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STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON IMMIGRATION,

REFUGEES, AND INTERNATIONAL LAW

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ON

PROPOSED LEGISLATION TO WAIVE

NONIMMIGRANT VISAS FOR CERTAIN COUNTRIES

Madam Chairwoman and Members of the Subcommittee:

We are pleased to have the opportunity to provide our observations on the proposed legislation to waive, on a reciprocal basis, the nonimmigrant visa requirement for visitors from designated countries. The purpose of this proposal is to enable short-term tourists and business visitors from "low-risk" countries to enter the United States without the customary visa. In so doing, the State Department expects to

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realize substantial cost savings through reduced staffing in countries where visa applicants have posed little risk of violating their temporary visitor status. The State Department has stated that 29 countries meet all of the proposal's requirements, and 2 others likely will.

We support the principle that the Government's limited enforcement resources should focus on the greatest risks, and from that standpoint, we have no objection to the purposes of the proposed legislation. The thrust of our testimony will be to raise those questions we see as central to the Subcommittee's deliberations, namely:

--How good are the data and methods to be used to select low-risk countries?

--Will the Immigration and Naturalization Service's workload increase and to what extent?

--Can INS determine whether a given country qualifies for continued visa waiver privileges?

The work we have undertaken at the Subcommittee's request has provided only partial answers to these questions. Yet, what we have learned convinces us that adequate control mechanisms cannot realistically be implemented by INS. The initial eligibility determination, therefore, becomes all the more important, as it may very well be irrevocable.

## HOW WILL VIOLATIONS BE MEASURED AND CONTROLLED?

The proposed legislation contains control provisions which seemingly provide a high degree of assurance that the granting of visa waiver privileges will not lessen the United States' ability to regulate the entry and stay of aliens. Specifically, if a country's rate of violation exceeds 1 percent during a given year, it's visa waiver privilege is automatically withdrawn.

Our concern centers on the practicality of implementing effective controls at ports-of-entry and the high cost of determining the rate of violation by visitors admitted to the United States.

Several of the largest countries considered eligible for waivers--the United Kingdom, France, Italy, and Ireland, for example--had a visa refusal rate in excess of 1 percent in fiscal year 1979. Thus, if INS' screening at the ports-of-entry is as effective as the screening done overseas, each country would most likely lose its visa waiver privilege after only 1 year. Equally obvious is the fact that INS could not, nor is it expected to, interrupt the flow of international travelers to do the detailed screening currently performed by the State Department.

INS believes that if it is to be the sole determinant of whether a nonimmigrant enters the country, its inspectors should ask additional questions at ports-of-entry to establish eligibility. According to INS estimates, an additional 2 minutes per traveler would be required to ask these questions, at an overall added cost of $2.1 million. The impact of any added time at international airports would be severe, however, as the already lengthy clearance process and the crowded facilities would significantly worsen. Thus, added port-of-entry screening by INS to determine admissability should not, in our opinion, be viewed as a practical or effective safeguard.

Assuring that the "risks" are kept to acceptable levels hinges, rather, on INS' ability to detect violations by those admitted. This latter approach likely will be extremely costly and difficult to implement unless a country's continued eligibility is based solely on statistical information generated by INS' nonimmigrant document control system.

The current system, however, has a number of problems that prevent it from effectively determining a country's continuing eligibility. About 10 percent of the arrival documents INS collects at ports-of-entry are never matched to a corresponding departure document. Improvements no doubt can be made to reduce this disparity and the proposed legislation provides some

incentives to the airlines to collect the departure documents and to insure that INS receives them. However, the existing system's ability to generate data with the high degree of accuracy called for by the legislation is open to serious question.

Let me give some indication of the magnitude of the problem. Data we obtained from INS' existing system shows that "apparent overstays" of tourists and business visitors in 1979 from the 31 low-risk countries totaled 805,000 people. The apparent overstays for most countries were in excess of 25 percent of the visas issued by the State Department. Additional massaging of the data would likely reduce this percentage. However, a large number of apparent overstays caused by problems endemic to the system would no doubt remain. In our view, the data would not provide the degree of accuracy and reliability required.

The remaining alternative, investigating apparent overstays to resolve the question of whether a violation occurred in fact, would no doubt be very costly and the results inconclusive. In a 1979 test, INS investigated 3,734 apparent overstays but was still unable to resolve 65 percent of the cases. Of the remainder, INS determined that 1,257 overstays had left the country, and it located only 4 individuals who violated their conditions of entry. This effort required about 8,600 staff hours and would have required even more time to satisfy the requirements of the proposed legislation.

INS abandoned overstay followup as a regular enforcement technique some years ago because of its high cost and limited results. Obviously, such an approach is impractical on the scale that would be required to resolve large numbers of apparent overstays. If used, it would ultimately result in INS expending scarce resources merely to confirm that a country still posed a very low risk.

It is our understanding that INS recognizes the futility of using either the nonimmigrant document control system or investigating apparent overstays to determine continuing eligibility and, therefore, will rely on existing enforcement techniques and resulting data to make such determinations. While this approach is not inconsistent with an initial decision that visitors from a given country pose little risk, the Subcommittee should be fully aware that, despite appearances, the proposed legislation will not provide a ready or reliable means to detect increases in a country's violation rate.

## DETERMINING ELIGIBILITY: THE KEY CONTROL MECHANISM

The proposed legislation makes a country eligible for the visa waiver if its nonimmigrant visa refusal rate was less than 2 percent in the preceding fiscal year. The initial eligibility determination should be the key control given the absence of effective mechanisms for determining continuing eligibility.

Although the State Department identified 29 countries that met all eligibility requirements and 2 others it believed would qualify, our analysis of the supporting documentation identified a number of mathematical errors and data gaps. The Department simply had no data for four countries--Andorra, Liechtenstein, Monaco, and San Marino--and had miscalculated the refusal rates for the remainder because of mathematical errors and/or the use of inaccurate estimates.

When brought these problems to the attention of State Department officials, they agreed to recompute the visa refusal rates. Because the Department had to request data on actual visa refusal rates from the consulates to correct its computations, the eligibility of the 31 countries was still to be determined.

A remaining question is whether the visa refusal rate is a complete measure of risk. A good case can be made for adding to the visa refusal rate, entry denials and actual violations by visitors from the countries being considered for waiver privileges. That way a country's eligibility would be based on its actual compliance rate as well as the additional violations that might occur once the visa screening process ends. The inability of INS to completely measure the degree of compliance once a visa waiver is granted would seem to give added importance to knowing the full risks beforehand.

Madam Chairwoman, that concludes my prepared statement. We are ready to answer any questions the Subcommittee may have.