

DEPARTMENT OF HOMELAND SECURITY
Office of Inspector General

**An Evaluation of DHS Activities to
Implement Section 428 of the
Homeland Security Act of 2002**



Office of Inspections, Evaluations, & Special Reviews

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**Homeland
Security**

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, investigative, and special reports prepared by the OIG as part of its DHS oversight responsibility to identify and prevent fraud, waste, abuse, and mismanagement.

This report assesses the strengths and weaknesses of the program or operation under review. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to the OIG, and have been discussed in draft with those responsible for implementation. It is my hope that this report will result in more effective, efficient, and economical operations. I express my appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in black ink, appearing to read "Clark Kent Ervin".

Clark Kent Ervin
Inspector General

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Abbreviations

BTS	Directorate for Border and Transportation Security
CBP	Customs and Border Protection - a BTS component
CIS	Citizenship and Immigration Services - a DHS component
DHS	Department of Homeland Security
DOS	Department of State
FBI	Federal Bureau of Investigation
ICASS	International Cooperative Administrative Support Services
ICE	Immigration and Customs Enforcement - a BTS component
INS	Immigration & Naturalization Service
MOU	Memorandum of Understanding
NSEERS	National Security Entry-Exit Registration System
NTC	National Targeting Center, Reston, Virginia – a CBP component
OIE	Office of International Enforcement - a BTS component
OIG	Office of Inspector General - a DHS component
PCS	Permanent Change of Station (assignment)
TDY	Temporary Duty (assignment)
TPO	Transition Planning Office
VSO	Visa Security Officer
VSU	Visa Security Unit - an ICE component

OIG

Department of Homeland Security Office of Inspector General

Introduction

The Office of Inspector General (OIG) evaluated the Department of Homeland Security's (DHS) planning and implementation of Section 428 of the Homeland Security Act of 2002, P.L. 107-296, (the Act). Section 428, titled "Visa Issuance," vests in the Secretary of Homeland Security "all authorities" to issue regulations, administer, and enforce all immigration and nationality laws. Section 428 provides for the assignment of Visa Security Officers (VSO) to embassies and consulates to oversee the security of the visa issuance process. Within DHS, the responsibility for managing Section 428 issues rests predominantly within the Border and Transportation Security (BTS) directorate.

Results in Brief

The VSO program as it currently is managed prevents BTS from realizing the potential value of stationing VSOs at U.S. embassies and consulate offices to review visa applications. Because BTS uses temporary duty officers who have not received specialized training in VSO duties and foreign language training, do not have all of the necessary skills, and do not have adequate administrative support, the full intelligence and law enforcement value that VSOs could add to the existing inter-agency country teams cannot be achieved.

DHS has made progress in meeting Section 428 requirements. Specifically it has:

- Negotiated a memorandum of understanding (MOU) with the Department of State (DOS) to delineate their respective roles and responsibilities in implementing Section 428 requirements.
- Selected and deployed DHS personnel to Saudi Arabia on temporary assignments to begin the visa review process.

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- Approved the formation of two internal organizations to manage the Section 428 requirements.

However, DHS has not yet implemented all of Section 428. Specifically, DHS did not:

- Comply with the requirement to have DHS personnel in place in Saudi Arabia to review visa applications by January 24, 2003.¹ Temporary personnel arrived on August 31, 2003.
- Develop a plan to provide homeland security training to DOS consular officers, so that such officers are more likely to spot factors that would deter them from issuing a visa to someone who might be a terrorist.
- Devise training plans to instruct DHS employees assigned to U.S. embassies and consular posts in foreign languages, interview and fraud detection techniques, and foreign country conditions.
- Establish, in coordination with DOS, performance standards to evaluate consular officers.
- Publish the study of the role of foreign national employees in reviewing and approving visas, as required by Section 428(g)(2).
- Specify criteria to select other consular posts for the assignment of DHS employees, or submit the report required by Section 428(e)(4) to Congress.
- Submit the report describing the implementation of Section 428 to Congress, as required by Section 428(e)(7).

Many of the delays can be attributed to the significant amount of time taken to negotiate the DHS-DOS MOU that delineated the roles and responsibilities of the two departments.² Much of the work could have been initiated without awaiting the execution of an MOU because many aspects of DHS' new responsibility do

¹ We received differing opinions about the effective date for the implementation of the Act. The date stated here was derived from language in the Act, which required implementation within 60 days of the passage of the Act. The Act was passed on November 25, 2002. However, DHS was not formally established until March 1, 2003, making implementation of provisions of the Act difficult. Nevertheless, we believe the law required the implementation of this provision of Section 428 by January 25, 2003.

² The signing of the MOU was announced on September 29, 2003.

not require DOS participation or consent. The MOU may serve a future purpose to resolve serious controversies that cannot be resolved by less formal means, but it should not have been a reason for delaying action.

Other significant findings resulting from our evaluation are:

- The Act requires BTS to develop programs of “homeland security training” for consular officers. This training is not further defined in the Act, and BTS officials we interviewed had differing interpretations of what might be appropriate. BTS has not yet developed a training program for consular officers.
- The use of temporarily assigned (TDY) officers to staff the visa security offices in Riyadh and Jeddah rather than officers on permanent (PCS) assignments has reduced the effectiveness of the operation due to the high turnover of officers.
- Nine of the ten TDY officers who have served or are serving in Saudi Arabia do not read or speak Arabic. This limits their effectiveness and reduces their contribution to the security of the visa process.
- The lack of sufficient current funding for the visa security activity has resulted in BTS Visa Security Officers’ (VSO) in Saudi Arabia working without adequate administrative support.
- With no clear vision how to add value to the existing consular process, the BTS VSOs in Saudi Arabia are mainly, but not exclusively, occupying themselves entering visa applicant data into DHS databases to conduct queries, conveying the results of the queries to the DOS officers, and examining the passports and application papers that the DOS consular officers have already scrutinized.
- The Act’s requirement that in Saudi Arabia - and only in Saudi Arabia - VSOs review all visa applications compels the VSOs there to expend considerable time and effort screening the many applications from children and certain third-country nationals who are of little homeland security interest.
- BTS and other law enforcement and intelligence agencies have not reviewed thousands of visa application submitted and approved during

the two years prior to the September 11th attacks for possible connection to terrorism.

We recognize the enormous challenges faced by BTS in establishing itself and its new missions in such a short time. We further understand that many of the Section 428 requirements levied against BTS were unfunded. BTS officials said that they have had numerous discussions with congressional staff about the funding that BTS needs to meet the extensive responsibilities required by Section 428's mandate to establish a global visa security operation. Nevertheless, funding for many of the required programs has not yet been provided.

We are recommending that BTS:

1. Develop programs to provide homeland security training for consular officers, as well as training for consular officers in interview and fraud detection techniques;
2. Develop a program to provide foreign language training for VSOs;
3. Develop performance standards to evaluate consular officers in coordination with DOS;
4. Develop criteria for assigning VSOs to other countries;
5. Assign responsibility for developing and publishing the report that explains the decisions not to assign VSOs to all other countries;
6. Conduct a study of the personnel management techniques used by other agencies with a global workforce, and evaluate the ways to facilitate the overseas rotation of DHS employees;
7. Discontinue the practice of filling VSO positions with temporarily assigned officers;
8. Establish criteria for selecting VSOs based on required experience and skills;
9. Establish a funding mechanism to ensure that the visa security operation receives all required support, and that DOS is reimbursed promptly for the support that it provides;

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10. Seek amendment to Section 428(i) to limit the scope of visa application reviews in Saudi Arabia;
 11. Examine visa applications submitted in Saudi Arabia in the two year period prior to September 11, 2001; and,
 12. Automate the visa name check process to eliminate redundant data entry.

Background

The Homeland Security Act of 2002 established DHS. Section 428 of the Act, which pertains to visas, requires DHS to assume six specific visa related responsibilities:

1. Assign DHS employees to Saudi Arabia to review all visa applications prior to adjudication by consular officers.³
2. Develop programs of homeland security training for DOS consular officers.⁴
3. Ensure that DHS employees and, as appropriate, consular officers, are provided training, including training in foreign languages, interview techniques, and fraud detection techniques, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.⁵
4. Develop performance standards to be used when the Secretary of State evaluates the performance of consular officers.⁶
5. Study the role of foreign nationals in the granting and refusing of visas and other documents authorizing entry of aliens into the United States.⁷

³ Sec. 428 (i).

