

Testimony of
The Honorable Maura Harty

Assistant Secretary for Consular Affairs
Department of State
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Committee on the Judiciary
Testimony of Assistant Secretary of State Maura Harty
Visa Issuance: Our First Line of Defense
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Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to address you on a subject that all of us agree is crucial: preventing terrorists from entering the United States. The Department of State's visa work abroad constitutes the "forward based defense" of the United States against terrorists and criminals who seek to enter the country to harm us. We have no higher responsibility and we are determined to do this work in the most thorough and comprehensive manner possible. In this historic time of change, the Department of State and the Department of Homeland Security have come together to establish procedures that will provide a sound basis for maintaining an effective, efficient visa process that secures America's borders from external threats while continuing to promote legitimate travel to the U.S. We worked long and hard together on a framework that gives the Secretary of Homeland Security the policy role contemplated by the Homeland Security Act while maintaining the Secretary of State's clear chain of command over consular officers and relying on the foreign policy and visa processing expertise of the Department of State and its consular officers. The language in the MOU's opening intent paragraph best describes how State and DHS intend to collaborate in implementing the MOU:

"The Secretary of State and the Secretary of Homeland Security will work cooperatively to create and maintain an effective, efficient visa process that secures America's borders from external threats and ensures that our borders remain open to legitimate travel to the U.S. Such travel is important to our international, economic and national values and interests."

What does this mean operationally? Our broad organizing principle in drafting the MOU was to recognize and respect the different expertise of the two departments consistent with the law granting the DHS authority over visa policy, particularly as it relates to homeland security issues. The Secretary of Homeland Security will establish visa policy, review implementation of that policy and have the final responsibility to issue or approve visa guidance, including regulations, Foreign Affairs manual provisions and cables to all diplomatic and consular posts except in certain areas that are reserved to the Secretary of State. DHS will generally have responsibility to determine the documentary requirements for visa application and qualification, the ability of visa applicants to apply outside their countries of origin or residence, and the use of personal

appearance waivers that would allow a consular officer to waive a personal interview. These procedures will be designed in consultation with the Department of State, and will be informed by State's knowledge of what is practical abroad. Existing visa guidance will remain in place until changed in accordance with the MOU.

Advisory Opinions and Security Advisory Opinions will continue to be sent to State by consular officers abroad and answered by the State Department's Visa Office, but DHS will have the deciding authority in the event of a disagreement between agencies consulted and, of course, can require that a visa be denied in accordance with law. DHS will make the major decisions relevant to the Visa Waiver Program, with the Secretary of State's participation and advice, in the same manner as the Attorney General did before under the law creating the VWP. The establishment of standards and procedures for deciding whether nationals of countries that the Secretary of State has designated as State Sponsors of Terrorism pose a threat to the US, and therefore cannot be issued visas, will generally rest with DHS, though we have agreed that they will be designed in conformance with the facts as they apply to the applicant pool in each individual country. One size does not fit all here as the MOU explicitly recognizes.

The Secretary of State will have responsibility over certain visa decisions, including decisions of a foreign policy nature. For example, he will be responsible for identifying who is covered by our obligations to permit travel to and from the United Nation's Headquarters in New York for visa classification purposes, identifying treaties of Commerce and Navigation for the purpose of qualifying for an investor visa, and identifying legitimate international exchange programs for visa purposes. He will also be responsible for establishing visa validity periods and fees based on reciprocity. In the case of visa validity periods, however, he will consult with Homeland Security before lengthening them, and Homeland Security will have authority to determine that certain persons or classes of persons cannot benefit from the maximum validity period for security reasons. The Secretary of State will also exercise all the foreign policy-related grounds of visa denial enumerated in Section 428 and the additional provision, not specifically enumerated, under which we deny visas to persons who have confiscated the property of American citizens without just compensation.

