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Testimony of

The Honorable Thomas M. Sullivan

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U.S. House of Representatives
Committee on Small Business

Date:	*June 19, 2002*
Time:	*10:00 A.M.*
Location:	*2360 Rayburn House Office Building*
Topic:	*Impact on Small Business of the Immigration and Naturalization Services' Proposal to Limit the Period of Admissions for B-2 Tourist's Visas*

Created by Congress in 1976, The Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. The Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate, directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Issues are identified through economic research, policy analyses, and small business outreach. The Chief Counsel's efforts are supported by offices in Washington, D.C., and by Regional Advocates located across the United States. For more information on the Office of Advocacy, visit http://www.sba.gov/advo, or call (202) 205-6533.

Chairman Manzullo, Ranking Member Velazquez, Members of the Committee, good morning and thank you for the opportunity to appear before you today to address the impact on small business of the Immigration and Naturalization Services' (INS) proposal to reduce the default period for admissions under a B-2 tourist visa and INS's compliance with the Regulatory Flexibility Act in that proposal.

My name is Thomas Sullivan and I am Chief Counsel for the Office of Advocacy at the U.S. Small Business Administration. As Chief Counsel for Advocacy, I am charged with monitoring federal agencies' compliance with the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). Please note that the Chief Counsel of Advocacy's views are my own and do not necessarily reflect the views of the Administration or the U.S. Small Business Administration.

Before discussing INS's treatment of the RFA in its recent proposal to reduce the default period for admissions under a B-2 tourist visa, I would like to give you a brief overview of the Regulatory Flexibility Act and our office's responsibility. Congress enacted the RFA in 1980 after determining that uniform federal regulations produced a disproportionate adverse economic hardship on small entities. In an attempt to minimize the burden of regulations on small entities, the RFA mandated administrative agencies to consider the potential economic impact of federal regulations on small entities and to examine regulatory alternatives that achieve the agencies' public policy goals while minimizing small business impacts.

Agency compliance with the RFA, however, was not judicially reviewable. Therefore, agencies could not be held accountable for their noncompliance with the statute. As such, many agencies ignored the RFA and did not conduct full regulatory flexibility analyses in conjunction with their rulemakings. In response to the widespread agency indifference, Congress amended the RFA in 1996 by enacting the Small Business Regulatory Enforcement Fairness Act ("SBREFA"). The 1996 Amendments reshaped the requirements of the RFA and provided for judicial review of agencies' final decisions under the RFA.

The RFA requires agencies to prepare and publish an initial regulatory flexibility analysis, when proposing a regulation, and a final regulatory flexibility analysis, when issuing a final rule, for each rule that will have a significant economic impact on a substantial number of small entities. The analysis is prepared in order to ensure that the agency has considered the economic impact of the regulation on small entities and that the agency has considered all reasonable regulatory alternatives that would minimize the rule's economic impact on affected small entities. The RFA exempts an agency from these requirements if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." If the head of the agency makes such a certification, the agency must provide a factual basis for the certification.

On April 12, 2002, Immigration and Naturalization Service (INS) published a proposed rule on *Limiting the Period of Admission for B Nonimmigrant Aliens.* Under the current regulations, a foreign tourist is allowed to stay a minimum of 6 months under a B-2 tourist visa. It is Advocacy's understanding that the proposal will eliminate the minimum 6 months admission period of B-2 visitors for pleasure; reduce the maximum admission period of B-1 and B-2 visitors from 1 year to 6 months; and establish greater control over a B visitor's ability to extend status or change status to that of a nonimmigrant student. For the purpose of this hearing, my comments are limited to the aspects of the proposal which eliminate the minimum admission period of B-2 visitors.

Whereas the current rules provide foreign visitors with a guaranteed length of stay, the length of stay under the proposal will not be determined until the foreign visitor arrives in the United States. Moreover, the proposal places the onus of explaining the amount of time for the length of stay on the foreign visitor. If the length of stay cannot be determined, the INS agent will issue a visa for thirty days.

In the Regulatory Flexibility Act section of the proposal, INS certified that the proposal would not have a significant economic impact on a substantial number of small entities. The basis for the certification was that the proposal applies only to nonimmigrant aliens visiting the

United States as visitors for business or pleasure. In that the courts have interpreted the RFA as only requiring agencies to consider the economic impact of the proposal on the entities that the proposal will directly impact, the certification is not blatantly erroneous. However, as stated in the Office of Advocacy's comment letter on the proposal, a copy of which is attached to my testimony, in terms of meeting the overall spirit of the RFA, INS's certification is deficient because it does not consider the impact that the proposal may have on members of the travel industry.

After reviewing the proposal, Advocacy became concerned about the potential impact that it could have on small entities. The Department of Commerce's statistics indicate that in the year 2000, foreign visitors spent 70 billion dollars in this country. SBA's statistics indicate that the majority of the members of the travel and tourism industry are small entities. For example, 95% of all travel agencies and 84.5 % of the tour operating businesses are currently defined as small entities. However, the proposal will affect more than travel agencies and tour operators. It will also have a foreseeable impact on other small businesses like hotel/motels, 95.7% of which are small; restaurants, 98.2% of which are small; sightseeing bus companies, 92.7% of which are small; and souvenir shops, 98.7% of which are small. If foreign travelers decide to travel elsewhere due to the uncertainty that is inherent in the daunting visa policy, the travel and tourism industry could lose billions of dollars. Advocacy asserts that such an impact is not only logical, it is foreseeable. Yet, INS made no effort to analyze the potential impact that the proposal would have on small entities that cater to foreign travelers.

Although a strict interpretation of the RFA may not require an analysis of the travel and tourism industry, Advocacy asserts that when the potential impact of a regulation is foreseeable and economically devastating to a particular industry, an agency has a duty to perform a regulatory flexibility analysis from the standpoint of good public policy. The RFA not only requires the agency to consider the economic impact, it also requires the agency to consider less burdensome alternatives for achieving the goal.

Here, considering alternatives may have assisted INS in finding a more effective solution to the problem of national security without having an unnecessarily burdensome economic impact on members of the travel and tourism industry. Instead, INS has proposed a rule that may not address the stated goal of increasing national security, but may be economically devastating to small businesses in an industry that has yet to recover from the tragedy of September 11th.

The impact that the proposal could have on the travel and tourism industry is an extremely serious concern that needs to be addressed. As the independent voice for small business within the Federal government, I urge INS to give serious consideration to less burdensome alternatives to this proposal.

Thank you for the opportunity to appear today. I am happy to answer any questions that you may have about my testimony.