



DEPARTMENT OF STATE

**STATEMENT
OF
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**BEFORE THE
SUBCOMMITTEE ON HUMAN RIGHTS AND LAW OF THE
SENATE COMMITTEE THE JUDICIARY**

**HEARING
ON
DENYING SAFE HAVEN IN THE UNITED STATES TO HUMAN
RIGHTS VIOLATORS**

OCTOBER 6, 2009

Mr. Chairman, Ranking Member Coburn, and distinguished Members of the Subcommittee, thank you for the opportunity to come before you today to discuss the matter of visas and human rights violators.

Within the Department of State, the Bureau of Democracy, Human Rights and Labor has the overall lead on human rights issues. Information on human rights violators is gathered chiefly by our embassies abroad, by Foreign Service personnel reporting to the various regional bureaus and to functional bureaus such as the Bureaus of International Narcotics and Law Enforcement; and Population, Refugees, and Migration. Within the Department, the Bureau of Consular Affairs issues or denies visas according to statute utilizing information obtained through a visa application, an interview and database checks. The Bureau of Democracy, Human Rights and Labor is responsible for administering the process of the Leahy Amendment vetting and for other human rights-related foreign policy issues. I am here to discuss with you the role of the Bureau of Consular Affairs: the actual visa adjudication based on statute, the visa application, the visa interview, and the check of interagency databases.

Our consular officers at overseas visa processing posts comprise America's first line of defense in preventing travel to the United States of those persons who are not eligible to enter the country. Every year at posts around the world, trained consular officers review applications for over eight million potential travelers. Most of our applicants are legitimate, and those who are not are denied visas. In our primary consular training, consular officers receive information about all visa ineligibilities that they may need to apply the law overseas, including the ineligibilities that exist for human rights violations.

Determinations of visa ineligibility are based on law. As the Honorable Members are aware, there is currently no broad-based visa ineligibility for human rights violators per se. However, there are several visa ineligibilities within the Immigration and Nationality Act (INA) that are related to human rights concerns. These are found in Section 212(a) and include an ineligibility: for foreign government officials who have committed particularly severe violations of religious freedom¹; for individuals who have committed or conspired to commit a human trafficking

¹ Section 212(a)(2)(G) of the INA

offense²; for individuals involved in Nazi-related persecutions from 1933 to 1945³; for individuals who have engaged in genocide; for individuals who have committed acts of torture or extrajudicial killings; and for individuals who have engaged in the recruitment or use of a child soldier⁴.

Additionally, Presidential Proclamations under Section 212(f) of the Immigration and Nationality Act that suspend entry into the United States or place restrictions on those whose entry would be detrimental to the interests of the United States have been effective in denying visas to human rights violators. Presidential Proclamations have been used to deny visas to individuals from Burma, Cuba, Zimbabwe, and the Balkan states, among other countries. It is also possible for a human rights violator to be ineligible on other, more defined grounds. For example, if a person has had two or more criminal convictions for which the aggregate sentence of confinement was five years or more⁵ or who has committed a crime involving moral turpitude⁶, they will be denied. Finally, some individuals who commit human rights violations are refused under the broad terrorism-related ineligibility provisions of the INA.

² Section 212(a)(2)(H)(i) of the INA

³ Section 212(a)(3)(E)(i) of the INA

⁴ Section 212(a)(3)(G) of the INA

⁵ Section 212(i)(2)(B) of the INA

⁶ Section 212(a)(2)(A)(i)(I) of the INA

There may also be other acts that one would consider violations of human rights for which U.S. law provides no visa ineligibility. For example, an individual who has engaged in religious persecution, but was not serving as an official of a foreign government at the time, would not be ineligible under the religious persecution provision of the INA.

Consular officers use three basic tools in applying the law in the visa adjudication process: the application, the interview, and interagency databases, including biometric databases. Our application forms specifically ask iterations of questions that solicit whether the applicant has committed torture, genocide, extra-judicial killings, political killings, violations of religious freedom, Nazi-related persecutions, or other crimes or acts of violence. After amending the Foreign Affairs Manual and sending out a guidance cable to all posts, we are now finalizing with the Office of Management and Budget a change in our application forms to add a question about employing child soldiers. The entire visa application must be answered by each applicant before the interview with a Consular officer.

Furthermore, the Department has designed and is implementing use of a new electronic application. This form asks more detailed questions on topics that could demonstrate an applicant is ineligible for a visa. Our online application forms not only require applicants to answer these questions, but also require applicants to provide a written explanation to any question to which they answer “yes.” The online form makes application information available to Consular officers and to our interagency partners before a visa interview takes place. This form is now being used by approximately 10% of our nonimmigrant visa applicants and we plan to deploy it world-wide by early next year. We will also pilot an electronic application form for immigrant visa applicants this fall which asks the same detailed questions.

After reviewing the entire visa application form and applying their knowledge and understanding of the local history and society where the applicant lives, consular officers may issue or deny a visa, or use the interview to pursue a line of questioning that may lead to or confirm a suspicion of ineligibility. With the additional information gleaned from that interview, there may be sufficient grounds to determine an ineligibility then and there, or the officer may request an advisory opinion from the Visa Office.

Finally, perhaps the most effective method for officers to detect a human rights ineligibility occurs when an applicant's biographic and biometric information are checked against interagency databases. Applicant biographic information is checked through the State Department's Consular Lookout and Support System (CLASS) database, which includes many records from the Department of Homeland Security's Traveler Enforcement Compliance System (TECS). Biometric information, both fingerprints and digitized photographs, is checked against the Department of Homeland Security's Automated Biometric Identification System (IDENT), the State Department's extensive Facial Recognition program, and the Federal Bureau of Investigation's Criminal Justice Information System databases. The interagency sharing environment is robust and occurs in real time with many thousands of records being exchanged each day.

