

Department of Homeland Security **Office of Inspector General**

DHS' Efforts To Screen Members of Foreign Terrorist Organizations

(Redacted)





OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

July 22, 2013

MEMORANDUM FOR:

The Honorable David F. Heyman
Assistant Secretary
Office of Policy

The Honorable John T. Morton
Director
U.S. Immigration and Customs Enforcement

Thomas S. Winkowski
Deputy Commissioner of U.S. Customs and Border Protection,
Performing the duties of the Commissioner of U.S. Customs
and Border Protection

FROM:

Charles K. Edwards
Deputy Inspector General

SUBJECT:

*DHS' Efforts To Screen Members of Foreign Terrorist
Organizations – Law Enforcement Sensitive/For Official
Use Only*

Attached for your information is our final report, *DHS' Efforts To Screen Members of Foreign Terrorist Organizations – Law Enforcement Sensitive/For Official Use Only*. We have also included a redacted version of the report, which will be published on our website. We incorporated the technical and formal comments from the Departments of Homeland Security (DHS), State, and Justice in the final report where we deemed appropriate.

The report contains three recommendations aimed at improving operational challenges that may reduce the effectiveness of DHS' visa security processes. In response to our report, U.S. Immigration and Customs Enforcement concurred with all three recommendations, which are resolved and open.

As prescribed by DHS Directive 077-01, Follow-Up and Resolutions for the Office of Inspector General Report Recommendations, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation.

Until your response is received and evaluated, the recommendations will be considered resolved and open.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over DHS.

Please call me with any questions, or your staff may contact Deborah L. Outten-Mills, Acting Assistant Inspector General for Inspections, at (202) 254-4015, or Marcia Moxey Hodges, Chief Inspector, at (202) 254-4202.

Attachments



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Abbreviations

ARO	Admissibility Review Office
CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
DOJ	Department of Justice
DOS	Department of State
ERO	Enforcement and Removal Operations
FTO	Foreign Terrorist Organization
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act
MOU	Memorandum of Understanding
OIG	Office of Inspector General
PATRIOT	Pre-Adjudicated Threat Recognition and Intelligence Operations Team
SAO	Security Advisory Opinion
VSP	Visa Security Program
VSU	Visa Security Unit



Executive Summary

The *Homeland Security Act of 2002* transferred to the Department of Homeland Security (DHS) a prominent role in the visa security process. Several DHS components, as well as other U.S. Government departments and agencies, have roles and responsibilities to ensure that members of Foreign Terrorist Organizations who seek admission into the United States may be admitted only in compliance with applicable Federal laws.

In June 2012, Egyptian Hani Nour Eldin visited the United States as a member of an Egyptian parliamentary delegation to meet with U.S. Government officials and business leaders. During this visit, Mr. Eldin raised with White House officials the possibility of transferring Omar Abdel Rahman, a convicted terrorist, from U.S. custody to Egyptian custody. In June 2012, former Chairman Peter T. King, of the House Committee on Homeland Security, raised concerns that Mr. Eldin, a self-proclaimed member of Gama'at al-Islamiyya (the Islamic Group), which the Department of State has designated a Foreign Terrorist Organization since 1997, was issued a visa and granted admission into the United States. Former Chairman King requested that we review DHS admissibility processes for members of Foreign Terrorist Organizations. He also asked that we establish whether DHS has a potential role or has been consulted about transferring convicted terrorist Omar Abdel Rahman from U.S. custody to Egyptian custody, for "humanitarian and health reasons."

We assessed DHS' efforts to screen members of Foreign Terrorist Organizations. Specifically, we reviewed whether (1) DHS has policies and procedures for admitting members of Foreign Terrorist Organizations into the United States; (2) DHS and the Department of State coordinate their efforts when waivers for inadmissibility are granted to members of Foreign Terrorist Organizations; (3) the admittance of a specific individual to the United States was in compliance with applicable Federal laws and DHS policies; and (4) DHS has a role in custodial transfers of foreign nationals who are in Department of Justice custody on terrorism charges.

We determined DHS has policies and procedures for admitting members of Foreign Terrorist Organizations into the United States, and collaborating with other departments and agencies when screening members of Foreign Terrorist Organizations and issuing inadmissibility waivers. DHS did not determine any derogatory information on Mr. Eldin prior to admitting him, and DHS followed established procedures for allowing Mr. Eldin into the United States. However, we identified operational challenges that may reduce the effectiveness of DHS' visa security processes. We are making three recommendations



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to enhance DHS' efforts to screen members of Foreign Terrorist Organizations. The Department concurred with all recommendations.



Background

In June 2012, Egyptian Hani Nour Eldin visited the United States as a member of an Egyptian parliamentary delegation, which had been newly elected after the resignation of former Egyptian President Hosni Mubarak.¹ These Egyptian Parliament members came to Washington, DC, in part, to meet with senior U.S. Government officials to discuss bilateral relations between the two countries. Mr. Eldin is an elected member of the Construction and Development Party, affiliated with Gama'a al-Islamiyya (the Islamic Group), which the Department of State (DOS) has designated as a Foreign Terrorist Organization (FTO) since 1997. The party itself, however, is not a U.S.-designated FTO. During a meeting with White House officials, Mr. Eldin raised the possibility of transferring Omar Abdel Rahman, a spiritual leader to the Islamic Group, from U.S. custody to Egyptian custody. Mr. Rahman, also known as the "Blind Sheik," is currently serving a life sentence without parole in U.S. Federal prison as a result of his conviction on terrorism-related charges in connection with the 1993 World Trade Center bombing.

According to a June 21, 2012, news article, Mr. Eldin was arrested in 1993 on terrorism charges relating to a shooting incident between members of the Islamic Group and Egyptian police.² In his interview for the article, Mr. Eldin denied having a role in the shooting, and said he was arrested because of his political activism. In the interview, Mr. Eldin also admitted to being an Islamic Group member but denied being a terrorist.

