STATEMENT OF

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BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS

REGARDING

PROPOSED B2 VISITOR VISA REGULATION AND ITS IMPACT ON SMALL BUSINESS

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As a preliminary matter, and as you know, Mr. Chairman, the President recently announced his proposal for a new Department of Homeland Security. I strongly support the creation of this new cabinet-level department, as proposed by the President, and I consider this an important and very positive development for the security of our nation and for the mission and employees of the INS. In this new structure, the INS will become a key part of one of the largest agencies in the federal government and will be partners in what is the most important mission of our government - protecting the American people and ensuring the safety of our institutions and our precious freedoms.

Mr. Chairman, I appreciate you calling this hearing today so that we might have the chance to discuss the Immigration and Naturalization Service's (INS) recently published proposed rule on visitors to the United States.

Intent of the Proposed Rule

Longstanding immigration law provides for two types of visitors – those coming for business (B-1) and those coming for pleasure (B-2). By regulation the INS controls how long visitors may stay in the United States and sets forth the terms and conditions of their visit.

On April 12th, the INS published a rule proposing several changes affecting the length of stay for visitors to the United States. First, we propose to change the maximum initial period of admission for all visitors to the United States from 1 year to 6 months.

Next, we propose similar rules for all visitors by eliminating the minimum period of admission that currently applies only to visitors for pleasure. In place of the 6-month minimum period of admission, the INS is proposing that visitors for pleasure will be admitted for a period of time that is fair and reasonable for the completion of the purpose of the visit. This is the current standard being applied to visitors for business.

The rule also specifies the general requirements for extensions of visitor status and proposes to strengthen control over decisions to grant such extensions.

Last, we propose to limit the circumstances under which a visitor may change status to a foreign student. Under this proposal, an individual applying for admission as a visitor will be required to disclose at the port-of-entry an intention to change to student status.

Misperceptions about the Proposed Rule

As the public, media, and other interested persons have digested these proposed changes, a number of misperceptions have arisen regarding the rule, in particular that the INS is seeking to establish a "30-day" limit on visits to the United States. That is not true. The reason for these changes is the concern, highlighted by the activities of the hijackers, that an individual can enter the United States for an almost automatic 6 months and, potentially, could file an extension and stay a year or more without having to validate substantially his or her reasons for being here. As you know, 18 of the 19 hijackers entered the United States on visitor visas. In addition, an automatic 6 month initial admission period with a generous extension policy may lead individuals to develop permanent ties to the United States, including unlawful employment, that contribute to the problem of visa overstays.

The proposal is to admit all visitors for an initial period of up to, but not more than, 6 months based on the stated purpose and duration of their visit. Experience and data indicate that 6 months far exceeds the average – and the median – length of stay of most visitors. While we propose to limit all visitors to a maximum initial period of 6 months, we also propose to place responsibility to explain the purpose and length of stay on B-2 visitors as is the case today for B-1 visitors for business.

In instances where there is ambiguity over the exact nature of the visit, INS proposes a default admission period of 30 days. The proposed 30-day period is neither a minimum nor a maximum and is clearly not a new standard admission period. The inspecting INS officer will be authorized to admit visitors for a shorter or longer period (up to 6 months) depending on the circumstances. The INS Inspections program will carry out a rigorous education program to ensure that all Immigration Inspectors fully understand that any default period is <u>not</u> a new maximum or minimum admission period.

National Security and the Need for the Proposed Changes

As the Committee can well appreciate, national security concerns figure prominently in almost every action currently undertaken by the government. At the INS, we take seriously the responsibility to ensure a secure flow of people across our borders. This requires us to balance our charge to defend the United States from those who intend to harm Americans and the need to secure our economic prosperity and freedoms by keeping our borders open and efficient to legitimate travel and commerce.

In order to support national security against future terrorist threats, our proposals make sure that every visitor applying for admission is questioned thoroughly in order to determine a fair and reasonable period of admission. And it is reasonable to expect that anyone wishing to enter the United States should

be able to articulate to the inspector the desired period of admission, be it verbally or with documents that outline the exact nature of the trip. Requiring individuals to explain their itinerary and length of stay is prudent policy for our post-September 11th world.

This proposed rule is just one in a series of steps we are taking to bolster the integrity of our nation's immigration system. We must take steps to minimize our vulnerability to those who would exploit our generous system. Of equal importance are steps to guard against the erosion of public confidence in our long and rich tradition of welcoming people to this country.

In addition to these proposed changes, I have issued a number of necessary, if not universally popular, directives. For example, I directed the INS to publish changes to our foreign student regulations and this summer we will begin to deploy the automated, internet-based SEVIS system to monitor those foreign students attending American institutions of learning. In a similar vein, I directed that no application or petition for immigration benefits be approved before appropriate security checks have been conducted. We have instituted more robust security checks for refugees. And, overall, we have instituted policies requiring higher levels of approval when we grant parole, including parole for deferred inspections, at our POEs. Since September 11, the INS has been tirelessly working under enhanced security procedures at a Threat Level I alert at our ports-of-entry (POEs).