We are working with the Bureau of Democracy, Human Rights and Labor to ensure that all records with personal identifying information (i.e., names and dates of birth, plus, where possible, countries of birth) in its new Leahy Amendment vetting database, called INVEST, will be incorporated into the Bureau of Consular Affairs' CLASS database. INVEST, which is

being developed now, will contain all data available to the Department on Leahy Amendment vetting results. While we note that the Leahy Vetting standards of gross human rights violations may not always lead to a visa ineligibility under the law, this information can assist our officers in directing their interviews to determine if a visa ineligibility does exist and will be of invaluable assistance in our efforts to deny the entry into the United States of human rights violators.

Consular officers depend on reporting officers, various Department bureaus, especially regional bureaus and the Bureau of Democracy, Human Rights and Labor, the Department of Homeland Security, and the Federal Bureau of Investigation to develop information that can be entered into CLASS to inform consular officers of possible ineligibilities. The consular officer will consider a visa applicant's eligibility for a visa in light of any derogatory information on record in the databases mentioned that may pertain to the applicant. Some cases will require guidance from the Visa Office via the Security Advisory Opinion (SAO) and Advisory Opinion (AO) processes. The SAO process requires a consular officer abroad to refer selected visa applications for additional review by Washington-based law enforcement and intelligence agencies. The SAO process is generally used

for individuals who may be ineligible under section 212(a)(3) of the Immigration and Nationality Act, including individuals who may have been involved in genocide, extrajudicial killings, torture, or the recruitment or use of child soldiers. The Department processes approximately 260,000 SAOs per year. The Advisory Opinion process is similar to the SAO process and involves obtaining a legal opinion from the Department regarding visa classification or possible ineligibility on non-security grounds, including particularly severe violations of religious freedom.

At the present time, we have lookouts entered into our CLASS system for nine individuals based on possible participation in a particularly severe violation of religious freedoms, 330 individuals based on possible involvement in trafficking in persons, 12,812 based on possible involvement in Nazi-related persecutions, 3,016 individuals based on possible involvement in genocide, and 707 individuals based on possible involvement in torture or extrajudicial killings. These lookouts represent information that could potentially lead to an ineligibility finding but for which no definitive ineligibility determination has yet been made. Individuals who are subject to lookouts may have been denied under other grounds or may not have yet applied for a visa. If any alien subject to a lookout entry applies for a visa, a

determination of eligibility would include consideration of the information pertaining to the possible human rights violations.

In the last five years we have revoked one visa to an official who was involved in particularly severe violations of religious freedoms, revoked the visas of a family that was involved in trafficking in persons, and refused one individual for being involved in trafficking in persons. A total of 2,758 visas have been denied on the basis of Presidential Proclamations under Section 212(f), as well as hundreds of visas to those involved in Nazi-related persecutions. As mentioned, Presidential Proclamations are based on a variety of factors and are not limited to human rights violations.

Furthermore, we have worked in close cooperation with the Department of Homeland Security to improve the database interface between CLASS and TECS to ensure that consular officers are able to review human rights related records contained in TECS through the CLASS system.

Mr. Chairman, Members of the Committee, I know that your subcommittee has grappled with this issue for many years. Your leadership

on this topic is admirable and inspiring. To receive a fuller picture of the Department of State's work regarding human rights violators, I encourage the Subcommittee to discuss the issue with representatives from our regional bureaus, representing our embassies, which supply the bulk of our human rights reporting, and our Bureau of Democracy, Human Rights and Labor, which leads the Department's work on human rights issues and which oversees the INVEST system used for Leahy Amendment vetting.

While we have had success in denying visas to human rights violators, we believe we can do more. We are dedicated to ensuring that anyone who has committed violations that would make him or her inadmissible under our statutory provisions does not receive a visa. As noted, we are looking forward to the exchange of data between INVEST and CLASS. I also am instructing consular section chiefs to make sure they maintain regular contact with our human rights officers at posts abroad to ensure that anyone who has been identified by the reporting officer as a potential human rights violator has a lookout entered into CLASS. We will also remind our consular officers overseas of the tools available to them to deny visas to human rights violators.

In conclusion, let me reiterate, the Bureau of Consular Affairs and our visa adjudicating officers at our 219 visa processing posts around the world are and will continue be engaged on human rights issues as they affect the entry of foreigners into the United States. With this, I will conclude my testimony and answer your questions. Thank you.

DAVID T. DONAHUE

David T. Donahue has been Deputy Assistant Secretary for Visa Services since September 2008. Prior to that, he was Director of the Office of Policy Coordination and Public Affairs in the Bureau of Consular Affairs. He joined the Foreign Service in 1983. He was Minister Counselor for Consular Affairs in Mexico City from 2005 – 2007. Previous to that he was Consul General in Manila, Philippines (2002-2005) and Islamabad, Pakistan (1999-2002). He was chief of the consular section in Singapore (1995-1999) and served consular tours in Port of Spain, Trinidad and Tobago (1986-88) and Karachi, Pakistan (1984-1986). Mr. Donahue served as Deputy Refugee Coordinator in Islamabad, Pakistan from 1993 – 1995. In Washington, Mr. Donahue was a watch officer in the Operations Center (1988-1989), Bangladesh Desk Officer (1989-1991) and Course Coordinator for Basic

Consular Training (ConGen Rosslyn) at the Foreign Service Institute (1991-1993). Mr. Donahue is a native of Indiana. Prior to the Foreign Service, he was a teacher and a customer service manager for a mail order company. He graduated from St. Meinrad College in Indiana in 1976.