In June 2012, former Chairman Peter T. King, of the House Committee on Homeland Security, raised concerns that a foreign national with connections to an FTO was issued a visa and granted admission into the United States. On August 15, 2012, Former Chairman King requested that we review DHS' admissibility processes for foreign nationals who are members of FTOs. Specifically, he requested we examine the circumstances surrounding Mr. Eldin's June 2012 admission, and determine what DHS policies and procedures exist for admitting members of FTOs into the United States. In addition, he asked that we establish whether DHS has a potential role or has been consulted about transferring convicted terrorist Omar Abdel Rahman from U.S. custody to Egyptian custody, for humanitarian and health reasons.

¹ Hani Nour Eldin applied for a nonimmigrant visa under his passport name, Hany Noureldin Abobakr Sedik, but is referenced in this report by his commonly known name in Egypt, Hani Nour Eldin.

² Eli Lake, "Member of Egyptian Terror Group Goes to Washington," *The Daily Beast* (21 June 2012).



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DHS Core Missions Related to Screening and Admission of FTO Members

Protecting the American people from terrorist threats is one of DHS' founding principles. One manner in which the Department carries out this mission is prohibiting inadmissible persons from entering the United States, while safeguarding lawful travel of eligible individuals. DHS derives this authority from Section 428 of the *Homeland Security Act of 2002*, which transferred to DHS a prominent role in the visa security process. Section 428 of the act generally provides the Secretary of DHS the authority to administer *Immigration and Nationality Act* (INA) provisions, as well as other laws relating to the issuance of visas by DOS consular officers. This authority includes the ability to assign personnel to DOS posts, review visa applications, grant waivers of inadmissibility, train consular officers, and refuse the issuance of a visa. Within DHS, the Office of Policy, U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) all contribute to screening FTO members who attempt to travel to the United States on nonimmigrant visas.

DHS' Office of Policy is responsible for developing departmental policies, programs, and planning to promote and ensure quality, consistency, and integration across all homeland security missions. The Office of Policy also engages with external stakeholders on a variety of issues related to nonimmigrant visas and border security. Various offices within the Office of Policy play a role in integrating programs aimed at protecting our borders, and the integrity of lawful travel to and from the United States:

- The Office of Immigration and Border Security develops and coordinates immigration policies and procedures, including issues related to immigrant and nonimmigrant visas.
- The Screening Coordination Office oversees and coordinates interagency and intradepartmental screening policies and procedures.
- The Office of International Affairs develops strategy for coordinating the Department's homeland security mission overseas, and actively engages with international partners to counter terrorism, enhance security, and improve border security management.

ICE performs screening and vetting of visa applicants through its Visa Security Program (VSP). ICE's VSP was established in the *Homeland Security Act of 2002*, to increase the security of the visa process at U.S. embassies and consulates.³ The program enhances

³ *Homeland Security Act of 2002* (Pub. L. No. 107-296), § 428 (2002).



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national security by preventing terrorists, criminals, and other ineligible applicants from receiving visas. In 2007, Congress appropriated \$5 million to create the Security Advisory Opinion (SAO) Unit within ICE's VSP.⁴ The SAO Unit operates in accordance with processes defined in a Memorandum of Understanding (MOU) between ICE and DOS.⁵ As of March 2013, ICE's VSP had 20 Visa Security Units (VSU) to support DOS visa security operations at U.S. embassies and consulates throughout the world.

CBP considers keeping terrorists out of the United States one of its priority missions. Within this mission's framework, CBP is responsible for facilitating lawful international travel, while enforcing hundreds of U.S. laws and regulations, including immigration laws. Accordingly, DHS' authority to waive temporarily most grounds of inadmissibility is delegated to CBP.⁶ Within CBP's Office of Field Operations, its Admissibility and Passenger Programs – Admissibility Review Office (ARO) is charged with adjudicating all nonimmigrant waiver applications pursuant to INA § 212(d)(3) in the CBP jurisdiction.⁷ DHS created CBP's ARO in 2005 to achieve consistency in adjudicating nonimmigrant waivers.

Members of FTOs and Their Admissibility to the United States

Before traveling to the United States, foreign nationals must generally obtain a nonimmigrant visa for temporary stay. The INA, as amended, enumerates classes of aliens that are ineligible for either a visa or admission into the United States. For example, members of FTOs or individuals who have engaged or engage in terrorism-related activity, as defined by the INA, are inadmissible to the United States.⁸ The three categories of terrorist organizations established by the INA are listed in appendix D. The grounds for inadmissibility include, but are not limited to, individuals who—

- Have engaged in terrorist activity;⁹
- Are engaged or are likely to engage in terrorist activity after entry;¹⁰

⁴ *U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007*, H.R. 2206. A security advisory opinion is requested by DOS consular officers for visa applicants requiring extra scrutiny and additional security checks.

⁵ As of May 2013, the SAO Unit was in pilot status.

⁶ Section 212(d)(3)(A) of INA.

⁷ U.S. Citizenship and Immigration Services adjudicates waiver applications for the K, T, and U nonimmigrant visa classifications because these nonimmigrants are prospective immigrants.

⁸ Section 212(a)(3)(B)(i)(I) through (X) of INA.

⁹ Section 212(a)(3)(B)(iii) of INA defines the term "terrorist activity" as various actions commonly associated with terrorism such as kidnapping, assassination, hijacking, nuclear, biological, or chemical agents, the use of firearms or other dangerous devices, etc.



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- Incited terrorist activity with intent to cause serious bodily harm or death;
- Are representatives or current members of a terrorist organization;
- Endorsed or espoused terrorist activity;
- Received military-type training from or on behalf of a terrorist organization; or
- Are spouses or children of anyone who has engaged in terrorist activity within the past 5 years (with certain exceptions).¹¹

The INA, however, also contains provisions for certain ineligible applicants to apply for waivers of their ineligibility. The INA grants the Secretary of DOS and DOS consular officers the discretionary function to recommend waivers of ineligible nonimmigrant visas to DHS for approval.¹² These recommendations are made only when justified by foreign policy of other national interests. In addition, each waiver request requires individual consideration by DHS.

