

Testimony of
Mr. Jess Ford

July 15, 2003

Testimony
Before the Senate Judiciary Subcommittee
on Immigration, Border Security and
Citizenship

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For Release on Delivery
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New Policies and Increased
Interagency Coordination
Needed to Improve Visa
Process
Statement of Jess T. Ford
Director, International Affairs and Trade
GAO-03-1013T

Our analysis of the visa process shows that the Departments of State, Homeland Security, and Justice could more effectively manage the visa process if they had clear and comprehensive policies and procedures and increased agency coordination and information sharing. In our October 2002 report on the visa process as an antiterrorism tool, we found that

?

? State did not provide clear policies on how consular officers should balance national security concerns with the desire to facilitate legitimate travel when issuing visas; and

? State and Justice disagreed on the evidence needed to deny a visa on terrorism grounds.

In our June 2003 report, we found that State had revoked visas for terrorism concerns but that

? The revocation process was not being used aggressively to alert homeland security and law enforcement agencies that individuals who entered the country before their visas were revoked might be security risks; and

? The process broke down when information on revocations was not being shared between State and appropriate immigration and law enforcement officials.

These weaknesses diminish the effectiveness of the visa process in keeping potential terrorists out of the United States.

Diagram of Gaps in the Visa Revocation Notification System

Inconsistent or incomplete
information flow

No information flow

Sources: GAO and Art Explosion.

Department of State

Bureau of

Consular Affairs

revokes visas

Department of Homeland Security

Department of State

Issuing visas

Managing stays

Controlling entries

Department of Homeland Security

Department of Justice

Since September 11, 2001, visa

operations have played an

increasingly important role in

ensuring the national security of

the United States. The

Departments of State, Homeland

Security, and Justice, as well as

other agencies, are involved in the

visa process. Each plays an

important role in making security

decisions so that potential

terrorists do not enter the country.

In two GAO reports, we assessed

the effectiveness of the visa

process as an antiterrorism tool.

GAO made numerous

recommendations to strengthen the

visa process as an antiterrorism

tool. Among them, GAO

recommended that the Department

of Homeland Security, in

conjunction with the Departments

of State and Justice, develop

specific policies and procedures for

the interagency visa revocation

process to ensure that when State

revokes a visa because of terrorism

concerns, the appropriate units

within State, Homeland Security,

and the FBI are notified

immediately and that proper actions are taken.

State said it is using our recommendations as a roadmap for making improvements in the visa process. Homeland Security agreed that the visa process should be strengthened as an antiterrorism tool.

www.gao.gov/cgi-bin/getrpt?GAO-03-1013T.

To view the full testimony, including the scope and methodology, click on the link above.

For more information, contact Jess T. Ford at (202) 512-4128 or fordj@gao.gov.

Highlights of GAO-03-1013T, a testimony before the Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship

July 15, 2003

BORDER SECURITY

New Policies and Increased Interagency Coordination Needed to Improve Visa Process

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to discuss our recent work on the visa process and some of the ways we believe this process could be strengthened as an important part of our country's border security strategy. Mr. Chairman, citizens of other countries seeking to enter the United States temporarily for business, tourism, and other reasons generally must apply for and obtain a U.S. travel document, called a nonimmigrant visa, at U.S. embassies or consulates abroad before arriving at U.S. ports of entry. In deciding who should and should not receive a visa, consular officers must perform a risk assessment that balances the need to facilitate legitimate travel with the need to protect the United States against potential terrorists and to deter others whose entry is considered likely to be harmful to U.S. national interests. Consular officers also need to delicately balance U.S. national security interests with other interests such as promoting U.S. business, tourism, education and cultural exchanges, and the overall health of our economy.

Since September 11, 2001, visa operations have played an increasingly important role in ensuring the national security of the United States. The Departments of State, Homeland Security, and Justice, as well as other agencies, are involved in the visa process, with each playing an important role in making security decisions.

My testimony today is based on two of our recent reports¹ on the visa

process that contained observations and recommendations on ways in which national and border security could be strengthened through the visa process, implementation of clear visa policies and guidelines, and sharing of information and data. The first report focused on the effectiveness of the visa process as an antiterrorism tool and recommended ways that the process could be strengthened as a screen against terrorists. The second report provides examples of how weaknesses in policy and interagency coordination are affecting border security. In addition to my comments based on the two reports, I will provide a brief overview of an emerging visa policy issue that warrants oversight.

