before the effective date of such waiver.

e.  
Carrier agreements

1.

## In general

The agreement referred to in subsection (a)(4) of this section is an agreement between a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title and the Attorney General under which the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the program—

### A.

to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A) of this section ,

### B.

to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the program,

### C.

to be subject to the imposition of fines resulting from the transporting into the United States of a national of a designated country without a passport pursuant to regulations promulgated by the Attorney General, and

### D.

to collect, provide, and share passenger data as required under subsection (h)(1)(B) of this section .

## 2.

### Termination of agreements

The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title for the failure by a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title to meet the terms of such agreement.

## 3.

### Business aircraft requirements

### A.

#### In general

For purposes of this section , a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations that owns or operates a noncommercial aircraft is a corporation that is organized under the laws of any of the States of the United States or the District of Columbia and is accredited by or a member of a national organization that sets business aviation standards. The Attorney General shall prescribe by regulation the provision of such information as the Attorney General deems necessary to identify the domestic corporation, its officers, employees, shareholders, its place of business, and its business activities.

B.  
Collections

In addition to any other fee authorized by law, the Attorney General is authorized to charge and collect, on a periodic basis, an amount from each domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, for nonimmigrant visa waiver admissions on noncommercial aircraft owned or operated by such domestic corporation equal to the total amount of fees assessed for issuance of nonimmigrant visa waiver arrival/departure forms at land border ports of entry. All fees collected under this paragraph shall be deposited into the Immigration User Fee Account established under section 286(h) of this Act [8 U.S.C 1356(h)] .

f.  
Duration and termination of designation

1.  
In general

A.  
Determination and notification of disqualification rate

Upon determination by the Attorney General that a program country's disqualification rate is 2 percent or more, the Attorney General shall notify the Secretary of State.

B.  
Probationary status

If the program country's disqualification rate is greater than 2 percent but less than 3.5 percent, the Attorney General shall place the program country in probationary status for a period not to exceed 2 full fiscal years following the year in which the determination under subparagraph (A) is made.

C.  
Termination of designation

Subject to paragraph (3), if the program country's disqualification rate is 3.5 percent or more, the Attorney General shall terminate the country's designation as a program

country effective at the beginning of the second fiscal year following the fiscal year in which the determination under subparagraph (A) is made.

2.

Termination of probationary status

A.

In general

If the Attorney General determines at the end of the probationary period described in paragraph (1)(B) that the program country placed in probationary status under such paragraph has failed to develop a machine-readable passport program as required by section (c)(2)(C) of this section @ }, or has a disqualification rate of 2 percent or more, the Attorney General shall terminate the designation of the country as a program country. If the Attorney General determines that the program country has developed a machine-readable passport program and has a disqualification rate of less than 2 percent, the Attorney General shall redesignate the country as a program country.

B.

Effective date

A termination of the designation of a country under subparagraph (A) shall take effect on the first day of the first fiscal year following the fiscal year in which the determination under such subparagraph is made. Until such date, nationals of the country shall remain eligible for a waiver under subsection (a) of this section .

3.

Nonapplicability of certain provisions

Paragraph (1)(C) shall not apply unless the total number of nationals of a program country described in paragraph (4)(A) exceeds 100.

4.

“Disqualification rate” defined

For purposes of this subsection, the term “disqualification rate” means the percentage which—

A.

the total number of nationals of the program country who were—

i.

denied admission at the time of arrival or withdrew their application for admission during the most recent fiscal year for which data are available; and

ii.

admitted as nonimmigrant visitors during such fiscal year and who violated the terms of such admission; bears to

B.  
the total number of nationals of such country who applied for admission as nonimmigrant visitors during such fiscal year.

5.  
Failure to report passport thefts

If the Secretary of Homeland Security and the Secretary of State jointly determine that the program country is not reporting the theft or loss of passports, as required by subsection (c)(2)(D) of this section , the Secretary of Homeland Security shall terminate the designation of the country as a program country.

g.  
Visa application sole method to dispute denial of waiver based on a ground of inadmissibility

In the case of an alien denied a waiver under the program by reason of a ground of inadmissibility described in section 212(a) of this Act [8 U.S.C 1182(a)] that is discovered at the time of the alien's application for the waiver or through the use of an automated electronic database required under subsection (a)(9) of this section , the alien may apply for a visa at an appropriate consular office outside the United States. There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.

h.  
Use of information technology systems

1.  
Automated entry-exit control system

A.  
System

Not later than October 1, 2001, the Attorney General shall develop and implement a fully automated entry and exit control system that will collect a record of arrival and departure for every alien who arrives and departs by sea or air at a port of entry into the United States and is provided a waiver under the program.

B.  
Requirements

The system under subparagraph (A) shall satisfy the following requirements:

i.

#### Data collection by carriers

Not later than October 1, 2001, the records of arrival and departure described in subparagraph (A) shall be based, to the maximum extent practicable, on passenger data collected and electronically transmitted to the automated entry and exit control system by each carrier that has an agreement under subsection (a)(4) of this section .

ii.

#### Data provision by carriers

Not later than October 1, 2002, no waiver may be provided under this section to an alien arriving by sea or air at a port of entry into the United States on a carrier unless the carrier is electronically transmitting to the automated entry and exit control system passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out this paragraph.

iii.

#### Calculation

The system shall contain sufficient data to permit the Attorney General to calculate, for each program country and each fiscal year, the portion of nationals of that country who are described in subparagraph (A) and for whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

C.

#### Reporting

i.