⁴ Sec. 428 (b) (1).

⁵ Sec. 428 (e) (6).

⁶ Sec. 428 (e) (3).

⁷ Sec. 428 (g) (1).

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6. Assign DHS employees to diplomatic and consular posts at which visas are issued, unless the Secretary determines that such assignment at a particular post would not promote homeland security.⁸

Section 428 also requires that DHS send to Congress:

1. An annual report describing the basis for each determination not to assign DHS employees to a diplomatic or consular post.⁹
2. A report, jointly with the Secretary of State, not later than one year after enactment of the Act on the implementation of subsection (e), which relates to the assignment of DHS employees to embassies abroad, and conveying any legislative proposals necessary to further the objectives of subsection (e).¹⁰
3. A report, to be issued not later than one year after enactment of the Act, on a study of the role of foreign service nationals in the granting or refusing of visas.¹¹

Purpose, Scope, and Methodology

We conducted this evaluation to determine whether BTS implemented all Section 428 requirements and to assess the effectiveness of the VSO program implemented in Saudi Arabia. We began our review in July 2003 and circulated a draft report for comments in November 2003. In December 2003 we were informed of an October 31, 2003, reorganization of the offices involved in executing the DHS 428 activities. This reorganization necessitated additional fieldwork. We conducted interviews with DHS officials including the Under Secretary for BTS, the director of the Visa Security Unit (VSU) at Immigration and Customs Enforcement (ICE), and the head of the BTS Office of International Enforcement (OIE). We reviewed DHS documents in Washington, D.C. and in Saudi Arabia. We also reviewed information from DOS and the White House Homeland Security Council. While in Saudi Arabia, we met with the temporary

⁸ Sec. 428 (e) (1).

⁹ Sec. 428 (e) (4).

¹⁰ Sec. 428 (e) (7).

¹¹ Sec. 428 (g) (2).

VSOs assigned to Riyadh and Jeddah, DOS officials, and other members of the U.S. embassy community.

Deployment of Visa Security Officers

BTS did not comply in a timely fashion with the requirement in Section 428(i) that it place VSOs in Saudi Arabia to review all visa applications prior to adjudication by DOS. According to Section 428(i), on-site reviews by DHS personnel were to begin “after the enactment of this Act.” The Act became effective on January 24, 2003, 60 days after the President signed it. However, BTS VSOs did not deploy to Saudi Arabia until the end of August 2003. DHS officials told us that the department waited for the DHS-DOS MOU to be approved before assigning BTS personnel to Saudi Arabia. When the decision was made to send a temporary team in August 2003, we were told that the officers would participate in the visa review process “only in an advisory capacity” until the DHS-DOS MOU was signed. The officers assumed their full responsibilities at the end of September 2003 when the DHS-DOS MOU was signed.

Planning and Preparation

In late 2002, the White House Office of Homeland Security established the DHS Transition Planning Office (TPO) that, in turn, formed an international sub-group to address the international aspects of the Act. In January 2003, members of the sub-group led an assessment team of senior employees from the agencies that would transfer to DHS on a visit to Saudi Arabia. The purpose of their trip was to study how Section 428(i), which requires DHS visa screening in Saudi Arabia, could be implemented at the embassy in Riyadh and at the consulate general in Jeddah. The assessment team included employees from Immigration and Naturalization Service (INS), U.S. Customs Service, the White House Office of Homeland Security, and the Transportation Security Administration. A senior officer from the DOS Bureau of Consular Affairs accompanied the group. The team made several recommendations on how DHS personnel should function in embassies and consulates and reported its findings to the TPO. The team’s report addressed in broad terms questions of office space, reporting relationships, and desired qualifications for personnel chosen to perform the work, such as language ability and professional experience.

In July 2003, BTS convened an Interagency International Affairs Working Group and interviewed volunteers willing to serve temporarily in Saudi Arabia until permanent employees could be chosen and trained. Three officers formerly with

INS were deployed to Saudi Arabia at the end of August 2003 in TDY status. Two of these officers were already assigned overseas and the third was assigned domestically.

DHS–DOS Memorandum of Understanding

Development of the MOU began before the effective date of the Act as Office of Homeland Security staff circulated drafts; the DHS TPO began working on these drafts in January 2003. In July and August 2003, we were told that completion of the MOU was imminent. It was signed eventually on September 29, 2003.

DHS and DOS officials told us that negotiating the MOU was a priority because without an MOU, the exact delineation of responsibilities between the two departments would be too unclear to enable the participants to address Section 428 issues. Also, officials stated that the MOU would establish mechanisms for the departments to communicate with each other on Section 428 issues. Specifically, DHS officials told us that implementing the subsections regarding the study of the role of foreign nationals and assignment of DHS staff to Saudi Arabia was conditional upon a signed inter-agency MOU. One official believed that only when the MOU went into force would DHS be required to review all visa applications in Saudi Arabia. Several officials who we interviewed were parties to the MOU negotiations. They reported that DHS and DOS attorneys who led the inter-agency negotiations shared the view that DHS could not comply with these subsections until an MOU was completed. Even accepting this view, important preparatory work could have begun while the MOU negotiations were in progress.

The Act did not make any of the Section 428 requirements conditional upon the development of the MOU. The Act contains only one mention of an MOU between DHS and DOS, at 428 (e) (8), which provides that subsection (e) becomes effective either one year after enactment, or upon completion of an MOU, whichever occurs earlier. We do not make a recommendation regarding the delayed deployment of VSOs to Saudi Arabia. However, we address the issues associated with the use of temporarily assigned VSOs later in our report.

Organizational Changes

Even while DHS was planning to implement Section 428 requirements, its internal organization was evolving. In September 2003, DHS approved the formation of an Office of International Enforcement (OIE) within BTS. OIE officers told us that once OIE was fully established and funded, it would be

responsible for all Section 428 requirements. OIE's responsibilities were to include developing a plan to train DOS consular officers; developing a plan to train DHS personnel assigned to U.S. embassies and consulates; and, developing a plan to assign DHS personnel to some U.S. embassies and consulates. OIE also would supervise those DHS employees detailed from ICE and CBP to be assigned to U.S. embassies and consulates overseas.

However, an important change occurred on October 31, 2003, when DHS approved a comprehensive reorganization of its international activities that significantly diminished OIE's role in Section 428 operations. By memorandum, the DHS Secretary announced that OIE would remain small, with seven to nine people, as operational responsibilities and daily policy making decisions would be assumed by another new BTS organization. According to the reorganization plan, OIE maintained general oversight responsibility for BTS international policy matters and would be responsible for international technical assistance and shared administrative services.

The October 31, 2003, memorandum also established the ICE International Office, which includes the VSU. According to the memorandum, the VSU will assume responsibility for daily operational and policy decisions with respect to the implementation of Section 428 and the DHS-DOS MOU. Specifically, the VSU will direct the activities of visa security officers.¹² Four officers detailed from their regular duty stations currently staff the VSU, located at ICE headquarters. Since its establishment, a senior officer, on TDY, has led the VSU. The VSU director reports to the Deputy Assistant Director for International Affairs, who in turn reports to the director of the Office of Investigations.

VSO and Consular Officer Training

Homeland Security Training for Consular Officers

The Act contains two provisions mandating that DHS train consular officers. The first, in Section 428(b)(1), deals with the issue broadly in terms of describing the shared responsibilities of DHS and DOS for visa issuance. It authorizes DHS to develop "homeland security training programs," not further defined, to be provided to DOS consular officers in addition to consular training provided by the Secretary of State. The second, more limited provision in the Act relating to DHS

¹² As of April 2004, visa security operations are conducted only at the U.S. Embassy in Riyadh and the Consulate General in Jeddah.

training for consular officers is in Section 428(e)(2), which describes the activities of VSOs at those consular posts to which they are assigned. In Saudi Arabia, the temporarily assigned DHS officers have provided informal fraud training on a one-on-one basis to the DOS consular officers in Riyadh and Jeddah.

While DHS officials are aware of the broad requirement to train all consular officers, DHS does not have a plan to do so. DHS has not defined the purpose, scope, and objectives of future consular training, nor has it developed a curriculum for a homeland security training program for consular officers.

Language, Interviewing, and Document Fraud Detection Training

Again, DHS officials are aware of the requirement in Section 428 (e) (6) to provide foreign language, country studies, and interview and fraud detection techniques training to DHS VSOs and DOS consular officers, but it has not developed a plan to provide such training. As of March, 2004, DHS has not developed a specific curriculum for the required training and has not identified personnel to receive the training.

