U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE AND TECHNOLOGY
SUBCOMMITTEE ON RESEARCH AND SCIENCE EDUCATION

HEARING CHARTER

Status of Visas and Other Policies for Foreign Students and Scholars

Thursday, February 7, 2008
2:00 – 4:00 p.m.
2318 Rayburn House Office Building

1. Purpose

On Thursday, February 7, the Subcommittee on Research and Science Education will hold a hearing to review the status of visas and other policies governing the entry into the U.S. of foreign students and scholars and to examine any ongoing impediments to smooth implementation of the policies as well as the impact that such impediments may be having on the U.S. scientific enterprise. In addition, the Subcommittee will explore recommendations for changes or improvements to existing policy.

2. Witnesses

Mr. Stephen A. "Tony" Edson, Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, Department of State.

Dr. Harvey V. Fineberg, President, Institute of Medicine, The National Academies.

Dr. Allan E. Goodman, President and CEO, Institute of International Education.

Ms. Catheryn Cotten, Director, International Office, Duke University.

3. Overarching Questions

- What is the current status of visas for foreign students? What difficulties remain for universities trying to recruit top science and engineering students from abroad? To what extent did significant backlogs in visa processing and the perception that the U.S. was unwelcoming to foreign students in the early years after 9/11 cause long-term harm to the ability of U.S. universities to attract top foreign students? Are there data on what is happening to foreign students who are accepted to U.S. universities but choose not to enroll? Are there differences across countries and regions?
- What is the current status of visas for foreign scholars? What difficulties do universities and faculty have in recruiting foreign science and engineering scholars for short-term appointments or research collaborations? What difficulties do scientific and professional societies have in planning technical meetings that include

foreign scholars? What is the impact on U.S. universities and the scientific enterprise more broadly?

- Are current policies governing the flow of science and engineering students and scholars across our border considered to be adequate and are they being implemented smoothly? If not, what changes are being proposed by the stakeholders? How responsive has the federal government been to changes and improvements proposed by the higher education and scientific communities?

4. Background

Visa Policy and Process

The United States has explicitly allowed foreign students to study in U.S. institutions on temporary visas since the Immigration Act of 1924. The U.S. has also long been a magnate for foreign-born scientists and engineers, and many of the greatest U.S. scientific achievements have depended on them. But even before September 11, 2001, in particular after the World Trade Center bombing in 1993, concerns were raised about certain foreign students in the U.S. as well as the courses they studied and the research they conducted. As a result, students and scholars from certain countries or those wishing to study sensitive technologies were required to go through additional security clearances.

To assist consular officers in determining who should be subject to this enhanced review[1], the State Department maintains a Technology Alert List (TAL), which establishes a list of major fields of technology transfer concern, such as chemical engineering and lasers, as well as a list of designated state sponsors of terrorism. Following the September 11th terrorist attacks, the State Department increased the number of subjects included in the TAL list significantly and added such sub-areas as community development, geography and urban planning. As a result, consular officers are requesting security clearances for more foreign scientists and students whose research or education falls into one of the TAL categories. The extra security review triggered by TAL is known as the Visa Mantis review, and requires the application to be forwarded to State Department headquarters in Washington DC for a security advisory opinion. The Office of Consular Affairs forwards the application to the FBI, the Nonproliferation Bureau and other agencies to conduct investigations before preparing the security advisory opinion and replying to the consular officer. The visa is approved or denied based on this opinion.

[1] Before proceeding to further review, those applying for a J or F visa (the two most common categories for students and visiting scholars) must first demonstrate "nonimmigrant intent" to the consular officer in one's home country. In other words, the applicant must convince the consular officer that he/she has every intention of returning home after completion of studies. This requirement is codified in the Immigration and Nationality Act. Proposals pending in the 110th Congress would do away with this requirement, at least for a newly created category of F visa for STEM students (see H.R. 1645 and S. 1639, or CRS report RL31146 for an overview). Applicants are also screened up front for ineligibility based on criminal history or for certain health conditions.

Assuming the visa is approved by State, a foreign student is still processed by three more agencies under the Department of Homeland Security (DHS). First, the student is inspected at the border by the Customs and Border Protection (CBP). The student's arrival is reported to the Immigration and Custom Enforcement (ICE) for entry in to the Student and Exchange Visitor Information System (SEVIS). After entry, the student's academic institution is responsible for reporting information to the SEVIS database. The SEVIS information is then shared with State, CBP, and the U.S. Citizenship and Immigration Services (USCIS). The latter agency is responsible for adjudicating any adjustments in visa status the foreign students wishes to make[2].