1U.S. General Accounting Office, Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool, GAO-03-132NI (Washington, D.C.: Oct. 21, 2002) and U.S. General Accounting Office, Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process, GAO-03-798 (Washington, D.C.: June 18, 2003).

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Our analysis of the visa process shows that the Departments of State, Homeland Security, and Justice could more effectively manage the visa function if they had clear and comprehensive policies and procedures and increased agency coordination and information sharing. Our October 2002 report addressed the need for a clear policy on how to balance national security concerns with the desire to facilitate legitimate travel when issuing visas. It also addressed the need for more coordination and information sharing to realize the full potential of the visa process. In addition, there is a need for more human resources and more training for consular officers. We made several recommendations to the Department of State and the new Department of Homeland Security to improve this process. State reported that it plans to use our recommendations as a road map for improving the visa process.

Our June 2003 report also pointed out that the U.S. government does not have a clear and comprehensive policy on the interagency visa revocation process. This process should be used more aggressively to alert homeland security and law enforcement agencies that individuals who entered the country before their visas were revoked might be security risks. However, we found that the process broke down because information on visa revocations was not shared between State and appropriate immigration and law enforcement offices. It broke down even further when individuals in question had already entered the United States prior to revocation. In our review of the 240 visas that were revoked for terrorism concerns between September 11, 2001 and December 31, 2002, we found numerous cases where notifications of the revocations did not reach appropriate units within the Immigration and Naturalization Service (INS)² and FBI. We also found evidence that individuals whose visas were revoked because of terrorism concerns entered the United States and may still remain in the country. We have made recommendations to the Departments of Homeland Security, State, and Justice to improve the revocation process. Homeland Security agreed that the visa revocation

process needed to be strengthened.

2On March 1, 2003, INS became part of three units within the Department of Homeland Security. INS inspection functions transferred to the Bureau of Customs and Border Protection; its investigative and enforcement functions transferred to the Bureau of Immigration and Customs Enforcement; and its immigration services function became part of the Bureau of Citizenship and Immigration Services. Because our work focused on visa revocation cases that took place before the March 1 reorganization, our report referred to the U.S. government's immigration agency as "INS."

Summary

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State has directed that, beginning August 1, posts interview all foreign individuals, with a few exceptions, seeking to visit the United States prior to visa issuance. The purpose of this guidance is to tighten the visa process. The new regulations may result in delays if posts do not have adequate resources to handle the number of interviews.

Mr. Chairman, I now want to provide additional details on the policies, procedures, and coordination that we described in our reports.

The September 11 attacks illustrated the vulnerabilities in the visa process when it became known that all 19 of the terrorist hijackers had been issued visas to enter the United States. Before the attacks, the State Department's visa operations focused primarily on screening applicants to determine whether they intended to work or reside illegally in the United States. In deciding on who should receive a visa, consular officers relied on the State Department's consular "lookout" system, a name check system that incorporates information from many agencies, as the primary basis for identifying potential terrorists.³ Consular officers were encouraged to facilitate legitimate travel and, at some posts we visited, faced pressure to issue visas. The State Department gave overseas consular sections substantial discretion in determining the level of scrutiny applied to visa applications and encouraged streamlined procedures to provide customer service and deal with a large workload.

As a result, according to State Department officials and documents, consular sections worldwide adopted practices that reduced the review time for visa applications. For example, some posts decided not to interview applicants who appeared likely to return to their country at the end of their allotted time in the United States.

Since the terrorist attacks, the U.S. government has introduced some changes to strengthen the visa process. For example, the State Department has, with the help of other agencies, almost doubled the number of names and the amount of information in the lookout system. Further, the Department began seeking new or additional interagency clearances on selected applicants to screen out terrorists, although these checks were

3U.S. General Accounting Office, Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing GAO-03-322 (Washington, D.C.: Apr. 15, 2003). We recommended a series of actions including that the Department of Homeland Security and other agencies that have and use watch lists lead an effort to

standardize and consolidate the federal government's watch list structures and policies.

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Be Strengthened as an
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not always completed by other U.S. agencies in a thorough or timely manner. We also observed that consular officers at some of the posts we visited were spending more time reviewing visa applications and interviewing applicants; they were able to do so, at least temporarily, because the number of visa applications decreased dramatically after September 11.