Since mid-2003, DHS has held meetings to begin designing a curriculum for such training. Among the participants were officers subsequently assigned to OIE, and representatives from the Federal Law Enforcement Training Center. One official interviewed said that the DHS personnel already abroad may be brought back to the United States in small groups during 2004 for a course that would familiarize them with the whole range of Section 428 responsibilities.

DOS has well developed training programs for foreign languages and foreign area studies at the National Foreign Affairs Training Center in Arlington, Virginia. The DHS-DOS MOU makes these facilities available to DHS employees. As yet, DHS has not developed plans to use this training resource and, we were told, language training may not be part of a VSO's pre-assignment training. While DHS personnel in Saudi Arabia informally share their expertise with DOS consular officers in methods to detect counterfeit documents, a curriculum for training in interview and fraud detection techniques has not been developed.

Funding for training and other costs associated with overseas deployment of DHS staff is not yet available, since DHS' budget for fiscal year (FY) 2004 was prepared before the establishment of OIE and the ICE VSU. As a result, there is no identified funding for visa security operations this fiscal year. In its April 2004 congressional testimony, ICE requested \$10 million for funding the visa

security program in FY 2005, and sought the establishment of 90 new permanent positions.¹³

We recommend that the Under Secretary for Border and Transportation Security:

Recommendation 1: Develop a curriculum of homeland security training for consular officers consistent with the requirement in Section 428 (b) (1) of the Act.

Recommendation 2: Develop a training program for VSOs that includes foreign languages, country studies, and interview and fraud detection techniques.

Consular Officer Performance Standards

DHS, in coordination with DOS, has not established performance standards to evaluate consular officers. The Act mandates that DHS develop performance standards to be used when the Secretary of State evaluates the performance of consular officers. No DHS component has been assigned this task. While the MOU contains coordination mechanisms to be used by the departments to consult with each other on Section 428 issues, it does not contain substantive provisions regarding development of performance standards.

We recommend that the Under Secretary for Border and Transportation Security:

Recommendation 3: In coordination with DOS, develop performance standards to evaluate consular officers.

Role of Foreign Nationals

DHS failed to meet the November 25, 2003, submission deadline for a report to Congress that studied of the role of foreign national employees in the granting and refusing of visas. Most federal agencies staff their overseas offices with both U.S. and foreign national employees. They provide administrative support, local expertise, language skills, and operational continuity.

¹³ Hearing on Border Enforcement, and Immigration Services: *Testimony of The Honorable Michael J. Garcia, Assistant Secretary, Bureau of Immigration and Customs Enforcement*. March 30, 2004, testimony before Homeland Security Subcommittee of the U.S. Senate Appropriations Committee.

Section 428(g) requires that DHS study the role of foreign national employees in the granting and refusing of visas and other documents authorizing entry of aliens into the United States and requires that a report be issued not later than one year after enactment of the Act. While Section 428(g) makes no mention of DOS participation in the study, DHS officials said that no meaningful or accurate study could be conducted without DOS assistance because most of the foreign nationals are DOS employees. DHS officials concluded that DOS assistance would be facilitated by the execution of the MOU. Since execution of the MOU was believed to be imminent during the summer of 2003, tentative plans were developed to conduct the study. A draft of the study was completed in November 2003 and circulated for final comments within DHS. In December 2003 it was sent to DOS for comments. In February 2004 it was released to the Office of Management and Budget (OMB) for review. In late May 2004, the report was still pending clearance at OMB. It was finally released in July 2004.

Assignment of Visa Security Officers

DHS did not meet the November 25, 2003, deadline for submitting a report to Congress on the rationale for not assigning VSOs to U.S. embassies and consular offices.¹⁴ Moreover, DHS has not established formal written criteria to select additional countries where VSOs will be assigned.

Section 428(i) requires that DHS assign VSOs to Saudi Arabia to review all visa applications before consular officers adjudicate the applications. Section 428(e) authorizes the Secretary to assign VSOs to other countries unless he determines that such assignments would not promote homeland security. In addition, Section 428(e) requires an annual report to Congress describing the basis for each determination not to assign DHS employees to a diplomatic or consular post.

We were told that the selection process involves evaluating current intelligence, historical connections to terrorism, visa volume, and several other factors to decide where the next group of visa security offices will be opened. We were unable to determine which DHS element will be responsible for formalizing the criteria or preparing the report to Congress, or when the report will be written.

¹⁴ We received differing opinions about the effective date for the implementation of the Act. The date stated here was derived from language in the Act, which required implementation within 60 days of the passage of the Act. The Act was passed on November 25, 2002. However, DHS was not formally established until March 1, 2003, making implementation of provisions of the Act difficult. Nevertheless, we believe the law required that DHS implement this provision of Section 428 by November 25, 2003, the one year anniversary of the passage of the Act.

While the visa security program eventually could have many offices around the world, DHS has not determined how many will eventually be created, or when.

In May 2004, the Under Secretary for BTS informed us that DHS is conducting a review of DHS operations overseas. The review, in which BTS is participating, will examine personnel issues, including the possibility of a foreign service for DHS. DHS has made plans to establish five additional visa security offices before the end of 2004. BTS informed us that it has prepared NSDD-38¹⁵ requests for the next group of VSO positions to be created abroad.

We recommend that the Under Secretary for Border and Transportation Security:

Recommendation 4: Develop written criteria for assigning VSOs to other countries.

Recommendation 5: Assign responsibility to develop and publish the report to Congress required by Section 428(e)(4).

The Civil Service And International Personnel Mobility

BTS does not have a personnel management plan to address the needs of a global workforce and has not established a mechanism to facilitate overseas rotations of BTS employees. Because there are visa activities in almost every country with which the United States maintains diplomatic relations, the requirement to station VSOs around the world could lead to the assignment of BTS personnel to many, or even most, of the U.S. diplomatic posts abroad.

We interviewed several employees who had been assigned overseas under the authority of the Office of International Affairs of the former INS. They said that INS sometimes had difficulty staffing its overseas posts. Management had to let some positions remain vacant for extended periods of time while replacement officers were sought. Since Civil Service rules do not generally allow forced transfers, INS management often was unable to select its best officers for foreign assignment, or to compel the officers who did seek such assignments to serve out the full term of their assignment.

Another significant challenge was re-integrating employees when their foreign tours approached conclusion. When the time came for the overseas employees to

¹⁵ National Security Decision Directive 38 established the procedure by which federal agencies other than the Department of State create new positions for their personnel at an embassy or consulate in a foreign country.

return to the United States, positions at the former office often were unavailable. The domestic positions previously encumbered by those assigned overseas had been permanently filled by other employees. Officers assigned abroad were sometimes at a disadvantage competing for new domestic vacancies. Domestic managers, when filling vacancies in their offices, were not required to give hiring preference to personnel overseas and often promoted from within. This resulted in foreign assignments being extended repeatedly until a suitable opening arose in the domestic office to which the employee wished to return.

Federal agencies find it easier to invest time and money training employees when they can expect a significant return on their investment. Language training for VSOs, for example, would be easier to justify if the officer will serve more than one tour abroad. Language training is very expensive—Arabic language training programs at the Foreign Service Institute or the Defense Language Institute last more than a year. Students must be paid and housed during the long training period. VSOs over time will develop a professional expertise that would be very valuable to DHS if it could be preserved. New VSOs could be trained by experienced VSOs who served two or three foreign assignments over the course of their careers.

ICE officials told us that they do not believe the benefit of training such a cadre of officers is worth the potential cost to ICE’s domestic law enforcement operations. They do not want to create two different types of agents, those with mainly domestic experience and those with primarily overseas experience. There is, one official said, “no interest in creating a Foreign Legion.” In our interviews with the Under Secretary for BTS and the director of OIE, we heard similar views.

Many federal agencies with a global workforce, such as the Departments of State, Commerce, Agriculture, and the Central Intelligence Agency, have adapted a “foreign service” model to staff overseas posts. This involves creating and training a designated group of employees expected to be mobile and international; creating a fair and effective assignment system to facilitate their movements; investing in language and other special training for the overseas mission; and synchronizing their resumption of domestic duties with the movement of other employees. We do not maintain that the “foreign service” model is the best solution to the DHS overseas personnel challenge; however, given the need DHS will have to maintain a robust, professional, and international posture involving many DHS elements, it should be studied and considered as a possible solution to maintaining an effective long-term, overseas operation.