Visa Adjudication Cooperation and Coordination Between DHS and DOS

Border security and preventing terrorists from entering the United States requires broad information sharing, cooperation, and coordination among Federal Government departments and agencies. DHS and DOS are both engaged in decisions on whether to issue nonimmigrant visas, and subsequently admit aliens into the United States, including granting inadmissibility waivers to FTO members when it benefits U.S. national interests. An example may include granting an FTO member a waiver to attend United Nations General Assembly meetings, when foreign policy interests have been determined to outweigh any potential security threat.

Within DOS, the Bureau of Consular Affairs is responsible for visa operations, protecting U.S. border security, and facilitating legitimate travel to the United States. DOS consular officers overseas are responsible for issuing nonimmigrant and immigrant visas to foreign nationals who travel to the United States. In processing a visa application, consular officers review the application, conduct automated name checks against the watchlist of known or suspected terrorists and data systems of criminal suspects, obtain fingerprints, and interview the visa applicant. Then the consular officer decides whether to approve or deny the visa application, or to request additional security checks or information before adjudicating the application.

¹⁰ Section 212(a)(3)(B)(iv) of INA defines “engaging in terrorist activity” as planning or executing a terrorist activity, soliciting others to do so, providing material support to a terrorist organization or member of a terrorist organization, and soliciting funds or recruiting members for a terrorist organization.

¹¹ Section 212(a)(3)(B)(i) of INA.

¹² Section 212(d)(3)(A) of INA.



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DOS' Bureau of Consular Affairs and ICE's VSP Coordination

ICE's VSP officials interact and coordinate regularly with DOS officials at headquarters and overseas posts when conducting visa security functions. ICE VSU personnel overseas conduct visa security activities that can be post-specific, depending on the volume or type of visa applications, as well as available DOS resources at a post. ICE's VSP headquarters staff performs a variety of visa security checks for U.S. embassies and consulates, and work closely with DOS partners on many initiatives to strengthen visa security operations.

DOS' Bureau of Consular Affairs and CBP ARO Coordination

[REDACTED]

Processes and Procedures for Security Advisory Opinions and Admitting FTO Members

DHS works with its Federal partners collaboratively to evaluate visa applicants and determine whether it is in the national interest for a foreign national, who is inadmissible under INA § 212, to visit the United States on a temporary nonimmigrant waiver.

[REDACTED]

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¹³ Consular Lookout and Support System (CLASS) is used by passport agencies, consulates, and border inspection agencies to perform name-checks of visa and passport applicants in support of the issuance process. CLASS is as an automated index for manual files at overseas posts and passport offices.



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[REDACTED]

[REDACTED]

[REDACTED]

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¹⁴ Nonimmigrant visa applications will also be denied when applicants cannot overcome the presumption of immigrant intent required by law by sufficiently demonstrating that they have strong ties to their home country that will compel them to leave the United States at the end of their temporary stay.



DOS Referrals for Waiver Recommendations to CBP

[REDACTED] 15

[REDACTED] 16

[REDACTED] 18

¹⁵ In addition to being qualified for the visa, foreign nationals cannot be inadmissible under INA sections 212(a)(3)(A)(i), 212(a)(3)(A)(ii), 212(a)(3)(A)(iii), 212(a)(3)(C), or clauses (i) and (ii) of paragraph 212(a)(3)(E). Furthermore, foreign nationals must not be inadmissible under INA § 214(b) [an intending immigrant] and may not seek a waiver of nonimmigrant documentary requirements of INA § 212(a)(7)(B).

¹⁶ The Consular Consolidated Database contains DOS' immigrant and nonimmigrant visa records, including visa applications, refusals, or issuances.

¹⁷ [REDACTED]

¹⁸ TECS is an automated enforcement and inspections system that provides a large data system of information for law enforcement and border inspection purposes, and serves a case management function for ICE. The National Crime Information Center is a computerized index of criminal justice information, such as criminal record history, fugitives, stolen properties, and missing persons.



DHS' Role in Custodial Transfers

The Department of Justice (DOJ) has the primary responsibility for administering all aspects of the International Prisoner Transfer Program, including the arrangements for the physical transfer of prisoners who have been approved for transfer.¹⁹ A convicted foreign national is eligible to participate in the transfer program only if the prisoner is a national of the receiving country. Once the foreign government accepts custody of the prisoner, it assumes the responsibility of administering the transferred sentence.

DHS's role in the prisoner transfer process is limited. When DOJ receives a new transfer application, it is its practice, in all cases, to ask ICE for information about the immigration status of the prisoner. In those cases where DHS played an investigative role in the underlying prosecution, DOJ will also query DHS for its substantive views on the transfer request. If DOJ approves a case for transfer, it will sometimes contact ICE and request that it take action to obtain a removal order for the transferring prisoner.

Each quarter, DOJ provides a report to ICE that provides identifying information about all of the prisoners it has approved for transfer during that quarter. If the foreign country ultimately approves the transfer, DHS does not have an active role in the physical transfer of the prisoner. The Federal Bureau of Prisons, which has legal custody of the prisoner, is responsible for handling the arrangements for the transfer with the receiving country and for making the physical transfer of the prisoner to the foreign country escorts. This custodial exchange is done at an international airport. Approximately a week before the transfer, the Federal Bureau of Prisons notifies ICE of the date and place where the transfer will occur. After witnessing the departure of the prisoner, the Federal Bureau of Prisons executes a form, attesting to the transfer.²⁰ Per agreement with DHS, the Federal Bureau of Prisons provides DHS with a copy of this form for DHS' records.

¹⁹ 18. U.S.C. §§ 4100–4115.

²⁰ Federal Bureau of Prisons form BP-AO392.



Results of Review

Members of FTOs are inadmissible to the United States unless granted a temporary waiver of inadmissibility. When FTO members are granted waivers for admission into the United States, several DHS components, as well as other Federal Government departments and agencies, have roles and responsibilities to ensure it is accomplished in compliance with applicable Federal laws. DHS has policies and procedures for admitting members of FTOs into the United States. We identified, however, operational challenges that may reduce the effectiveness of DHS' visa security processes. Interagency notifications on visa security issues, potentially affecting admissibility to the United States, need refinement. Additionally, some DHS components do not have access to open source information resources, which may hinder the Department's ability to screen members of FTOs more effectively.