Foreign Students and Scholars in the U.S. Academic S&E Enterprise[3]

The overall numbers of foreign students enrolled in U.S. institutions at all levels increased steadily during the four decades prior to the September 11th attacks, from 50,000 (or 1.4% of our total student population) in 1959/60 to more than 586,000 (or 4.6% of our total student population) in 2002/03, just before creation of DHS. Congress put DHS, rather than the State Department in charge of establishing visa policy and reviewing its implementation. The resulting changes to policy and implementation, including the increased numbers of applicants subject to Mantis review, significantly slowed the visa process and made it more cumbersome for most students and scholars. Enrollment dropped to a low of 564,000 (or 3.9% of the total student population) in the 2005/06 academic year. The latest data show a rebound, with an enrollment of nearly 583,000 foreign students during 2006/07 academic year[4]. Of those, 40.5% were enrolled in engineering, physical and life sciences, social sciences or math and computer sciences (in that order)[5]. The top three countries represented were India, China (PRC) and South Korea, accounting for 36.7% of the total.

Nearly half of all foreign students are enrolled in graduate degree programs, and more than half of those enrolled in graduate programs are in S&E fields. In fact, foreign graduate student enrollment accounted for 25% of all U.S. S&E graduate students in 2005. The concentration of foreign enrollment was highest in engineering (45%), computer sciences (43%), physical sciences (40%) and mathematics (37%). High-tech employers are complaining that they can't find enough qualified U.S. citizens or permanent residents to fill certain high-skills jobs, and that the resulting demand for H1-B visas for foreign students educated in the U.S. far outstrips supply. The Science and Technology Committee, primarily through last year's COMPETES Act, has taken a lead in trying to increase the pipeline of U.S. students in S&E fields, but for the foreseeable future foreign students will continue to be represented in very high numbers.

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[2] One of the provisions in the pending legislation mentioned in the previous footnote would allow students to extend from 12 to 24 months the so-called Optional Practical Training (OPT) period, which gives them a grace period after graduation to seek sponsorship for and secure an H1-B visa, often while interning for the potential employer. However, a group of 19 Senators recently wrote to Secretary Chertoff claiming that DHS already has the authority to extend the OPT period without legislation: http://www.nafsa.org/_/Document/_/proposal_to_extend_opt.pdf.

[3] All data in this section from either the Institute of International Education "Open Doors" 2007 report: http://opendoors.iienetwork.org/ or NSF's 2008 Science and Engineering Indicators.

[4] For full timeline from 1959 to 2006, see http://opendoors.iienetwork.org/?p=113122

[5] Business and Management ranked first in top fields of study for foreign students, at 18%.

Similar trends are seen among S&E faculty. In 2003, 15.6% of all full-time S&E faculty were foreign-born citizens and an additional 12.7% were noncitizens. Within research universities, 16.4% of S&E faculty were naturalized citizens and an additional 16.4% were noncitizens. As with students, foreign-born faculty are represented in even higher numbers in the physical sciences, mathematics, computer sciences, and engineering.

The higher education and research communities, foreign policy leaders and business leaders argue that educational and research exchanges actually enhance rather than threaten U.S. national security for the following reasons:

- Foreign students and scholars, especially those that remain in the U.S. beyond their initial studies or appointment, help fill the science and engineering talent pool that fuels innovation and keeps U.S. companies competitive.
- Foreign students help enrich the educational experience of their peers while foreign scholars bring different perspectives to their disciplines and to their American colleagues, often initiating new research directions that may lead to scientific or technological breakthroughs.
- Opening our doors to students and scholars who then return to their home countries helps the U.S. make friends around the world, and thus is an important tool in public diplomacy and foreign policy.
- International students and their dependents, because they are largely in the U.S. at their own expense, bring billions of dollars to their universities and surrounding communities.

Recommendations for improvements from the stakeholders

A joint State/DHS advisory panel just released a report that, while not addressing S&E exchange specifically, essentially makes the same argument about the benefits of open borders[6]. In the report the panel offers concrete recommendations to DHS and State for ways to improve the flow of foreigners across our border. They took a big picture view of the entire system, and their recommendations regarding visa policy and processing focus heavily on management practices and coordination between agencies.