We recommend that the Under Secretary for Border and Transportation Security:

Recommendation 6: Conduct a study of the personnel management techniques used by other agencies with global workforces and evaluate ways to facilitate the overseas rotations of DHS employees.

Visa Security Operations in Saudi Arabia

The visa security operation as it is currently managed is not as effective or as efficient as it should be. Lacking funds, housing, administrative support, office space, and specialized VSO training, the assigned officers cannot fully provide security enhancements for the visa application process. Because VSOs were spending significant portions of their time as data entry operators, they did not always have time to perform investigative and intelligence analysis functions. In addition, the officers assigned to Saudi Arabia do not always have current experience or skill sets.

Temporarily Assigned VSOs

As of March 2004, of the ten VSOs currently or previously assigned to Saudi Arabia, only one served more than 90 days. The VSO operation has been staffed by a succession of temporary personnel because the Act did not provide new positions for VSOs and funds were not provided to pay the costs of transferring employees to Saudi Arabia. The VSOs are detailed from their permanent duty stations for TDY assignment. The costs of temporarily assigning the VSOs to Saudi Arabia are, in part, being borne by the TDY officers' permanent duty stations.

Little institutional memory has been developed as a consequence of the rapid turnover of personnel. Each new VSO starts from the beginning to learn the job and the work environment. One of the volunteers had never worked outside the United States and was unfamiliar with the structure of an embassy. Another VSO had had no prior experience with visas and lacked any familiarity with the visa application and issuance process. Others have come to the job without any background in criminal investigation, which ICE considers an essential element of the VSO function.

Because the officers are assigned only temporarily, DOS issues them official—not diplomatic—passports. Because of their TDY status, they are denied diplomatic

status and, consequently, they are treated as foreign visitors by the government of Saudi Arabia. This has an impact on their ability to perform their duties. The government of Saudi Arabia places severe restrictions on the activities of foreign visitors that make it impossible for the TDY officers to transact business at a bank, rent a car, obtain a driver's license, or purchase a mobile telephone. These are not just personal inconveniences. TDY officers are not as mobile or as able to communicate as are their embassy colleagues. Given the sensitive nature of the duties that VSOs perform, they should be accorded the protections of the international conventions on diplomatic and consular relations.

While the VSOs probably will continue to be temporarily assigned for the immediate future, BTS could save money by housing the TDY officers in rented housing rather than hotels. The embassy estimated that DHS could save approximately \$80,000 per year if it rented housing for the TDY officers, assigning two officers to each house.

We recognize the imperative of deploying VSOs to Saudi Arabia quickly, and acknowledge the positive actions taken by BTS to meet the statutory mandate. However, continuing to use TDY officers to fill the VSO positions, without regard to their qualifications, is not conducive to developing an effective or efficient long-term visa security operation. BTS should begin to fill the VSO positions with permanently assigned officers as soon as possible. The Under Secretary indicated that this is BTS' intention, and that future VSO assignments will be long-term transfers, not temporary assignments.

We recommend that the Under Secretary for Border and Transportation Security:

Recommendation 7: Discontinue the practice of filling the VSO positions with temporarily assigned officers and move toward filling the positions with permanently assigned officers.

Recommendation 8: Establish criteria for selecting VSOs based on required experience and skill sets to support the visa security operation.

Embassy Support for VSO Operations

As of March 2004, DHS had not paid for all of the administrative support services provided by DOS. In addition, there is other essential support that the VSOs required but, because of the lack of funding, DOS does not provide. This support includes housing, dedicated transportation and drivers, and cell phones. DHS' FY

2004 budget did not include funds for reimbursing DOS for providing support for the visa security operations. Uneconomical practices result from the lack of DHS funding, such as placing employees in hotels because of the absence of funding to procure permanent, leased housing. BTS made a request to reprogram some FY 2004 DHS funds to support the current operations of the VSU, especially the VSO offices in Saudi Arabia. The Under Secretary said that this request has been pending with DHS management for several months.

All agencies operating at an embassy participate in the common funding of shared administrative services through the Interagency Cooperative Administrative Support Services (ICASS). One-time costs can occur, such as when an embassy needs to remodel its offices to make room for a new agency. The construction or renovation expenses are typically charged to the benefiting agency. Few embassies have excess office space and significant reconstruction can be required to accommodate new staff, especially in the highly restricted and tightly secured “Controlled Access Area” (CAA) where classified information is handled.

The U.S. Embassy in Riyadh estimated that the start-up costs for the visa security offices in Saudi Arabia were \$189,000. These costs do not include renovations or personnel costs, just office equipment, office furniture, and office supplies. The embassy also estimates that when DHS is fully staffed, the annual ICASS bill for administrative support will be \$491,000.

It is difficult to forecast the expenses for renovations and reconstruction without knowing the specific countries to which VSOs will be assigned. DHS will need to plan each new visa security office well in advance of its actual opening, enter into a dialogue with the affected embassy, obtain estimates for the required renovations, and then prepare a budget request. A possible alternative that might permit timelier establishment of the VSO program would be for DHS to seek funding in advance for an “embassy office space renovation fund,” and then report to Congress as it is used and requires replenishment.

We recommend that the Under Secretary for Border and Transportation Security:

Recommendation 9: Establish a funding mechanism to ensure that the visa security operations receive all required support and that DOS is promptly reimbursed for the support that it provides.

Scope of Visa Application Reviews

VSOs in Saudi Arabia spend a significant amount of time reviewing applications of little homeland security interest, such as those of children, certain third-country nationals, or aliens already denied visas by DOS. Only 55 percent of the visa applications processed in Saudi Arabia in the past year were Saudi Arabian citizens. The rest were third country nationals, the largest contingent of whom are Filipinos. Section 428(i) requires that DHS review all visa applications in Saudi Arabia and does not give it the authority to set aside applications in any category in order to concentrate on higher risk applications. In every other country, Section 428(e) permits DHS to decide which applications would best benefit from VSO review.

We recommend that the Under Secretary for Border and Transportation Security:

Recommendation 10: Propose a technical correction to Section 428(i) to align it with Section 428(e) and permit DHS to review only those applications with homeland security interest in Saudi Arabia.

Consular officials in Riyadh said that in the months following the September 11 attacks, Federal Bureau of Investigation (FBI) investigators visited the embassy and examined the visa applications of several hundred individuals on a list they had brought with them. The list included names of the September 11 attackers—15 of the 19 hijackers were Saudis—and others suspected of terrorist involvement.

According to the DOS consular officials, however, there has been no examination by law enforcement or intelligence agencies of *thousands* of other Saudi visa applications that pre-date the September 11 attacks. These officials opined that a review of the applications might uncover information of intelligence or law enforcement value. Analysis, for example, might identify young Saudi males who may have been associates, or may have come from the families, tribes, or villages of the hijackers. Consular officials pointed out that these visa applications could contain information about other terrorist conspirators who may still have valid U.S. visas or who may remain in the United States. DOS has moved many of the visa applications to archives in the United States, but large numbers remain in temporary storage in Riyadh's visa section.

Our interviews with DHS, FBI, and intelligence officials in Riyadh confirmed that no thorough examination of pre-September 11 visa records has been made.

They said that combing through these thousands of old applications for possible commonalities with the hijackers would require a very large amount of time and would be an unwise diversion from their higher priority counterterrorism efforts already under way.

We recommend that the Under Secretary for Border and Transportation Security:

Recommendation 11: Evaluate the possible benefit of analyzing the existing visa applications in DOS files of young Saudi males who were issued visas in the two year period prior to September 11, 2001. BTS should coordinate with DOS, the FBI, and other federal agencies, as necessary, before making a determination about whether, or how, to proceed to analyze the applications.

Language Training

Even though Section 428 requires language training for VSOs, ICE has not decided whether to provide it. The costs, and the personnel complications of assigning officers to long-term training, are indeed daunting. The need to establish the first visa security office in 2003 gave DHS no option but to seek volunteers to serve on a temporary basis. Only one of the ten officers who served in Saudi Arabia in the past year spoke Arabic.

We are concerned that the precedent established by sending the first VSOs to Saudi Arabia without language training may become the accepted practice. In our opinion, this would deprive the visa security operation of much of its potential. Further, adopting this practice would clearly violate the training provisions of Section 428 and the DHS-DOS MOU. Section 6b of the MOU lists the qualifications for overseas DHS personnel, which include providing the VSOs with the ability to speak the host country language.