DHS Has Established Processes For Vetting Members of FTOs and Inadmissibility Waivers

DHS participates in vetting members of FTOs according to roles and responsibilities established in agreements with DOS. Under these agreements, the SAO process and ICE's VSP are important means for vetting visa applicants to determine potential affiliation with FTOs. Once affiliation has been established, DHS uses its temporary waiver of inadmissibility process to determine whether permitting a member of an FTO to visit the United States is in the national interest. Interagency committees at DOS posts supplement other efforts to collect derogatory information, and identify previously unknown individuals with FTO affiliations.

Memoranda of Understanding Define DHS and DOS Roles and Responsibilities Clearly

In 2003 and 2011, DHS and DOS established MOUs to help define each department's authorities, roles, and responsibilities under the *Homeland Security Act of 2002* Section 428. The 2003 MOU recognizes that both DHS and DOS have roles "to create and maintain an effective, efficient visa process that secures America's borders from external threats and ensures that [its] borders remain open to legitimate travel to the United States." According to this MOU, DHS will rely on DOS' foreign policy expertise, while DOS will rely on DHS' expertise on threats to U.S. security. The 2011 MOU was negotiated to facilitate



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day-to-day interactions between ICE VSU representatives at post, consular officers, and diplomatic security.

In addition to these general statements of intent, the 2003 MOU includes DHS' authority to issue or approve visa guidance.²¹ DHS and DOS are both entitled to consult on the security, legal, operational, resource, foreign policy, or foreign relations implications of visa guidance changes. DHS controls visa guidance over grounds of inadmissibility for visa applicants, and is responsible for determining when to grant waivers of inadmissibility, although it shares this duty with the secretaries of State and Interior for two classes of applicants. Consular officers or the Secretary of State may recommend candidates for such waivers to DHS.

The 2003 MOU also provides details for responsibility over SAOs. Specifically, DHS must concur on any changes DOS proposes to SAO policies and procedures. Moreover, DHS may direct changes to the SAO process when doing so serves the interest of homeland security.²²

The 2003 MOU also describes the following duties for DHS overseas personnel with Section 428 responsibilities:

- To provide advice to consular officers on specific threats posed by individual and classes of visa applications, including gathering intelligence on security threats through collaboration with other organizations at post and briefing consular officers accordingly;
- To provide training on terrorist threats and interview techniques that identify threats or fraudulent applications;
- To conduct investigations on consular matters under DHS jurisdiction;
- To review visa applications, either at the request of a consular officer or by a process defined by DHS; and
- To recommend to senior DOS officials at post that a visa be denied or revoked.

²¹ Visa guidance is defined as regulations, *Foreign Affairs Manual* provisions, and DOS cables to posts implementing laws pertaining to visas.

²² This right to modify SAO processes does not include SAOs sought in relation to functions covered by paragraph 3(a)(2)(b) of the 2003 MOU.



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The 2011 MOU provides additional details on the roles and responsibilities of ICE and DOS personnel stationed overseas. ICE's VSP's primary purpose is to maximize the visa process as a counterterrorism tool, and identify ineligible visa applicants prior to their travel to the United States. [REDACTED]

[REDACTED] The MOU describes the dispute resolution process in cases where DOS and DHS personnel at post do not agree. Despite this discussion, the 2011 MOU states that disagreements are rare, and our fieldwork confirmed this statement.

We determined that the MOUs effectively create guidance over the visa security process, including the relationship between DHS and DOS. Officials from both departments described their relationship as positive and productive. The MOUs also provide a means for making changes when doing so will enhance visa security. Moreover, the existence of the 2011 MOU demonstrates that the existing visa governance framework permits DHS and DOS to negotiate and implement identified process improvements.

Current SAO Process Enhances Visa Security

Section 428 and its implementing MOUs leverage the SAO process. DOS uses SAOs to provide consular officers with additional information related to potential security concerns arising from particular visa adjudications. DOS administers the SAO process, and a review board comprised of DHS, DOS, the Federal Bureau of Investigation, other intelligence community members, and the National Counterterrorism Center oversees the process and meets as needed. The SAO Requirements Review Board attempts to increase security, while eliminating unnecessary delays. For example, in 2007 the SAO board streamlined processing requirements for one SAO category. As a result, departments and agencies participating in the SAO review process received a travel advisory notice for applicants meeting certain criteria, but did not have to provide a response.

DOS and DHS staff said the SAO process enhances visa security. A DOS Bureau of Consular Affairs official said the SAO process is designed to prevent dangerous individuals from traveling to the United States. We determined that officials from both departments have knowledge of the SAO process, and that this



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process permits multiple departments and agencies to provide constructive comments on the visa security process.

Visas Viper Committees Improve Visa Security

In addition to the SAO process, DOS posts maintain interagency committees to improve visa security. Section 304 of the *Enhanced Border Security and Visa Entry Reform Act of 2002* requires each DOS foreign mission to maintain a terrorist lookout committee.²³ Committee requirements are detailed in the U.S. Department of State *Foreign Affairs Manual Volume 9 – Visas*, “Visas Viper Interagency Terrorist Reporting Program.” Visas Viper committees are to—

- Use the cooperative resources of all elements of the U.S. mission in the country in which the consular post is located to identify known or potential terrorists and to develop information on those individuals;
- Ensure that such information is routinely and consistently brought to the attention of appropriate U.S. officials for use in administering U.S. immigration laws; and
- Ensure that the names of known and suspected terrorists are entered into the appropriate lookout data systems.

Committees must meet at least monthly and, when engaged, enhance visa security. ICE VSU members stationed at DOS posts participate in Visas Viper meetings. An ICE VSU official described the program as providing an opportunity for various government departments and agencies located at a DOS post to circulate derogatory information on visa applicants. Another DHS official said Visas Viper committees have exhibited flexibility, such as conducting meetings via email message, when logistics or exigencies require it. Although the Visas Viper committee’s value ultimately depends on the quality of information shared, ICE officials suggested Visas Viper discussions are likely to prompt action, such as a more thorough review of a visa application or adding information to lookout data systems.

²³ Pub. L. No. 107-173.



DHS Followed Federal Laws and DHS Policies and Procedures When Admitting Mr. Eldin into the United States

DHS' review of Mr. Eldin's visa application complied with established processes.