As the Committee is well aware, rules and regulations have a deterrent effect. Typical criminal behavior strives to avoid attention. Individuals who seek to do harm to our country are more likely to expose themselves if they fail to play by the rules. Therefore, the proposed rule makes it more difficult for such individuals to remain undetected inside the United States for long periods of time.

Nearly all of the 19 hijackers maintained valid status while planning the attacks of September 11th. They made concerted efforts to do so, it is logical to assume, because that made them less likely to come to the attention of federal authorities. By limiting the stay of individuals who do not have legitimate reasons to be in the United States for long periods of time, there is a greater likelihood that those with bad intent will appear on the radar screen of law enforcement officials. Further, those who pose a threat to our country and overstay their visa will be subject to detention.

The Inspections Process

Some have expressed concern that these proposals would overwhelm the inspections process. We take issue with that assessment. As a general matter the immigration laws confer broad authority on the INS to determine who is admissible to the United States. Every person seeking to enter the United States

must satisfy the immigration inspector that he or she meets the requirements under law. The INS has proven its ability to exercise this authority judiciously.

Specifically, INS inspectors currently admit all B-1 visitors for business for a period of time that is fair and reasonable for the stated purpose of the visit. Each application for admission is unique and the decision is based on the individual facts and representations, be it five days or five months. The proposal applies this same requirement to all visitors – those coming for pleasure or for business. I believe INS has judiciously applied this standard with business visitors and has promoted our nation's commerce. Similarly, with enactment of expedited removal provisions in 1996, INS' ability to properly exercise broad authorities was again tested. We again met the challenge.

Comments about the proposal

In accordance with rulemaking procedures, the INS published these proposed changes with an opportunity for the public to provide written comments. The comment period closed on May 13th and we have received close to 10,000 comments. Before any changes take effect, the INS will analyze and consider all of the comments. We will take into account the concerns raised about the perceived impact the regulation would have on tourism and commerce. The intent here is not to hurt legitimate tourism but to improve the policies on who is coming to America and their purpose for being here.

The INS wants the Committee to know that we will make every effort to make reasonable accommodations for international tourism and business interests. The intent of the proposed rule is not to stifle small businesses that depend on the significant economic contributions of international tourism. However, the reality of our post-September 11th world is that a "one size fits all" admission period, especially one as generous as the current B-2 admission period of 6 months, does not make good sense.

It is understandable that individuals who choose to visit our country for long periods of time because they own property here or for other valid reasons are anxious about these proposed changes. We intend to work with our overseas offices, our colleagues in the Departments of State and Commerce, and the tourism industry to dispel misconceptions and educate foreign visitors of any changes to INS rules about length of stay. Preparation and planning are necessary steps for travelers – knowing what immigration rules apply is part of the planning. It is our role to ensure the rules are clear and understandable.

Individuals planning extended holidays or seeking medical attention in our world-renowned institutions should not alter their travel plans on the assumption the INS will restrict their visit to only 30 days. Rather, they should be educated about the need to state their travel plans to the immigration officer in order to ensure a period of admission that is consistent with their plans. We have many

partners in developing and disseminating the facts – the accurate message – in ways that are helpful to prospective visitors. And as I have just noted, we fully intend to work with other government agencies and our outside partners to make sure that individuals planning trips to the United States are fully informed of any changes that are adopted regarding admission periods. In particular, we will work with the government of Canada to address the concerns that many Canadian citizens have about the provisions of the proposed rule.

Economic Impact on Small Businesses

The INS did consider the possible economic impact the proposed rule could ultimately have on small businesses. Our conclusion, as supported and approved by the Department of Justice and the Office of Management and Budget, was that the rule would not have a significant impact on small businesses. We based our conclusion on the fact that the rule was not proposing to limit all visitors for pleasure to a pre-set admission period of only 30 days, but to a period of time that would allow the visitor to complete the stated purpose of the visit.

INS statistics show that 73% of visitors for pleasure complete their visit and depart from the United States within 30 days of arrival. Of this group, 51% depart the United States within 13 days. The remaining 27% on average stay in the United States for periods in excess of 40 days. Nothing in the proposed rule says that this 27% could not be accommodated and granted an admission period sufficient for the completion of the stated purpose of the individual's visit. Under the proposed rule, persons who can adequately explain the need for a 40, 60, or 100 day visit (up to a maximum initial admission of 6 months), would be eligible for such a period of admission.

For these reasons, the INS believes it has met the burden of proof in complying with the analytical provisions of the Regulatory Flexibility Act.

Conclusion

Mr. Chairman, the INS carefully considered the economic impact our proposed rule might have on United States businesses that depend on international tourism and tourists for their livelihood before publishing the proposed rule. We will consider and address all of the public comments we have received. Our intent here is not to stifle or compromise business, but to make sure that individuals wishing to enter the United States are admitted for periods of time that accurately comport with the stated purpose of the trip. This is sound policy and consistent with our charge under the law to examine those who are eligible for admission to our country while ensuring our nation's security. At the same time, we will not lose sight of our role to welcome and accommodate those whose intentions are to visit family or to experience and share in the many

leisure and business opportunities that make the United States the destination of choice for so many travelers. I look forward to answering your questions.