We observed VSOs at work in Saudi Arabia and were struck by how difficult it was for the VSOs to perform their tasks while relying on local employees to translate documents and conversations for them. While the experience they bring from their prior assignments makes them adept at spotting some fraudulent documents, they clearly would contribute more if they could read and speak the local language.

Earlier in our report, we made a recommendation concerning language training (Recommendation 2). We made that recommendation based on requirements established by Section 428 and the DHS-DOS MOU. Our observations of the

VSOs working in Saudi Arabia only confirmed the importance of having VSOs in those positions with the necessary language skills.

Database Queries

There is no consolidated DHS “lookout list” or “watch list.” VSOs in Saudi Arabia screen visa applications against a multitude of DHS databases, some of which are merely case file management systems containing little genuinely useful information. VSOs enter the visa applicants’ biographic information manually to conduct the queries. The same biographic information was previously collected and entered into DOS data systems by the consular officers during the visa application process. However, the DHS and DOS data systems do not share this information. Even if the initiation of the name checks were automated, personnel must have immigration experience and a working knowledge of the DHS databases to interpret the results of the DHS queries due to the technical complexity of the DHS data systems.

During the first few months of operation, the VSOs entered the applicants’ names and biographic data manually into DHS databases. This entering and re-entering of applicant biographical data consumed almost all of the available manpower and left no time for analysis. A new procedure was developed that required the VSOs to enter each applicant’s name, date and place of birth, passport number, and other particulars into one local database. At the end of each day, the VSOs develop a spreadsheet that is e-mailed to the National Targeting Center (NTC) in Reston, Virginia. At NTC, analysts process the spreadsheet as if it were the passenger manifest of a hypothetical inbound flight and check it against most of the available name check systems and government databases. Analysts at NTC have greater access to DHS databases than the DHS overseas offices, and are able to interpret the results of the name searches. The analysts electronically send adverse query results to the VSOs in Saudi Arabia. The turn-around time—currently overnight—does not delay the timely processing of the visa applications in Saudi Arabia.

The NTC procedure works so well that it might be a model for other visa security offices. If this process were expanded to new visa security operations in other countries, DHS must ensure that NTC is staffed and provided resources to handle the additional workload. It requires about one hour at NTC each day to process the two incoming spreadsheets from Riyadh and Jeddah, review the “hits,” search the computer files to verify and augment the information, and record the analyst’s comments on the outgoing spreadsheet. Saudi Arabia is a relatively low volume

visa operation, even if visa demand were to return to pre-9/11 levels. If the next four or five countries added to the program produce higher volumes of visa applications, the visa name check workload at NTC could increase significantly.

Assigning officers to overseas locations to repeat data entry of information already collected and transmitted to Washington, D.C. by the DOS consular officers is not an efficient use of DHS resources. The purpose for sending these officers overseas is to provide investigative and intelligence analysis support to the visa application process. The BTS Under Secretary said that BTS agrees that the database work would best be performed by consular officers, freeing VSOs to focus on analysis of terrorist threats to the visa process.

Before the visa security operation expands to other countries, DHS and DOS should explore ways to automate the database queries and free the VSOs for greater priority duties. One possibility would be for DOS to create a computer program that enables its data systems, either at the visa issuing post or in Washington, D.C., to generate a properly formatted query and transmit it directly to NTC. The results would be sent back to the VSOs at the overseas locations. A second option would be to build on the existing process wherein some of the data that DOS collects is passed to DHS' Automated Biometric Identification System (IDENT) for fingerprint matching. This existing process could be used to pass the necessary data directly to the NTC.

We recommend that the Under Secretary for Border and Transportation Security:

Recommendation 12: Develop an interface between BTS and DOS computer systems that permits a fast and efficient method to automate the visa security name check process and eliminate the duplicative data entry for database checks.

Section 428 of the Homeland Security Act (P.L. 107-296)

(a) DEFINITION.—In this subsection, the term “consular office” has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(c) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section, consistent with the Secretary of Homeland Security’s authority to refuse visas in accordance with law, shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(I) section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(J) section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(K) section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(L) section 613 of the Departments of Commerce, Justice, and DOS, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(M) section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

(N) section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(O) section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(P) section 51 of the DOS Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—

(1) IN GENERAL.—Nothing in this section may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)), consistent with the Secretary of Homeland Security’s authority to refuse visas in accordance with law.

(e) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.

(2) FUNCTIONS.—Employees assigned under paragraph (1) shall perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary.

(3) EVALUATION OF CONSULAR OFFICERS.—The Secretary of State shall evaluate, in consultation with the Secretary, as deemed appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) REPORT.—The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of an

employee of the Department at a particular diplomatic post would not promote homeland security.

(5) **PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.**—When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) **TRAINING AND HIRING.**—

(A) **IN GENERAL.**—The Secretary shall ensure, to the extent possible, that any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, shall be provided the necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, and fraud detection techniques, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) **USE OF CENTER.**—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(7) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(8) **EFFECTIVE DATE.**—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(f) **NO CREATION OF PRIVATE RIGHT OF ACTION.**—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(g) **STUDY REGARDING USE OF FOREIGN NATIONALS.**—

(1) **IN GENERAL.**—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

(h) **REPORT.**—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(i) **VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.**—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication.


U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

July 29, 2004

MEMORANDUM FOR: Clark Kent Ervin
Inspector General

FROM: Asa Hutchinson 
Under Secretary
Border and Transportation Security

SUBJECT: Response to the Draft Office of Inspector General (OIG)
Inspection Report: "An Evaluation of BTS Activities to
Implement Section 428 of the Homeland Security Act of 2002"

Thank you for the opportunity to comment on the OIG Draft Inspection Program regarding implementation of Section 428 of the Homeland Security Act. The accompanying document provides the official comments of the Border and Transportation Security (BTS) Directorate on this draft.

BTS has been working diligently to implement Section 428 since August 2003, and I appreciate the assistance your review offers in documenting the areas that must be addressed for what is now called the Visa Security Program, referred to below as the Program, to be most effective in executing its critical mission.

Before I respond to the specific recommendations in the report, I would like to discuss two issues that speak to the progress of this program during the period covered by the review.

First, I would like to draw your attention to the effective date of Section 428(i). In your report, you indicated, "DHS did not implement all of Section 428. Specifically, DHS did not comply with the requirement to have DHS personnel in place in Saudi Arabia to review visa applications by January 24, 2003. Temporary personnel arrived on August 31, 2003." This statement is incorrect and we recommend that it be eliminated from the report.

As background, in the very early days of DHS, there were discussions regarding the effective date for section 428(i) and whether section 428(e)(8) was meant only to govern subsection (e) and not section 428 as a whole. The legislative history reveals that 428(e)(8) was misnumbered as a result of the many versions of the bill as it evolved. "Subsection" was actually intended to mean "section" and to apply to the entirety of Section 428. DHS Senior Counsel and others agreed that section 428(e)(8) was a drafting error and the final bill did not make clear that the 428(e)(8) effective date was meant to apply to section 428 as a whole.

Based on these circumstances, DHS determined that the signing of the Memorandum of Understanding (MOU) between DHS and the Department of State would be the effective date of the

provision and that screening would not occur until the MOU was concluded. Further, DHS believed the MOU had to be executed before implementation to ensure effective operations at post. Without an MOU, the agencies' respective roles and responsibilities at post would have been in question.

Quite apart from the legislative history, you must agree that, in practice, it was unrealistic to expect that DHS personnel would be in Saudi Arabia on January 24, 2003, when DHS was not created until over one month later through the transfer of 22 agencies on March 1, 2003.

Second, I want to update you on the significant progress that the Program has made in spite of two fundamental and critical challenges: the lack of funding, and the consequent reliance on temporary detailed, rather than permanent, program personnel.

Among other organizational accomplishments, the Program has:

- Recruited, trained, and deployed the initial Visa Security Officers in Saudi Arabia.
- Negotiated a Memorandum of Understanding with the Department of State (DOS).
- Recruited a headquarters staff serving long-term details.
- Developed a permanent headquarters organizational structure and assigned functional responsibilities.
- Developed position descriptions for both headquarters staff and Visa Security Officers. The positions will be announced as soon as funding is secured.
- Conducted planning sessions to guide continued program development over the next 12 months, to include formal Visa Security Officer training, and consular officer training and evaluation, as directed by Section 428.