#### Percentage of nationals lacking departure record

As part of the annual report required to be submitted under section 1365a(e)(1) of this title [8 U.S.C 1365a(e)(1)], the Attorney General shall include a section containing the calculation described in subparagraph (B)(iii) for each program country for the previous fiscal year, together with an analysis of that information.

ii.

#### System effectiveness

Not later than December 31, 2004, the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

I.

The conclusions of the Attorney General regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

## II.

The recommendations of the Attorney General regarding the use of the calculation described in subparagraph (B)(iii) as a basis for evaluating whether to terminate or continue the designation of a country as a program country.

The report required by this clause may be combined with the annual report required to be submitted on that date under section 1365a(e)(1) of this title [8 U.S.C.1365a(e)(1)].

### 2.

Automated data sharing system

#### A.

System

The Attorney General and the Secretary of State shall develop and implement an automated data sharing system that will permit them to share data in electronic form from their respective records systems regarding the admissibility of aliens who are nationals of a program country.

#### B.

Requirements

The system under subparagraph (A) shall satisfy the following requirements:

##### i.

Supplying information to immigration officers conducting inspections at ports of entry

Not later than October 1, 2002, the system shall enable immigration officers conducting inspections at ports of entry under section 235 of this Act [8 U.S.C 1225] to obtain from the system, with respect to aliens seeking a waiver under the program—

##### I.

any photograph of the alien that may be contained in the records of the Department of State or the Service; and

##### II.

information on whether the alien has ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

##### ii.

Supplying photographs of inadmissible aliens

The system shall permit the Attorney General electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a

national of a program country and has been determined to be ineligible to receive a visa.

iii.

Maintaining records on applications for admission

The system shall maintain, for a minimum of 10 years, information about each application for admission made by an alien seeking a waiver under the program, including the following:

I.

The name or Service identification number of each immigration officer conducting the inspection of the alien at the port of entry.

II.

Any information described in clause (i) that is obtained from the system by any such officer.

III.

The results of the application.

3.

Electronic travel authorization system

A.

System

The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a fully automated electronic travel authorization system (referred to in this paragraph as the "System") to collect such biographical and other information as the Secretary of Homeland Security determines necessary to determine, in advance of travel, the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States.

B.

Fees

i.

In general

No later than 6 months after March 4, 2010, the Secretary of Homeland Security shall establish a fee for the use of the System and begin assessment and collection of that fee. The initial fee shall be the sum of—

I.

\$10 per travel authorization; and

## II.

an amount that will at least ensure recovery of the full costs of providing and administering the System, as determined by the Secretary.

### ii.

Disposition of amounts collected

Amounts collected under clause (i)(I) shall be credited to the Travel Promotion Fund established by subsection (d) section 2131 of title 22. Amounts collected under clause (i)(II) shall be transferred to the general fund of the Treasury and made available to pay the costs incurred to administer the System.

### iii.

Sunset of Travel Promotion Fund fee

The Secretary may not collect the fee authorized by clause (i)(I) for fiscal years beginning after September 30, 2015.

## C.

Validity

### i.

Period

The Secretary of Homeland Security, in consultation with the Secretary of State, shall prescribe regulations that provide for a period, not to exceed three years, during which a determination of eligibility to travel under the program will be valid. Notwithstanding any other provision under this section, the Secretary of Homeland Security may revoke any such determination at any time and for any reason.

### ii.

Limitation

A determination by the Secretary of Homeland Security that an alien is eligible to travel to the United States under the program is not a determination that the alien is admissible to the United States.

### iii.

Not a determination of visa eligibility

A determination by the Secretary of Homeland Security that an alien who applied for authorization to travel to the United States through the System is not eligible to travel under the program is not a determination of eligibility for a visa to travel to the United States and shall not preclude the alien from applying for a visa.

### iv.

Judicial review

Notwithstanding any other provision of law, no court shall have jurisdiction to review an eligibility determination under the System.

D.  
Report

Not later than 60 days before publishing notice regarding the implementation of the System in the Federal Register, the Secretary of Homeland Security shall submit a report regarding the implementation of the system to—

- i.  
the Committee on Homeland Security of the House of Representatives;
- ii.  
the Committee on the Judiciary of the House of Representatives;
- iii.  
the Committee on Foreign Affairs of the House of Representatives;
- iv.  
the Permanent Select Committee on Intelligence of the House of Representatives;
- v.  
the Committee on Appropriations of the House of Representatives;
- vi.  
the Committee on Homeland Security and Governmental Affairs of the Senate;
- vii.  
the Committee on the Judiciary of the Senate;
- viii.  
the Committee on Foreign Relations of the Senate;
- ix.  
the Select Committee on Intelligence of the Senate; and
- x.  
the Committee on Appropriations of the Senate.

i.  
Exit system

1.  
In general

Not later than one year after August 3, 2007, the Secretary of Homeland Security shall establish an exit system that records the departure on a flight leaving the United States of every alien participating in the visa waiver program established under this section .

2.  
System requirements

The system established under paragraph (1) shall—

A.  
match biometric information of the alien against relevant watch lists and immigration information; and

B.  
compare such biometric information against manifest information collected by air carriers on passengers departing the United States to confirm such aliens have departed the United States.

3.  
Report

Not later than 180 days after August 3, 2007, the Secretary shall submit to Congress a report that describes—

A.  
the progress made in developing and deploying the exit system established under this subsection; and

B.  
the procedures by which the Secretary shall improve the method of calculating the rates of nonimmigrants who overstay their authorized period of stay in the United States.