Since Mr. Eldin was not deemed inadmissible to the United States, DOS did not request CBP's ARO to consider an application for temporary waiver of inadmissibility for Mr. Eldin. Without a waiver of inadmissibility granted, congressional notification requirements were not triggered.²⁴ Moreover, CBP followed established protocols when screening Mr. Eldin prior to his flight's departure and upon his arrival in the United States, allowing for Mr. Eldin's entry into the United States.

Circumstances Surrounding Mr. Eldin's Admission into the United States

Mr. Eldin applied for a nonimmigrant visa under his passport name, Hany Noureldin Abobakr Sedik, but he is widely known in Egypt as Hani Nour El Din. Mr. Eldin was one of eight newly elected Egyptian Parliamentarians, who were participating in a DOS-sponsored program in Washington, DC. The program began on June 17, 2012, and was an opportunity for these Egyptian Parliamentarians to meet with U.S. Government officials, business leaders, and think tank representatives. Table 1 identifies key dates and actions concerning Mr. Eldin's visa.

²⁴ Not later than 90 days after the end of each fiscal year, the Secretaries of DOS and DHS must submit a report to specified congressional committees on all individuals exempted under INA section 212(d)(3)(B)(i). DHS does not have a reporting requirement for individuals granted temporary waivers of inadmissibility under INA section 212(d)(3)(A).



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[Redacted]

[Redacted]

[Redacted]

[Redacted]

26

26

[Redacted]



[REDACTED]

[REDACTED]

[REDACTED]

CBP Admitted Mr. Eldin into the United States

The pre-departure Advance Passenger Information System requirement allows CBP to review passenger information before passengers board flights to the United States. The advance transmission of this information provides CBP the ability to identify potential threats and to prevent a person of interest from boarding an aircraft. CBP received Mr. Eldin’s biographical data prior to his flight’s departure, via Advance Passenger Information System, and the information was entered into CBP’s Automated Targeting System.²⁷

[REDACTED]

All foreign nationals applying for admission at a U.S. port of entry must undergo an inspection by CBP officers. [REDACTED]

²⁷ Automated Targeting System is CBP’s intranet-based enforcement and decision support tool that compares traveler, cargo, and conveyance against intelligence and other law enforcement data.



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[REDACTED] the CBP officer's interaction with the individual during primary inspection, determines whether an individual must undergo a more thorough secondary inspection, where additional questioning and record checks occur.

Upon Mr. Eldin's arrival in the United States, CBP screened him, and Mr. Eldin was identified as a member of an Egyptian delegation applying for admission as a visitor for official business. [REDACTED]

[REDACTED] As a result, Mr. Eldin was not referred to secondary inspection. CBP deemed Mr. Eldin admissible to the United States based on information available at the time of his arrival.

Visa Adjudication and Screening Procedures Can Be Enhanced

The SAO review process was designed to provide in-depth screening and vetting of certain visa applicants who might pose a range of security threats, including those with potential FTO affiliation. Departments and agencies participating in the visa security process rely on information from multiple data systems, post-specific vetting criteria, and interagency alerts on security concerns, to ensure that potentially inadmissible applicants are not issued visas. As noted by ICE's VSP officials, this interdependency means that the SAO process is effective only when departments and agencies share information to the fullest extent. Mr. Eldin's case, however, illustrates that the current SAO process does not always maximize effective information sharing. Consequently, not all appropriate visa security partners have a chance to evaluate and respond to potential inadmissibility information.

Visa application processing has time constraints, and visas requiring an SAO add to this timeframe. [REDACTED]

[REDACTED] Therefore, it is prudent to highlight, as effectively as possible, visa applicants who may require additional scrutiny. It is unclear, however, whether the current visa application process has sufficient procedures to analyze and triage these applicants.



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Effective information sharing is of particular concern regarding applicants, such as Mr. Eldin, for whom consular notes are the sole source of potential derogatory information. [REDACTED]

[REDACTED] the consular notes were the only indicator of Mr. Eldin's more commonly known name in Egypt.

[REDACTED]

One of the processes designed to enhance visa security is a Visas Viper meeting. ICE's VSP officials explained that the purpose of these meetings is to identify unknown terrorists, so that applicants, such as those with potential FTO affiliation, can be recognized even though they do not have a record automatically flagging them as security concerns. However, a Visas Viper meeting was not held for Mr. Eldin's visa. [REDACTED]

[REDACTED] The fact that a Visas Viper meeting could have resulted in additional scrutiny of Mr. Eldin emphasizes the need for more effective information sharing among visa security partners.



Recommendation

We recommend that the Director for U.S. Immigration and Customs Enforcement:

Recommendation #1:

Work with visa security partners to develop a threshold for interagency notifications, when information developed during the visa adjudication process identifies potential issues concerning an applicant's admissibility to the United States.

Management Comments and OIG Analysis

We evaluated ICE's written response and have made changes to the report where we deemed appropriate. A summary of ICE's written response to the report recommendations and our analysis of the response follows each recommendation. A copy of ICE's response, in its entirety, is included as appendix C.

In addition, we received technical comments from ICE, CBP, DOS, and DOJ, and incorporated these comments into the report where appropriate. ICE concurred with all recommendations in the report. We appreciate the comments and contributions made by DHS, DOS, and DOJ.

Management Response to Recommendation 1: ICE concurs with Recommendation 1. ICE officials responded that the scheduled Pre-Adjudicated Threat Recognition and Intelligence Operations Team (PATRIOT) initiative rollout will allow ICE's VSU special agents at post to receive nonimmigrant visa applications via the VSPTS.net, which is an upgraded version of the tracking system. The special agents will be able to review and vet the applications prior to DOS adjudicating the applicants. This will allow ICE's VSU special agents additional time and opportunity to discuss with DOS and other U.S. Government partners at post, and to highlight visa applicants who may require additional scrutiny, but would otherwise fall outside the targeting criteria of a particular post. Also, PATRIOT will allow the Visas Viper committee to be more effective as they will have the capability to discuss applicants prior to their initial visa interview with DOS. PATRIOT will give ICE's VSUs and DOS time to coordinate a course of action. With the combination of PATRIOT, DOS, and ICE's VSU's at



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post, the visa security process and information sharing will be strengthened greatly.