While these actions have strengthened the visa process, our work in 2002 showed that there were widely divergent practices and procedures among and within overseas posts regarding (1) the authority of consular officers to deny questionable applicants a visa, (2) the role of the visa process in ensuring national security, and (3) the types of changes in posts' visa policies and procedures that are appropriate given the need for heightened border security. Also, the Departments of State and Justice disagreed on the evidence needed to deny a visa on terrorism grounds. Most consular officers at the posts we visited stated that more comprehensive guidance and training would help them use the visa process as an antiterrorism tool to detect questionable applicants. In July 2002, the Secretary of State acknowledged that the visa process needed to be strengthened and indicated that the State Department is working to identify areas for improvement.

In addition, the State Department has stressed that it must have the best interagency information available on persons who are potential security risks in order to make good visa decisions. The additional data received from the intelligence and law enforcement community has increased State's access to information for use in the visa adjudication process. In addition, State indicated that it will work with Homeland Security to establish the systems and procedures that will ensure seamless sharing of information in the future.

We also found that human capital limitations are a concern, as some consular sections may need more staff if the number of visa applicants returns to pre-September 11 levels or if State continues to institute new security checks for visa applicants. At some posts the demand for visas combined with increased workload per visa applicant still exceeded available staff, as evidenced by the waiting time for a visa appointment and in overtime of consular staff. Moreover, several posts we visited reported that they could manage their existing workload with current staffing but would need more staff if they faced an increase in either security clearance procedures or visa applications.

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In our October 2002 report, we concluded that the visa process could be an important tool to keep potential terrorists from entering the United

States but that weaknesses limited its effectiveness as an antiterrorism tool. The State Department needed to improve implementation of the visa process to increase its effectiveness and consistency among posts.

To strengthen the visa process as an antiterrorism tool, we recommended that the Secretary of State, in consultation with appropriate agencies,

- ? establish clear policy on addressing national security concerns through the visa process that is balanced with the desire to facilitate legitimate travel, provide timely customer service, and manage workloads;
- ? develop comprehensive, risk-based guidelines and standards on how consular affairs should use the visa process as a screen against potential terrorists;

- ? reassess staffing for visa operations in light of the current and anticipated number of visa applications and, if appropriate, request additional human resources to ensure that consular sections have adequate staff with necessary skills; and

- ? provide consular training courses to improve interview techniques, recognize fraudulent documents, understand terrorism trends, and better use the name check system.

To address visa issues requiring coordination and actions across several agencies, we recommended that the Department of Homeland Security coordinate with appropriate agencies to

- ? establish governmentwide guidelines on the level of evidence needed to deny a visa on terrorism grounds under provisions of the Immigration and Nationality Act;

- ? reassess interagency headquarters' security checks on visa applicants to verify that all the checks are necessary and promptly conducted, and provide clear guidance to overseas posts and headquarters agencies on their roles in conducting these checks;

- ? consider reassessing, on an interagency basis, visas issued before the implementation of the new security checks;

- ? reexamine visa operations on a regular basis to ensure that the operations effectively contribute to the overall national strategy for

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homeland security; and

- ? ensure that law enforcement and intelligence agencies promptly provide information to the State Department on persons who may pose a security risk and, therefore, should not receive visas.

In its response to our recommendations, the Department of State noted that it has acted on or is currently acting on some of the issues we reported and continues to reexamine its visa process. Moreover, in January 2003, the Assistant Secretary for Consular Affairs reported that State plans to use our recommendations as a roadmap for improvements within the Bureau of Consular Affairs and in consular sections around the world. State has also indicated that it is currently undertaking a number of initiatives to review visa policies, staffing, and training needs.

Furthermore, State said it is looking at refining various screening

programs and will coordinate with other agencies to reassess interagency headquarters' security checks.

In our recent work on visa revocations, we again found weaknesses caused by the lack of comprehensive policies and coordination between agencies. The visa revocation process can be an important tool to prevent potential terrorists from entering the United States. Ideally, information on suspected terrorists would reach the Department of State before it decides to issue a visa; however, there will always be some cases in which the information arrives after the visa has been issued. Revoking a visa can mitigate this problem, but only if State notifies the appropriate agencies and if those agencies take appropriate actions to deny entry or investigate persons with a revoked visa. In our June 2003 report, we identified the policies and procedures of several agencies that govern the visa revocation process and determined the effectiveness of the process. We focused on all 240 visas that State revoked for terrorism concerns from September 11, 2001, to December 31, 2002.