Operationally, the Program has:

- Established and maintained visa security operations at two posts in Saudi Arabia, which review 100% of the applications in that country.
- Established initial visa review procedures and a database to track workload.
- Evaluated, with DOS Bureau of Consular Affairs, and selected five overseas posts for FY 2004 expansion, consistent with the Section 428 mandate and funding availability.
- Met with the Ambassadors and senior officers at each of the selected posts.
- Submitted NSDD-38s for the selected posts to the Department of State.
- Developed a detailed implementation plan to establish visa security operations at the selected posts.
- Recruited 35 experienced DHS officers to serve as Visa Security Officers overseas.
- Established a headquarters procedure for in-depth vetting of subjects of interest identified through visa security activities.
- Held intensive review sessions with returned Visa Security Officers to evaluate procedures and identify detailed requirements for system automation.
- Prepared the reports to Congress, as assigned by DHS.

BTS takes the funding challenge seriously and has been working diligently within DHS and with the Office of Management and Budget (OMB) to secure approval for the reprogramming of FY 2004 funding to support VSU and its overseas visa security operations. BTS further has proposed FY

2005 funding levels that would support the continued development of the program and expansion to five more sites in FY 2005.

Despite the funding constraints, the Program is doing everything possible to establish itself and meet the Congressional mandate. Many of the OIG's recommendations highlight limitations that cannot be resolved until the Program obtains the needed resources, as discussed below.

Response to OIG Recommendations

Recommendation 1: Develop a curriculum of homeland security training for consular officers consistent with the requirement in Section 428 (b) (1) of the Act.

BTS/ICE concur.

BTS views consular training as encompassing both formal and informal training activities. The OIG is correct that BTS has not yet implemented formal training of consular officers, as a result of funding and personnel resource constraints.

Informal training occurs routinely at the two Saudi posts and will continue to be a critical form of consular training as the program expands. Informal training involves day-to-day interactions between Visa Security Officers (VSOs) and individual consular officers. The VSOs share their law enforcement expertise and immigration experience with the consular officers to guide their interviews and refine document review methods. Informal training also generates valuable input to VSU headquarters about the types of formal training consular officers may need.

Funding is needed to enable two activities critical to the development of an appropriate and effective formal consular training program:

- Attend and observe consular training at the Foreign Service Institute, in order to make appropriate recommendations for supplemental training.
- Observe consular operations at posts around the world, in order to identify on-site training needs as well as how these might vary from post to post.

VSU has preliminarily identified three core areas of instruction that will be tailored and supplemented based on the needs identified, through the above activities:

- Interviewing techniques: Consular Officers will be trained in interviewing from a law enforcement perspective.
- Fraudulent Document Training and Analysis: The training will provide scenario-based instruction to provide Consular Officers practical experience in detecting fraudulent documents (passports, visas, birth, death, marriage and divorce certificates, and stamps) and impostors using the expertise of the ICE Forensic Document Laboratory.
- Counter-Terrorism Training / Terrorist Use of Fraudulent Documents / Terrorist Practices: The training will emphasize terrorist use of travel documents and other document-specific material. Trainees will learn the latest methods being used by terrorists to obtain and use fraudulent documents and how terrorists could use different visa categories to gain entry and remain in the United States.

Recommendation 2: Develop a training program for VSOs that includes foreign languages, country studies, and interview and fraud detection techniques.

BTS/ICE concur.

All VSOs have graduated from a five-month law enforcement academy. BTS/OIE arranged additional training for the VSOs deployed last fall to prepare them for operations in the context of this program. VSU is now proposing a VSO training curriculum that includes courses in area/country studies, life and operations at overseas posts, a review of counterterrorism methods, formal visa security procedures, and a review of interview and fraud document techniques as a refresher to the extensive training these officers already have received. VSU is currently coordinating with different course providers in anticipation of scheduling training as soon as the Program is funded.

With regard to language training specifically, given the Program's lack of funding and reliance on detailed personnel, BTS has had no funding with which to provide language training to the VSOs already deployed and cannot reasonably provide extensive language training to VSOs on temporary details or short tours. Based on BTS' assessment of need, BTS may provide language training to permanent VSOs as necessary and to the extent possible, as Congress suggests in Section 428(e)(6)(A). In the meantime, language skills are a criterion for selecting TDY volunteers. BTS/ICE will continue to lobby for funding for language training as an essential element to the success and security of the Program.

Recommendation 3: In coordination with DOS, develop performance standards to evaluate consular officers.

BTS/ICE concur.

BTS plans to work with DOS to establish appropriate performance standards for DOS' use in evaluating consular officers. BTS anticipates defining its role as an auditing function of DOS' own evaluation practices. VSU recognizes that its recommendation of performance standards as a basis for such an audit is, like the formal consular training program, dependent upon developing a sophisticated understanding of basic consular officer training, of how consular officers currently are evaluated, and of operating practices and skill sets at multiple posts.

As soon as BTS secures funding for the Program, it will deploy additional VSOs to the five selected posts and send Program staff to DOS training. This will enable the Program to work with DOS to develop performance standards in FY2005. BTS cannot provide a more specific date at this time due to the uncertainty about when funding will be available.

Recommendation 4: Develop written criteria for assigning VSOs to other countries.

BTS/ICE concur.

BTS has recommended that DHS establish five posts each fiscal year, funding permitting. Given global risk, BTS has developed site selection criteria that consider a range of quantitative and qualitative information to assess the overall risk and need for visa security operations at a given post. [See Attachment B. Law Enforcement Sensitive: Redact before publishing.]

A key step in the selection process is a site assessment coordinated with DOS Bureau of Consular Affairs. In the site assessment, BTS and Consular Affairs representatives visit those posts considered to be candidates for visa security operations. During these visits, BTS and the Consular Affairs representative consult with the senior officials at the posts, including the Ambassador, the

Deputy Chief of Mission, the Regional Security Officer, the FBI Attaché, and Department of Defense. Through these discussions, BTS gains a full appreciation of the conditions in the country, which informs the site selection process.

Based on information from the intelligence community, country specific and law enforcement information, and the site assessments conducted by BTS and Consular Affairs, DHS has selected five posts for the next assignment of VSOs.

Recommendation 5: Assign responsibility to develop and publish the report to Congress required by Section 428(e)(4).

BTS/ICE concur.

BTS/OIE submitted the first annual report to BTS at the end of May 2004. DHS submitted the report to OMB on June 6, 2004. DHS will assign responsibility for drafting future reports.

Recommendation 6: Conduct a study of the personnel management techniques used by other agencies with a global workforce and evaluate ways to facilitate the overseas rotations of DHS employees.

BTS/OIE concur.

DHS/OIE are currently conducting a comprehensive assessment of its international operations to determine the best alignment and support of the department's global mission.

Recommendation 7: Discontinue the practice of filling the VSO positions with temporarily assigned officers and move toward filling the positions with permanently assigned officers.

BTS/ICE concur.

BTS agrees that the continued reliance on temporary detailed staff is not ideal for the continuity of operations and the ongoing development of this new program. Until dedicated funding is approved by OMB for the Program, BTS, by necessity, will continue to rely on temporary staff to execute the mission assigned by Congress. As noted above, BTS has been working closely with DHS and with the Office of Management and Budget to reprogram FY 2004 funds to enable the program to hire permanent personnel at headquarters and overseas.

With respect to the length of the details, BTS acknowledges that initially, due to rapid deployment, some detailees served shorter tours. BTS notes, however, that all of the current VSOs have been at post at least 6 months (one – a native Arabic speaker -- has served since operations began in October 2003).

Recommendation 8: Establish criteria for selecting VSOs based on required experience and skill sets to support the visa security operation.

BTS/ICE concur.

All of the VSOs deployed to Saudi Arabia are seasoned law enforcement officers with an average of 20 years' experience (the least experienced officer has seven years' experience in immigration law enforcement and is a native Arabic speaker; the next least experienced, 15 years; the rest, over 20 years). The report states that none of the VSOs was familiar with the "visa issuance process." The initial deployment of immigration officers to Saudi Arabia was accomplished with officers serving overseas in U.S. Embassies. All of these officers had worked on a daily basis with consular officers and have been intimately aware of the consular process both prior to and after 9-11. All but one of the second team of detailees was drawn from immigration and law enforcement officers who had previously served overseas in U.S. Embassies and consulates and as such were familiar with consular practices.