ICE officials further responded that determining whether an applicant is chosen for further scrutiny by the VSU at post is called the "targeting plan." The targeting plan is designed by each VSU at post based on the threat environment at that particular post. Some visa applicants will be designated as requiring an SAO. [REDACTED]

Along with the SAO process, each ICE VSU participates in an interagency committee to improve the visa security process. This is known as the Visas Viper committee. This process is used by DOS to nominate known or suspected terrorists to be entered in the appropriate lookout data systems. This process is important to ensure that derogatory information is being shared and to keep the visa process secure. After evaluation, ICE will be able to estimate better a target date for establishing the recommended procedures.

OIG Analysis: We consider ICE's proposed actions responsive to the intent of this recommendation, which is resolved and open. We will close this recommendation when we receive and have reviewed the threshold developed for highlighting visa applicants who may require additional scrutiny, but would otherwise fall outside the targeting criteria of a particular post.

New Initiatives To Improve the Visa Security Processes May Not Address Some Security Vetting Issues

Since 2004, ICE's VSP has been screening and vetting visa applications after the DOS consular officer interviews the applicant. In 2009, ICE visa security officials determined ICE could enhance the screening process by analyzing visa applications prior to DOS' adjudication. In addition, communication between various tracking systems needed improvement. Tracking systems did not permit real-time data exchange, which presented communications problems between departments and agencies, as well as ICE's VSUs. ICE officials engaged DOS, and visa security partners within DHS, and created a system to address these security concerns. However, the new system may not resolve certain security issues, such as those presented in Mr. Eldin's case.



Pre-Adjudicated Threat Recognition Intelligence Operations Team Initiative

In development since 2009, the PATRIOT program uses interagency resources from ICE, CBP, DOS, and the Intelligence Community to identify national security, public safety, and other eligibility concerns related to visa applicants. [REDACTED]

PATRIOT [REDACTED]

[REDACTED] screening results produce either a “green light” or “red light” response for DOS, indicating whether or not DHS holds derogatory information on an applicant. A red light indicates derogatory information, and locks an application in DOS’ systems to permit further review by ICE and CBP. A green light indicates no derogatory information, and permits DOS to begin visa issuance procedures.

When PATRIOT locks a nonimmigrant visa application, ICE and CBP personnel further vet any derogatory screening results. After ICE agents and CBP officers complete a joint review of the derogatory information, they inform DOS, via the Visa Security Program Tracking System, whether DHS objects to the visa issuance. All such objections are accompanied by a justification based on the INA or other legislation that restricts visa eligibility.²⁹ PATRIOT is web-based, and will permit real-time data exchange among all participating visa security departments and agencies.

With PATRIOT, ICE’s visa security review process is pre-adjudicative. This approach is intended to allow visa eligibility concerns to be identified earlier in the application process, resulting in enhanced security, better timeliness, and

²⁸ [REDACTED]

²⁹ Examples of legislation that restrict visa eligibility include Section 306 of the *Enhanced Border Security and Visa Responsibility Act of 2002*, and Section 501 of the *Iran Threat Reduction and Syria Human Rights Act of 2012* (Pub. L. No. 112-158).



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more transparency. Since visa security and eligibility concerns from DHS holdings will be identified and evaluated prior to a DOS applicant interview, a consular officer will be prepared better to ask more specific questions of those applicants. The initiative will also (1) allow ICE to screen 100 percent of applicants worldwide against DHS holdings when resources, primarily congressional funding and personnel from ICE, are sufficiently allocated; (2) decrease the number of SAO requests by consular officers because of advanced screening; and (3) provide DOS with one answer from DHS components regarding visa eligibility and admissibility. Appendix E provides additional information on the previous process and PATRIOT's effect on visa processing workflow.

[REDACTED]

[REDACTED]



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Recommendation

We recommend that the U.S. Immigration and Customs Enforcement's Executive Associate Director for Homeland Security Investigations:

Recommendation #2:

Develop and implement a process that ensures the Pre-Adjudicated Threat Recognition Intelligence Operations Team program is effective in addressing visa security concerns. At a minimum, this should include establishing and implementing protocols for conducting periodic reviews.

Management Response to Recommendation 2: ICE concurs with Recommendation 2. ICE officials responded that assessing PATRIOT process effectiveness will be critical to ensure it is operating as intended, as it is a new initiative aimed at increasing the efficiency and effectiveness of ICE's Homeland Security Investigations' visa security operations. Homeland Security Investigations intends to accomplish this through a comparison of final results to validate that screening criteria are being assessed correctly, that analysts and agents are interpreting correctly the initial hits, and that they are identifying ineligibilities and inadmissibilities appropriately in accordance with their findings.

The standard operating procedures for PATRIOT are currently under development. Homeland Security Investigations will include a procedure for conducting periodic reviews of the PATRIOT screening and vetting processes in those standard operating procedure. Homeland Security Investigations intends to assess the effectiveness of the process and employee training through random sampling and spot checks of record information once PATRIOT begins "live" operation. If these methods prove inadequate, Homeland Security Investigations will modify or replace them. Once effective and efficient methods for evaluating the PATRIOT process and user training are determined, they will be included in the PATRIOT standard operating procedures. After evaluation, ICE will be able to estimate better a target date for establishing the recommended procedures.

OIG Analysis: We consider ICE's proposed actions responsive to the intent of this recommendation, which is resolved and open. We will close this recommendation when we receive and have reviewed the PATRIOT standard operating procedures.



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30 [REDACTED]
31 [REDACTED]



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[REDACTED]

DHS Has No Knowledge of Plans To Transfer Mr. Omar Abdel Rahman To Egyptian Custody

During Mr. Eldin's June 19, 2012, meeting with officials at the White House, he raised the possibility of transferring convicted terrorist Omar Abdel Rahman from U.S. custody to Egyptian custody, for humanitarian and health reasons. DHS officials, however, are unaware of any plans to facilitate the transfer of Mr. Rahman to Egyptian custody.