Our analysis indicated that the U.S. government has no specific written policy on the use of visa revocations as an antiterrorism tool and no written procedures to guide State in notifying relevant agencies of visas that have been revoked on terrorism grounds. State and INS have written procedures that guide some types of visa revocations; however, neither they nor the FBI has written internal procedures for notifying appropriate personnel to take action on visas revoked by the State Department. State and INS officials could articulate their informal policies and procedures for how and what purpose their agencies have used the process to keep

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terrorists out of the United States, but neither they nor FBI officials had specific policies or procedures that covered investigating, locating, or taking appropriate action in cases where the visa holder had already entered the country.

The lack of formal, written policies and procedures may have contributed to systemic weaknesses in the visa revocation process that increase the probability of a suspected terrorist entering or remaining in the United States. At the time of visa revocation, State should notify its consular officers at overseas posts, the Department of Homeland Security, and the FBI. State would have to provide notice of revocation, along with supporting evidence to the appropriate units within Homeland Security and the FBI, which would allow them to take appropriate action. In our review of the 240 visa revocations, we found that (1) appropriate units within INS and the FBI did not always receive timely notification of the revocations; (2) lookouts were not consistently posted to the agencies'

watch lists; (3) 30 individuals whose visas were revoked on terrorism grounds entered the United States and may still remain in the country;⁴ (4) INS investigators were not usually notified of individuals with revoked visas who had entered the United States and therefore did not open investigations on them; and (5) the FBI did not investigate individuals with revoked visas unless these individuals were also in TIPOFF. For instance:

? In a number of cases, notification between State and the appropriate units within INS did not take place or was not completed in a timely manner. For example, INS officials said they did not receive any notice of the revocations from State in 43 of the 240 cases. In another 47 cases, the INS Lookout Unit received the revocation notice only via a cable, which took, on average, 12 days to reach the Unit.

? In cases in which the INS Lookout Unit had received notification, it generally posted information on these revocations in its lookout database within 1 day of receiving the notice. In cases where it was not notified, it could not post information on these individuals in its lookout database, which precluded INS inspectors at ports of entry from knowing that these individuals had had their visas revoked.

⁴This number is based on our analysis of data we received from INS as of May 19, 2003. On May 20 and 21, INS and the FBI, respectively, provided additional information related to this matter. We were not able to complete analysis of the data prior to the release of our report due to the nature and volume of the data. The data could show that the actual number of persons is higher or lower than 30.

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Moreover, the State Department neglected to enter the revocation action for 64 of the 240 cases into its own watch list.

? GAO's analysis of INS arrival and departure data indicates that 29 individuals entered the United States before their visas were revoked and may still remain in the country. These data also show that INS inspectors admitted at least four other people after the visa revocation, one of whom may still remain in the country. However, in testimony on June 18, 2003, the FBI said that none of these 30 individuals posed a terrorist threat since they were not in TIPOFF, a State-operated interagency terrorist watch list that FBI's Foreign Terrorist Tracking Task Force monitors. State Department officials told us during our review that State relied on sources of information in addition to TIPOFF in making visa revocation decisions. INS inspectors prevented at least 14 others from entering the country because the INS watch list included information on the revocation action or had another lookout on them.

? INS investigators said they did not open cases on these individuals with revoked visas who had entered the United States because their unit had not been notified that State had revoked visas because of terrorism concerns and that these persons had entered the country. They added that, in the 10 cases that were referred to them, they conducted a full investigation of possible immigration violations. INS officials said that

it would be challenging to remove individuals with revoked visas who had entered the United States unless they were in violation of their immigration status. Homeland Security officials said that the issue of whether a visa revocation, after an individual is admitted on that visa, has the effect of rendering the individuals out-of-status is unresolved legally.

? FBI officials told us they were not concerned about individuals whose visas were revoked because of terrorism concerns unless the individuals' names were in TIPOFF. They said that they had a system in place to monitor individuals in TIPOFF who enter the country but that they would not investigate individuals who were not in TIPOFF based solely on the revocation notice from State. FBI's position indicates that FBI is not taking into account all sources of information that State uses in determining if a person may pose a terrorism threat.

We concluded that the visa process could be an important tool to keep potential terrorists from entering the United States. However, there are currently major gaps in the notification and investigation processes. One reason for this is that there are no comprehensive written policies and
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procedures on how notification of a visa revocation should take place and what agencies should do when they are notified. As a result, there is heightened risk that persons who State believed should not have been issued a visa because of terrorism concerns could enter the country with revoked visas or be allowed to remain after their visas are revoked without undergoing investigation or monitoring.