The MOU establishes guidelines for assignment of DHS personnel at our missions abroad, their duties once assigned, and the interactions and authorities they will have with consular officers and the visa process once they arrive overseas. The MOU reflects the recognition that the officers DHS assigned should add important value to the visa process by bringing to bear specific homeland security and counter-terrorism experience or training, broad knowledge of immigration law, experience or training in investigative interviews and identifying fraudulent documents, and, ultimately, foreign language ability and specific area knowledge. DHS will establish specific criteria for assignments abroad that will guide them in deciding where to send personnel, but has already taken steps to ensure a DHS presence in Saudi Arabia where visa applications must be reviewed by DHS. Assignments will be established in accordance with NSDD-38 procedures under the authority of the Chief of Mission.

What role does the MOU envision for DHS personnel abroad? They will act as coordinators of source information involving threats to the U.S., particularly focusing on terrorist threats, and be

fully integrated into post committees such as the "Visas Viper" group designed to identify such threats. They will have the ability to review visa applications, whether non-immigrant or immigrant, of classes of applicants who present security threats. In Saudi Arabia they will review all applications. They will provide training and intelligence support to our consular officers, and they may recommend refusals or revocations of visas to them as the need arises. They may also conduct investigations with respect to consular matters which fall under the jurisdiction of the Secretary of Homeland Security. Should there be a disagreement between a DHS officer and a consular officer over a refusal or revocation recommendation that cannot be resolved at post, an advisory opinion request, in which the DHS officer will participate, will be sent to the Department of State for consultation and resolution with DHS. Consular systems and records, though maintained by the State Department, will be fully available to DHS under guidelines that guarantee their proper use and appropriate confidentiality.

The MOU recognizes that the Secretary of State must have control over officers in his chain of command. DHS officers assigned visa duties abroad may provide input related to the evaluations of consular officers doing visa work, but the evaluations themselves will be written by State Department consular supervisors. Direction to consular officers will come from their State Department supervisors, and all officers assigned abroad, including DHS, come under the authority of the Chief of Mission. The Departments of State and Homeland Security are both committed to effective coordination of our respective responsibilities with one another, and to the timely review of the procedures established in the MOU to ensure their effectiveness in our common goal of safeguarding the United States from foreign threats.

You may ask why it took six months to negotiate this MOU. The simple answer is because we wanted to get it right the first time. The vast complexity of visa law, regulation and policy and the complexity of consular management at more than 200 visa issuing posts world wide required careful and painstaking analysis to ensure that we crafted an MOU that would address the congressional intent of Section 428 of the Homeland Security Act. And we took care to do so in a way that we believe will create and maintain an effective, efficient visa process that secures America's borders from external threats and ensures that our borders remain open to legitimate travel to the U.S. .

But the MOU is not the end product; it is only the beginning of this new partnership with the Department of Homeland Security. Long before we completed the MOU we were already forging a new relationship. I established a liaison office staffed with two senior officers, one of Ambassadorial rank, to coordinate daily with DHS on matters of joint concern. As a result, we have coordinated closely and cooperatively on a number of initiatives, including the new requirements for personal appearance for visa applicants and the Visa Waiver Program Waiver, and we continue to coordinate weekly on the new entry-exit system known as US-VISIT. Just last month, DHS teams arrived in Saudi Arabia to begin their integration into our consular operations in Riyadh and Jeddah. They were warmly welcomed, and the integration is proceeding smoothly. Our liaison officers here, in conjunction with their DHS counterparts, are in frequent contact with our respective offices in Saudi Arabia to coordinate the integration and to ensure that DHS officers are full members of our Embassy team there. We anticipate this will be the successful model upon which to base integration of DHS officers in consular sections at other posts as designated.

Visa processing has undergone a profound transformation since 9/11 as we have sharpened our focus on security concerns. I hope I have conveyed to you just how intensely focused the Bureau of Consular Affairs is in our counter-terrorism mission. I also hope I have conveyed to you just how committed we are to working closely and cooperatively with the Department of Homeland Security (DHS) to ensure that the visa process offers the highest level of security possible for the protection of the American people. I would like to take this opportunity to express my gratitude to my dear friend and colleague, Under Secretary Asa Hutchinson, and to his outstanding team for all of their hard work and sincere efforts in achieving the first step in this new partnership. I welcome your questions.