The Case of Mr. Omar Abdel Rahman

Mr. Rahman is widely regarded as a spiritual leader of the Islamic Group. He has been a revered figure in Islamist extremist circles since the 1980s. In 1981, the Egyptian Government charged Mr. Rahman on suspicion of involvement in the assassination of Egyptian President Anwar Sadat, but Mr. Rahman was acquitted. Mr. Rahman entered the United States on a temporary visa in 1990, and was granted lawful permanent resident status in 1991. In 1995, he was convicted of seditious conspiracy that included the 1993 World Trade Center bombing and a plot to bomb other New York City landmarks.

Mr. Rahman has a record of past immigration violations that include falsifying information on his application for adjustment of status by misrepresenting his criminal history, and failing to disclose a prior marriage.³² Mr. Rahman has been subject to an order of exclusion from the United States since 1993 because of those violations, but is in DOJ custody for the higher charge of seditious conspiracy.³³ Mr. Rahman is currently serving a life sentence without parole at a Federal Bureau of Prisons medical facility in North Carolina. Since the resignation of former Egyptian President Hosni Mubarak in February 2011, there have been persistent requests from Egyptian officials for Mr. Rahman's transfer to Egyptian custody, for humanitarian and health reasons. DOJ's International Prisoner Transfer Program permits the transfer of prisoners whose home

³² Adjustment of status is the process by which an eligible individual, already in the United States, can get permanent residence status without having to return to their home country to complete visa processing.

³³ Order of exclusion is the formal proceeding in which an alien's admissibility to the United States is determined. When an alien is determined inadmissible to the United States, the alien may be excluded from entry and forced to return to the last departure point or deported to alien's home country.



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countries have a treaty relationship with the United States, but as of March 2013, no such treaty exists between the United States and Egypt. In a September 19, 2012, letter addressed to DOJ and DOS, members of Congress requested information regarding reports of the possible release of Mr. Rahman into Egyptian custody. In a joint response to Congress on October 5, 2012, DOJ and DOS officials stated there was no truth to reports concerning the release of Mr. Rahman to another country to complete his sentence.

As of March 2013, DHS officials with a potential role in coordinating the transfer of Mr. Rahman were not aware of any plans to facilitate the transfer of Mr. Rahman from U.S. custody to Egyptian custody. These officials stated that they have never been consulted or involved in any discussions pertaining to his release or transfer.



Appendix A

Objectives, Scope, and Methodology

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, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

Several DHS components, as well as other Federal departments and agencies, have a responsibility to ensure that members of FTOs who seek admission into the United States may be admitted only in compliance with applicable Federal laws. Within DHS, the Office of Policy, ICE, and CBP all contribute to screening members of FTOs who attempt to travel to the United States on nonimmigrant visas. In June 2012, former Chairman Peter T. King, of the House Committee on Homeland Security, raised concerns that Hani Nour Eldin, an elected member of the Construction and Development party, affiliated with the Islamic Group, was issued a visa and granted admission into the United States. During this visit, Mr. Eldin raised with White House officials the possibility of transferring Omar Abdel Rahman, a convicted terrorist also known as the “Blind Sheik,” from U.S. custody to Egyptian custody, for humanitarian and health reasons. In August 2012, former Chairman King requested that we review DHS admissibility processes for foreign nationals who are members of FTOs.

Our objectives were to (1) determine what DHS policies and procedures are in place for admitting members of FTOs into the United States, and evaluate whether the current policies and procedures present national security vulnerabilities; (2) assess the level of coordination between DHS and DOS when waivers for admission into the United States are granted to members of FTOs; (3) assess whether the admittance of specific individuals were in compliance with applicable Federal laws, DHS policies and procedures, or other requirements; and (4) establish whether DHS has a role in custodial transfers of foreign nationals who are in DOJ custody on terrorism charges.

We examined DHS directives, policies, and procedures for admitting members of FTOs into the United States. We also analyzed MOUs between DHS and DOS. In addition, we observed how ICE’s VSP staff screen visa applicants. We reviewed law enforcement data system records and the SAO for Mr. Eldin.

We interviewed DHS officials who have a role in making eligibility decisions for admitting members of FTOs into the United States, adjudicating cases for which waivers have been



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requested, and developing and implementing DHS policy and guidance related to nonimmigrant visas. This allowed us to assess the effectiveness of DHS' efforts to protect national security interests, while providing eligible foreign nationals access to nonimmigrant visas. In addition, we met with DOS officials to discuss the level of coordination when waivers for admission into the United States are requested by or on behalf of members of FTOs. We also had discussions with DOJ officials to determine whether Mr. Rahman's custody transfer from the United States to Egypt was ever discussed with DHS officials.

Our fieldwork began in October 2012 and concluded in February 2013. We conducted this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the Quality Standards for Inspections issued by the Council of the Inspectors General on Integrity and Efficiency.



Appendix B

Recommendations

We recommend that the Director for U.S. Immigration and Customs Enforcement:

Recommendation #1:

Work with visa security partners to develop a threshold for interagency notifications, when information developed during the visa adjudication process identifies potential issues concerning an applicant's admissibility to the United States.

We recommend that the U.S. Immigration and Customs Enforcement's Executive Associate Director for Homeland Security Investigations:

Recommendation #2:

Develop and implement a process that ensures the Pre-Adjudicated Threat Recognition Intelligence Operations Team program is effective in addressing visa security concerns. At a minimum, this should include establishing and implementing protocols for conducting periodic reviews.

Recommendation #3:

[REDACTED]



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Appendix C
Management Comments to the Draft Report

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

June 17, 2013

MEMORANDUM FOR: Deborah L. Outten-Mills
Acting Assistant Inspector General for Inspections
Office of Inspector General

FROM: Radha C. Sekar 
Acting Executive Associate Director,
Management and Administration

SUBJECT: Management Response to OIG Draft, "DHS' Efforts to Screen
Members of Foreign Terrorist Organizations", dated April 29, 2013

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to comment on the subject draft report. We have reviewed the report and concur with the three recommendations, which are focused on enhancing the visa screening process.