To strengthen the visa revocation process as an antiterrorism tool, we recommended that the Secretary of Homeland Security, in conjunction with the Secretary of State and the Attorney General

? develop specific policies and procedures for the interagency visa revocation process to ensure that notification of visa revocations for suspected terrorists and relevant supporting information is transmitted from State to immigration and law enforcement agencies and their respective inspection and investigation units in a timely manner;

? develop a specific policy on actions that immigration and law enforcement agencies should take to investigate and locate individuals whose visas have been revoked for terrorism concerns and who remain in the United States after revocation; and

? determine if persons with visas revoked on terrorism grounds are in the United States and, if so, whether they pose a security threat.

In response to our recommendations, the Department of State testified that the Bureau of Consular Affairs is engaged in an effort to formalize standard operating procedures. The Department of Homeland Security also remarked that it was working to better standardize its procedures.

The FBI determined that 47 of the 240 persons with revoked visas were in TIPOFF and therefore could pose a terrorism threat but that it had no indication that any of these individuals were in the country.

The Department of State has recently issued guidance to its posts about using the visa process as an antiterrorism tool. In May 2003, the Secretary of State announced that, by August 1, 2003, with a few exceptions, all foreign individuals seeking to visit the United States would be interviewed prior to receiving a visa. The purpose of this guidance is to tighten the visa process to protect U.S. security and to prepare for the eventual fingerprinting of applicants that State must undertake to meet the legislated mandate to include a biometric identifier with issued visas. To comply with the new guidance, some posts may have to make substantial

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changes in how they handle nonimmigrant applications. State acknowledges that posts may find that personnel or facility resources are not adequate to handle the additional number of interviews. Even though State expects interview backlogs, the Department has indicated that posts are to implement the interview requirement with existing resources. It is not certain what impact the new policy will have on visa issuance. However, education, business, and government officials have expressed concern that it was already taking too long to issue visas and that without a commensurate increase in resources to accommodate the heavier workload that may result from the new requirement, there could be serious delays for those seeking to visit the United States. In March 2003, the House Committee on Science held a hearing on "Dealing with Foreign Students and Scholars in the Age of Terrorism: Visa Backlogs and Tracking Systems." In June 2003, the House Committee on Small Business held a hearing on "The Visa Approval Backlog and its Impact on American Small Business. " In both hearings, higher education and business leaders and agency officials testified on the negative impacts of delays in issuing visas. The testimonies also highlighted the difficulties of balancing national security interests with the desire to facilitate travel. At the request of the House Committee on Science, we are currently examining the amount of time taken to adjudicate visa applications from foreign science students and scholars. As part of this work, we will be looking at how the new interview policy will affect the process.

Before I conclude my statement, I would like to raise some questions that the subcommittee may want to consider in its oversight role:

? Have the Departments of State, Homeland Security, and Justice reached agreement on how best to communicate information on individuals who should not be issued visas and on individuals whose visas have been revoked?

? Have the Departments of State, Homeland Security, and Justice agreed on the level of evidence needed to deny and revoke visas?

? Does the Department of State have adequate number of trained staff for visa processing, especially if the number of visa applicants or security checks increase?

? Do the Departments of Homeland Security and Justice agree on whether persons who are in the country and have visas that have been revoked on terrorism concerns should be investigated and, if so, by

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which agency?

Mr. Chairman, I would like to reiterate our two overarching areas of concern for U.S. visa policy. First, the U.S. government needs to have clear, comprehensive policies governing U.S. visa processes and procedures so that all agencies involved agree on the level of security screening for foreign nationals both at our consulates abroad and at ports of entry. These policies should balance the need for national security with the desire to facilitate legitimate travel to the United States. The Departments of State and Homeland Security should coordinate to establish governmentwide guidelines on the level of evidence needed to deny a visa. There should also be a specific policy for the interagency visa revocation process, including the actions that immigration and law enforcement agencies should take to investigate and locate individuals with revoked visas who have entered the country.

The second area of concern is the continued need for coordination and information sharing among agencies. If our intelligence or law enforcement community is concerned that an individual poses a security risk, we have to make sure that this information is communicated to the State Department so that consular officers can deny and, if need be, revoke visas in a timely manner. Similarly, when State revokes a visa for terrorism concerns, we have to make sure that full information on the revocation is communicated to immigration and law enforcement agencies.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions that you or members of the subcommittee may have.

For future contacts regarding this testimony, please call Jess Ford at (202) 512-4128. Individuals making key contributions to this testimony included John Brummet, Andrea Miller, Kate Brentzel, Janey Cohen, Lynn Cothorn, and Suzanne Dove.

Contacts and

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