The higher education and scientific communities (including the three non-governmental organizations represented on today's panel) issued a much narrower set of recommendations in May 2005 regarding policies for students and scholars[7]. Those recommendations addressed the duration of Visa Mantis security clearances, visa renewal policies, visa reciprocity agreements, the "nonimmigrant intent" requirement for students, the absence of a national strategy to encourage academic and scientific exchange, and the restrictions on access to specialized scientific equipment for certain foreign nationals doing unclassified research.

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[6] *Secure Borders and Open Doors: Preserving Our Welcome to the World in an Age of Terrorism*, Report of the Secure Border and Open Doors Advisory Committee, January 2008.

[7] http://www.aau.edu/homeland/05VisaStatement.pdf

The Science Committee last held a hearing on this topic in February 2004, when there were plenty of horror stories to go around and the overall numbers were still dropping. All of the stakeholders agree that the situation for students has improved greatly since then, with the numbers having rebounded to pre-9/11 levels. But concerns remain. Due to the lasting perception of a closed border and a cumbersome process, many top foreign students and scholars are simply turning to other countries from the start. Some countries in particular started recruiting heavily as the U.S. closed its borders after September 11th. There are questions, therefore, about the overall quality of foreign students entering the U.S. today, even though the quantity is back up. In addition, scientific societies talk of having to move their conferences off-shore because too many visas for international scholars to attend conferences in the U.S. are still denied or delayed beyond the date of the conference. This leads to lost income for U.S. conference venues and surrounding communities. Perhaps more importantly, due to the increased cost of travel, it significantly reduces opportunities for U.S. graduate students in particular to attend these meetings at which they exchange research ideas with their peers and network for future career opportunities.

5. Questions for Witnesses

Mr. Edson

- How does the State Department balance potential security threats posed by visiting students and scholars with the benefits to the U.S. of welcoming foreign scholars to participate in the U.S. scientific enterprise? What steps has the State Department taken in the last few years to smoothly implement the resulting policy?
- What type of data do you collect on the number and the resolution of visa applications? To what extent has the frequency of visa problems, including delays and denials, for foreign students and scholars improved in the last few years? What policies or practices contributed to this change? How do you prioritize applications when backlogs occur?
- What type of data do you collect on applications that have triggered a Visa Mantis review based on the applicant's area of study or research? What guidance and training do you provide to consular staff so that they know they are applying the Mantis checks appropriately?
- What is the status of the internet-based visa application system under development? What other changes to visa policies or implementation strategies are being developed or considered at this time?

Dr. Fineberg

- What are the benefits to the U.S. scientific enterprise and to the U.S. more broadly of welcoming foreign students and scholars?
- How have post-9/11 changes to policies that affect the flow of foreign students and scholars across our borders affected the U.S. scientific enterprise? To what extent has the Visa Mantis process and implementation of other federal policies restricting the

flow of students and/or scholars improved in the last few years? Are the accumulated impacts from the first few years likely to be permanent or may they be reversed if the system continues to improve?

- Does the National Academies have recommendations for changes or improvements to current policies that would further improve the flow of students and/or scholars without compromising national security? How responsive has the federal government been in recent years to the concerns and recommendations of the National Academies and other representatives of the scientific community regarding these and similar recommendations?

Dr. Goodman

- What are the benefits to the U.S. scientific enterprise and to the U.S. more broadly of welcoming foreign students and scholars?
- Please describe the role of the Institute of International Education in promoting the exchange of students and scholars across our borders. How do you work with the university community and with the federal government in carrying out your mission?
- To what extent has the Visa Mantis process and implementation of other federal policies restricting the flow of students and scholars improved in the last few years? Does your organization have recommendations for changes or improvements to current policies that would further improve the flow of students and/or scholars without compromising national security? Have you made these recommendations directly to the relevant federal agencies, and if so, how have they been received?

Ms. Cotten

- How do foreign students and scholars contribute to the science and engineering enterprise at your university?
- How have visa delays or denials affected the ability of your university to recruit and retain top science and engineering students from abroad? How have they affected your ability to attract scholars for short-term appointments and research collaborations? To what extent has this process improved in the last few years? What difficulties remain? Did the significant problems for foreign students and scholars in the early years after 9/11 lead to long-term consequences for your university?
- Do you have recommendations for changes or improvements to current policies that would further improve the flow of students and scholars without compromising national security? How do you communicate your concerns and recommendations to the relevant federal agencies and how responsive are the agencies?