Enhancing our ability to screen visa applications has been a long-standing priority for ICE. Over the years, ICE has successfully expanded the number of sites where we have visa security units in place. Also, to enhance screening ICE has been developing a technology solution called Pre-Adjudicated Threat Recognition Intelligence Operations Team (PATRIOT). PATRIOT will allow our Special Agents additional time to vet visa applications, provide expanded opportunities to work with our Department of State colleagues, and improve our ability to highlight applicants for further scrutiny.

As detailed in the attachment, ICE will continue working to complete corrective actions for these recommendations. We are requesting that the recommendations be considered resolved and open pending completion of our planned corrective actions.

Should you have questions or concerns, please contact Michael Moy, Audit Portfolio Manager, at (202) 732-6263, or by e-mail at Michael.C.Moy@ice.dhs.gov.

Attachment

www.ice.gov



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ICE Response to OIG Draft Report Recommendations:

“DHS’ Efforts to Screen Members of Foreign Terrorist Organizations”
[OIG Project No. 13-002-ISP-PLCY]

Recommendation 1: Work with visa security partners to develop a threshold for interagency notifications, when information developed during the visa adjudication process identifies potential issues concerning an applicant’s admissibility to the United States.

ICE Response: ICE concurs with this recommendation. The scheduled roll-out of the Pre-Adjudicated Threat Recognition Intelligence Operations Team (PATRIOT) initiative will allow the ICE Visa Security Unit (VSU) Special Agents at post to receive non-immigrant visa (NIV) applications via the VSPTS.net which is an upgraded version of the tracking system. The Special Agents will be able to review and vet the applications prior to the Department of State (DOS) adjudicating the applicant. This will allow the VSU agents additional time and opportunity to discuss with DOS and other USG’s at post, and to highlight visa applicants who may require additional scrutiny who would otherwise fall outside the targeting criteria of that particular post. Also, PATRIOT will allow the VISAS VIPER committee to be more effective as they will have the capability to discuss applicants prior to their initial visa interview with DOS. PATRIOT will give the ICE VSU’s and DOS time to coordinate a course of action. With the combination of PATRIOT, DOS and ICE VSU’s at post, the visa security process and sharing of information will be greatly strengthened.

The determination of whether an applicant is chosen for further scrutiny by the VSU’s at post is called the “targeting plan.” The targeting plan is designed by each VSU post based on the threat environment at that particular post. Some visa applicants will be designated as requiring a SAO (Special Advisory Opinion).



Along with the SAO process, each ICE VSU participates in an interagency committee to improve the visa security process. This is known as the VISAS VIPER Committee. This process is used by DOS to nominate known or suspected terrorists to be entered in the appropriate lookout data systems. This is an important process to insure that the derogatory information is being shared and to keep the visa process secure. After evaluation, ICE will be better able to estimate a target date for establishing the recommended procedures.

Recommendation 2: Develop and implement a process that ensures the Pre-Adjudicated Threat Recognition Intelligence Operations Team program is effective in addressing visa security concerns. At a minimum, this should include establishing and implementing protocols for conducting periodic reviews.

ICE Response: ICE concurs with this recommendation. As a new initiative that increases the efficiency and effectiveness of HSI’s visa security operations, it will be critical to assess the effectiveness of the PATRIOT process to ensure that it is operating as intended. HSI intends to accomplish this through a comparison of final results to validate that the screening criteria is being assessed correctly by the process and that analysts and agents are correctly interpreting the initial hits and appropriately identifying ineligibilities and inadmissibilities in accordance with their findings. The standard operating procedures (SOP) for PATRIOT are currently under



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ICE Response to OIG Draft Report Recommendations:

**“DHS’ Efforts to Screen Members of Foreign Terrorist Organizations”
[OIG Project No. 13-002-ISP-PLCY]**

development. HSI will include a procedure for conducting periodic reviews of the PATRIOT screening and vetting processes in that SOP. HSI intends to assess the effectiveness of the process and employee training through random sampling and spot checks of record information once PATRIOT begins “live” operation, currently expected to begin shortly. If these methods prove inadequate, HSI will modify or replace them. Once effective and efficient methods for evaluating the effectiveness of the PATRIOT process and user training are determined, they will be included in the PATRIOT SOP. After evaluation, ICE will be better able to estimate a target date for establishing the recommended procedures.

[REDACTED]

[REDACTED]



Appendix D

Categories of Terrorist Organizations

Tier I

Designated by the Secretary of State, in accordance with section 219 of the INA, and are also referred to as Foreign Terrorist Organizations (FTOs). Legal criteria for designation under Section 219 of the INA:

1. It must be a foreign organization.
2. The organization must engage in terrorist activity, as defined in section 212 (a)(3)(B) of the INA (8 U.S.C. § 1182(a)(3)(B)), or terrorism, as defined in section 140(d)(2) of the *Foreign Relations Authorization Act, Fiscal Years 1988 and 1989* (22 U.S.C. § 2656f(d)(2)), or retain the capability and intent to engage in terrorist activity or terrorism.
3. The organization's terrorist activity or terrorism must threaten the security of U.S. nationals or the national security (national defense, foreign relations, or the economic interests) of the United States.

Tier II

Designated by the Secretary of State and excludes individuals associated with terrorist organizations from entry to the United States. These organizations are included in the Terrorist Exclusion List.³⁴

Tier III

Defined by law as “a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in,” terrorist activity. Tier III organizations are also called “undesigned terrorist organizations” because they qualify as terrorist organizations based on their activities alone without undergoing a formal designation process as Tier I and Tier II organizations. Instead, the determination of whether a group can be considered a Tier III organization is made on a case-by-case basis, generally in connection with the review of an application for an immigration benefit. Tier III organizations can and do arise and change over time.

³⁴ Section 411 of the *USA PATRIOT ACT of 2001* authorizes the Secretary of DOS to designate groups as Terrorist Exclusion List organizations in consultation with, or upon the request of, the Attorney General strictly for immigration purposes. Designation on the Terrorist Exclusion List allows the U.S. Government to exclude or deport aliens who provide material assistance to, or solicit it for, designated organizations.



Appendix E





Appendix F

Major Contributors to This Report

Marcia Moxey Hodges, Chief Inspector

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Appendix G

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