BTS/ICE has developed a staffing model for posts and has defined selection criteria for VSOs. These criteria include: law enforcement expertise, including investigations; counterterrorism experience; immigration law knowledge; experience working overseas in a diplomatic and interagency context; and language training. BTS has and will continue to select the best-qualified personnel to accomplish this mission.

Recommendation 9: Establish a funding mechanism to ensure that the visa security operations receive all required support and that DOS is promptly reimbursed for the support that it provides.

BTS/ICE concur.

As noted elsewhere, BTS/ICE have been working aggressively to secure funding for the Program. The request to reprogram the requisite funds is currently with OMB.

BTS recognizes the importance of reimbursing DOS timely for operating costs. The BTS/ICE account with DOS for the Saudi operations is current.

Recommendation 10: Propose a technical correction to Section 428(i) to align it with Section 428(e) and permit DHS to review only those applications with homeland security interest in Saudi Arabia.

BTS/ICE do not concur.

DHS does not at this time propose to ask Congress for amendments of this provision. DHS believes that all visa review is valuable to screen for a variety of systemic vulnerabilities in the visa process. Additionally, it would be too time consuming to manually exclude some applicants from review.

Recommendation 11: Evaluate the possible benefit of analyzing the existing visa applications in DOS files of young Saudi males who were issued visas in the two year period prior to September 11, 2001. BTS should coordinate with DOS, the FBI, and other federal agencies, as necessary, before making a determination about whether, or how, to proceed to analyze the applications.

BTS/ICE concur.

BTS/ICE agrees that there may be value in reviewing those applications, both to identify potential "sleeper" agents as well as to understand changes in Saudi visa patterns that Section 428 activities may have yielded.

BTS/ICE is currently working with DOS to obtain enhanced access to the Consular Consolidated Database (CCD) so that BTS personnel readily perform such reviews and analyses as the one suggested by the OIG. BTS cannot at this time commit to a specific action or timeframe in this regard.

Recommendation 12: Develop an interface between BTS and DOS computer systems that permits a fast and efficient method to automate the visa security name check process and eliminate the duplicative data entry for database checks.

BTS/ICE concur.

BTS/ICE agrees that the process needs to be streamlined. As an interim solution, the VSOs at the Saudi posts have arranged to receive basic applicant biographic and visa data electronically, through daily data feeds from CCD locally. This data flow has been in place in Jeddah since March and currently is being implemented in Riyadh. This eliminates significant data entry and enables the VSOs to focus entirely on visa security activities.

VSU is currently working with DOS to secure enhanced access to CCD and plans to arrange standard daily data feeds for each future post.

Attachment A: Background on the Program

Role and Authority

The role of DHS' Visa Security Program (the Program) is to identify, manage, and correct systemic vulnerabilities in the visa process that could otherwise be exploited by terrorists. DHS derives its authority in the visa process from Section 428 of the Homeland Security Act of 2002. In addition to providing DHS a leadership role in visa policy and oversight, Section 428 directs DHS to conduct the following operational activities:

- Deploy DHS officers to visa-issuing posts around the world
- Provide expert advice and training to consular officers at post regarding specific security threats presented by individual or classes of visa applications
- Review any visa applications submitted to DOS at post, including all visa applications submitted in Saudi Arabia
- Investigate consular matters under the jurisdiction of DHS, at post
- Evaluate consular officers based on performance standards established by DHS

Section 428 also assigned DHS responsibility for three reports to Congress:

- A one-time report on initial program implementation, to be submitted within a year of enactment of the Act;
- A one-time report on the role of Foreign Service Nationals in the visa process at post, to be submitted within a year of enactment of the Act; and
- An annual report on the assignment of officers to visa issuing posts, including an explanation of why assigning officers to any post would not promote homeland security.

Program Timeline

The Program was launched in 2003 under the leadership of the Office of International Enforcement (OIE) within the Directorate of Border and Transportation Security (BTS). OIE established initial visa security operations in Saudi Arabia, per Section 428. The Secretary subsequently assigned responsibility for visa security to the Bureau of Immigration and Customs Enforcement (ICE), which established a Visa Security Unit (VSU) within the Office of International Affairs to execute operations. OIE continues to contribute policy expertise to the program, while VSU is responsible for day-to-day visa security operations.

The key milestones in the Program's establishment are as follows:

- | | |
|---------------------|---------------------------------------------|
| • November 25, 2002 | Homeland Security Act signed |
| • January 24, 2003 | Department of Homeland Security established |
| • March 1, 2003 | Personnel assigned to DHS |

Appendix B
Management Comments

- | | |
|----------------------|------------------------------------------------------------------------------------------------------------------|
| • August 1, 2003 | Office of International Enforcement established within BTS and given responsibility for visa security operations |
| • September 26, 2003 | Memorandum of Understanding with DOS signed |
| • October 4, 2003 | Visa security operations begin in Saudi Arabia |
| • October 31, 2003 | Secretary assigns visa security to ICE |
| • January 4, 2003 | ICE Visa Security Unit (VSU) begins operations |
| • June 6, 2004 | Joint report on first year implementation and assignment of officers to posts, submitted to OMB |
| • June 17, 2004 | Report on FSNs cleared by OMB for submittal to Congress |

Attachment B: Site Selection Criteria

This attachment contained “For Official Use Only” information. We withheld the attachment at the request of BTS.

We evaluated BTS' written comments and have made changes to our draft report where we deemed appropriate. Below is a summary of BTS' written response to the report's recommendations and our analysis of their response.

The BTS said that the following statements in our draft report were incorrect.

“DHS did not implement all of Section 428. Specifically, DHS did not comply with the requirement to have DHS personnel in place in Saudi Arabia to review visa applications by January 24, 2003. Temporary personnel arrived on August 31, 2003.”

We received differing opinions regarding the effective date of the implementation of Section 428 requirements. The OIG's Office of Counsel reviewed the Act and made a determination that the effective date was 60 days following the passage of the Act. The Act was passed on November 25, 2002, making the effective date January 24, 2003. We acknowledge that DHS was not formally established until March 1, 2003, making implementation of the Section 428 requirements difficult.

BTS' response also discussed an apparent “legislative error” regarding the effective date of Section 428(i), which required that DHS personnel review all visa applications in Saudi Arabia. Section 428(e)(8) set the effective date of the deployment of DHS personnel to diplomatic and consular posts, other than Saudi Arabia, as the earlier of either the signing of an MOU between DHS and DOS, signed on September 29, 2003, or one year after the passage of the Act, November 25, 2004. According to BTS, Section 428(e)(8) was “misnumbered.” BTS believes that “subsection” actually was intended to mean “section” and it applied to the entirety of Section 428, thereby implying that the effective date of Section 428(i) was not until after the September 29, 2003 signing of the MOU. We never heard this discussion during the course of our interviews with BTS officials concerning the effective date. Further, this argument was never brought forward during our two meetings with the Under Secretary of BTS.

Throughout its response to our draft report, BTS said that implementation of many of the Section 428 requirements was contingent upon receiving dedicated funding for those requirements. We also recognize that many of the Section 428 requirements remain unfunded. We urge BTS to continue its aggressive efforts to identify its funding requirements to congress until this problem is resolved.

1. Develop a curriculum of homeland security training for consular officers consistent with the requirement in Section 428 (b) (1) of the Act.

BTS agreed that a formal training program for consular officers was needed. VSU preliminarily identified three core areas of instruction that will include interviewing techniques, fraudulent document training and analysis, and counter-terrorism related training.

BTS' plan to develop a curriculum to train consular officers is responsive to this recommendation.

Recommendation 1 – Resolved – Open.

2. Develop a training program for VSOs that includes foreign languages, country studies, and interview and fraud detection techniques.

BTS agreed with the need to provide VSO specific training to officers assigned to VSUs. BTS is developing a VSO training curriculum that includes courses in country studies, life and operations at overseas posts, a review of counterterrorism methods, formal visa security procedures, and a review of interview and fraud document techniques as a refresher to the extensive training these officers already have received. BTS also agrees, though funding has not been provided, that language training for VSOs was important and that it will be provided as funding permits. Further, BTS said that one of the criteria that it will use to select future VSOs will be language skills.

BTS's plan to develop the VSO training curriculum is responsive to this recommendation. With respect to language training, law enforcement officers and intelligence analysts assigned to a country in which they cannot speak or read the language cannot be as effective as possible. As we observed in Saudi Arabia, the VSOs were most effective when they could converse with host-country immigration and security officials and read traveler documents. Therefore, BTS should continue to pursue funding to support a VSO language training program.

Recommendation 2 – Resolved – Open.

3. In coordination with DOS, develop performance standards to evaluate consular officers.

BTS said that it will establish appropriate performance standards for DOS' use in evaluating consular officers. This effort is responsive to the recommendation. However, we do not agree that work on developing the performance standards needs to be delayed until the deployment of VSOs to the next five sites. BTS should begin this effort immediately with the assistance of DOS officials.

Recommendation 3 – Resolved – Open.

4. Develop written criteria for assigning VSOs to other countries.

BTS developed site selection criteria that consider a range of quantitative and qualitative information to assess the overall requirement for a VSU at a given location. Further, it developed a site assessment process that involves an on-site visit and consultations with senior officials at the posts, including the Ambassador, the Deputy Chief of Mission, the Regional Security Officer, the FBI Attaché, and Department of Defense. Using this process, BTS has selected five posts for the next assignment of VSOs.

The development of site selection criteria and the process for making site assessments are responsive to this recommendation. No further action is required.

Recommendation 4 – Closed.

5. Assign responsibility to develop and publish the report to Congress required by Section 428(e)(4).

BTS submitted the annual report for OMB review on June 6, 2004. As of August 1, 2004, the annual report has not been presented to congress. BTS said that it will assign responsibility for drafting future annual reports.

BTS' actions and plans are responsive to this recommendation. However, the draft annual report did not meet the full intent of the Section 428 (e)(1) requirement, which “authorizes the assignment of VSOs to diplomatic and consular posts at which visas are issued **unless the Secretary determines that such an assignment at a particular post would not promote homeland security** [emphasis added].” Section 428(e)(4) requires a report “that describes the basis for each determination under paragraph (1) that the assignment of an employee of the Department at a particular diplomatic or consular post would not promote homeland security.”

While the draft report describes current visa security operations and discusses the general criteria used to select future VSU sites, it does not describe the specific information BTS used to select the next five VSU sites or, for example, why these sites promote homeland security more than other sites. Further, it does not describe why other sites were not selected.

Also, while not required by Section 428, BTS missed an opportunity to present to congress the costs of deploying VSOs to the five selected sites. BTS contends throughout its response to our draft report that funding is a major impediment to fully complying with all Section 428 requirements. Yet, in its report to congress, BTS does not describe the details of this significant funding requirement. We strongly suggest that before the final annual report is issued to congress that BTS address these two concerns.

Recommendation 5 – Resolved – Open.

6. Conduct a study of the personnel management techniques used by other agencies with a global workforce and evaluate ways to facilitate the overseas rotations of DHS employees.

BTS said that DHS currently is conducting a comprehensive assessment of its international operations to determine the best alignment and support of the department's global mission.

This action is responsive to our recommendation. The assessment should include an overseas rotation plan for personnel that promotes the timely and equitable assignment of qualified personnel to overseas sites and their subsequent reassignment to the United States.

Recommendation 6 – Resolved – Open.

7. Discontinue the practice of filling the VSO positions with temporarily assigned officers and move toward filling the positions with permanently assigned officers.

BTS agreed to discontinue its reliance on temporarily assigned staff. Until dedicated funding for the VSO program is secured, BTS plans to work with DHS and OMB to reprogram FY 2004 funds to enable the program to hire permanent assigned staff.

BTS' plan to discontinue the use of temporarily assigned officers is responsive to this recommendation.

Recommendation 7 – Resolved – Open.

8. Establish criteria for selecting VSOs based on required experience and skill sets to support the visa security operation.

BTS developed a staffing model for VSUs and selection criteria for VSOs.¹⁶ BTS' actions are responsive to this recommendation and no further action is required

Recommendation 8 – Closed.

9. Establish a funding mechanism to ensure that the visa security operations receive all required support and that DOS is promptly reimbursed for the support that it provides.

BTS said that it has been aggressively pursuing dedicated funding for the VSU program and that a current budget reprogramming plan is with OMB awaiting approval.

BTS' on-going efforts to obtain funding are responsive to this recommendation. BTS noted that its account with DOS for the Saudi Arabia operation is now current. This status is a marked improvement since our visit to Saudi Arabia in March 2004.

Recommendation 9 – Resolved – Open.

10. Propose a technical correction to Section 428(i) to align it with Section 428(e) and permit DHS to review only those applications with homeland security interest in Saudi Arabia.

BTS said that it does not plan to propose an amendment to modify Section 428(i). BTS believes that reviewing all visa applications is worthwhile and that the process to exclude those visa applications without homeland security interest would be too time consuming.

While BTS non-concurred with this recommendation, we agree with BTS' rationale for not seeking to amend the legislation. At our exit conference, BTS officials explained that because of the improvements in data processing made since our visit to Saudi Arabia in March 2004, separating applications in Saudi Arabia before review will reduce, not increase, the efficiency and effectiveness of the VSOs. Further, they said that they intend to review all visa applications in other countries as the VSU program expands even though not required by Section 428. In addition, BTS officials believe that there are additional law enforcement benefits that can be gained by reviewing all visa applications. This recommendation requires no further action.

Recommendation 10 – Closed.

¹⁶ Based on additional information provided by BTS, we amended our draft report where we discuss the experience levels of the VSOs initially assigned to Saudi Arabia.

11. Evaluate the possible benefit of analyzing the existing visa applications in DOS files of young Saudi males who were issued visas in the two year period prior to September 11, 2001. BTS should coordinate with DOS, the FBI, and other federal agencies, as necessary, before making a determination about whether, or how, to proceed to analyze the applications.

BTS agrees that there may be value in reviewing pre-September 11 visa applications. However, it is waiting to obtain enhanced access to the Consular Consolidated Database (CCD). BTS does not know when it may begin the review.

BTS' intention to review the visa applications is responsive to this recommendation. However, we do not understand the need to delay the review pending enhanced access to CCD. BTS does not define the meaning of "enhanced access" or how this access will facilitate the review process. CCD contains only a portion of the data from the visa application. Other potentially valuable information is available only on the actual visa application. Therefore, a comprehensive review would require reviewing the actual visa applications. BTS should begin the review of these visa applications as soon as possible. Further delays will decrease the potential homeland security value of the information that they contain.

Recommendation 11 – Resolved – Open.

12. Develop an interface between BTS and DOS computer systems that permits a fast and efficient method to automate the visa security name check process and eliminate the duplicative data entry for database checks.

BTS agreed that the data entry process needed to be streamlined and has developed an interim solution to reduce the amount of time VSOs must spend entering data. In addition, BTS plans to secure enhanced access to CCD for current and future VSU sites.

BTS' interim and long range plans to streamline the data entry process is responsive to this recommendation.

Recommendation 12 – Resolved – Open.

Recommendation 1: Develop a curriculum of homeland security training for consular officers consistent with the requirement in Section 428 (b) (1) of the Act.

Recommendation 2: Develop a training program for VSOs that includes foreign languages, country studies, and interview and fraud detection techniques.

Recommendation 3: In coordination with DOS, develop performance standards to evaluate consular officers.

Recommendation 4: Develop written criteria for assigning VSOs to other countries.

Recommendation 5: Assign responsibility to develop and publish the report to Congress required by Section 428(e)(4).

Recommendation 6: Conduct a study of the personnel management techniques used by other agencies with global workforces and evaluate ways to facilitate the overseas rotations of DHS employees.

Recommendation 7: Discontinue the practice of filling the VSO positions with temporarily assigned officers and move toward filling the positions with permanently assigned officers.

Recommendation 8: Establish criteria for selecting VSOs based on required experience and skill sets to support the visa security operation.

Recommendation 9: Establish a funding mechanism to ensure that the visa security operations receive all required support and that DOS is promptly reimbursed for the support that it provides.

Recommendation 10: Propose a technical correction to Section 428(i) to align it with Section 428(e) and permit DHS to review only those applications with homeland security interest in Saudi Arabia.

Recommendation 11: Evaluate the possible benefit to be gained by analyzing the existing visa applications in DOS files of young Saudi males who were issued visas in the two year period prior to September 11, 2001. BTS should coordinate with DOS, the FBI, and other federal agencies, as necessary, before making a determination about whether, or how, to proceed to analyze the applications.

Recommendation 12: Develop an interface between BTS and DOS computer systems that permits a fast and efficient method to automate the visa security name check process and eliminate the duplicative data entry for database checks.

Appendix E
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