

A REPORT TO THE CONGRESS CONCERNING THE
EXTENSION OF WAIVER AUTHORITY FOR VIETNAM

COMMUNICATION

FROM

THE SECRETARY, THE DEPARTMENT OF
STATE

TRANSMITTING

A RECOMMENDATION TO CONTINUE IN EFFECT A WAIVER OF APPLICATION OF SUBSECTIONS (A) AND (B) OF SECTION 402 OF THE TRADE ACT OF 1974 WITH RESPECT TO VIETNAM FOR A FURTHER 12-MONTH PERIOD AND A DETERMINATION THAT CONTINUATION OF THE WAIVER CURRENTLY IN EFFECT FOR VIETNAM WILL SUBSTANTIALLY PROMOTE THE OBJECTIVES OF SECTION 402 OF THE ACT AND THE REASONS FOR SUCH A DETERMINATION, PURSUANT TO 19 U.S.C. 2432(C) AND (D)



JULY 11, 2005.—Referred to the Committee on Ways and Means and
ordered to be printed

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LETTER OF TRANSMITTAL

U.S. DEPARTMENT OF STATE,
Washington, DC.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: On behalf of the Secretary, I am transmitting to you the Determination and Report to the Congress, referred to in Subsection 402(d)(1) of the Trade Act of 1974 (the "Act"), as amended, with respect to the continuation of a waiver of application of Subsections (a) and (b) of Section 402 of the Act to Vietnam.

This document constitutes the Secretary's recommendation to continue this waiver for a further twelve-month period and includes her determination that continuing the waiver currently in effect for Vietnam will substantially promote the objectives of Section 402 of the Act, and the reasons for such determination.

I hope that this information will be helpful to you and other Members of Congress. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

MATTHEW A. REYNOLDS,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: As stated.

REPORT TO THE CONGRESS CONCERNING THE EXTENSION OF
WAIVER AUTHORITY FOR VIETNAM

Pursuant to Subsection 402(d)(1) of the Trade Act of 1974, as amended ("the Act"), I hereby recommend further extension of the waiver authority granted by Subsection 402(c) of the Act for twelve months. I have determined that such extension will substantially promote the objectives of Section 402 of the Act, and that continuation of the waiver currently applicable to Vietnam will also substantially promote the objectives of Section 402 of the Act. My determination is attached and is incorporated herein.

Freedom of Emigration Determination

According to Vietnamese Government Decree No. 05/2000/ND-CP of March 3, 2000, "On Exit and Entry of Vietnamese Citizens," all Vietnamese citizens have a right to a passport and there is no legal restriction on either foreign travel or emigration. Vietnam does not require an exit permit or exit visa for its citizens to depart the country. In practice, the Vietnamese authorities broadly respect this right. In the first half of fiscal year 2005, the U.S. Consulate General issued 7,141 immigrant visas, 2,455 non-immigrant visas in the K and V categories, and 5,775 non-immigrant visas. The Department of State anticipates that demand in Vietnam for immigrant and non-immigrant visas will continue to rise. Vietnamese also continue to emigrate to other countries including Australia, Canada, and France, and to Taiwan.

Vietnam's emigration policy has been progressively liberalized over the past 15 years and Vietnam has a solid record of cooperation with the United States to permit Vietnamese emigration. Over 500,000 Vietnamese emigrated to the United States as refugees, immigrants or parolees under the Orderly Departure Program (ODP), and only a relatively small number of refugee applicants remain to be processed.

On September 30, 1999, the Department of State closed the ODP office in Bangkok, Thailand, and opened the Refugee Resettlement Section (RRS) at the United States Consulate General in Ho Chi Minh City, Vietnam. The RRS continues to process the small number of remaining cases from the ODP and Resettlement Opportunity for Vietnamese Returnees (ROVR) programs. The GVN issues passports to Vietnamese seeking admission to the United States under these and other programs.

As of April 27, 2005, the Government of Vietnam (GVN) had cleared for interview all but one of the nearly 21,000 individuals who applied for consideration under the ROVR program. Thirteen ROVR cases are still pending, 12 of which have received passports. The remaining ROVR applicant is involved in a civil lawsuit and is unlikely to receive a passport until the case is resolved. The remaining applicants must gather the necessary documents to support their applications and be scheduled for an interview with United States Citizenship and Immigration Services (USCIS). USCIS has approved 17,248 individuals for admission to the United States, 16,464 of whom have departed from Vietnam for the United States.

The Former Re-education Camp Detainees program, known commonly as the "Humanitarian Operation" or "HO" allowed for the resettlement of individuals who had been detained for at least three years in a re-education camp because of their association with the United States or the former South Vietnamese government prior to April 30, 1975, as well as their eligible family members. As of April 27, 2005, there were 16 HO cases (comprising 57 persons) still pending USCIS interview; all but three cases (12 persons) have received passports.

A sub-group of the HO program consists of the applicants covered by the "McCain Amendment" (P.L. 104-208, as amended). These applicants are persons over the age of 21 who are the sons and daughters of former re-education camp detainees who were approved for admission as refugees and for various reasons were not included in their parents' cases. As a result of extensions and modifications to the legislation since its initial passage in October 1996, over 11,800 adult children and their accompanying family members have been able to join their parents in the United States. The number of children eligible for processing in this category fluctuates as new applications are received and others are processed and depart for the United States. As of April 27, 2005, 675 cases (comprising 1,746 individuals) are pending pre-screening or are ready to be presented to USCIS for interview. The most recent version of the McCain Amendment was renewed on December 8, 2004, and will be in effect through September 30, 2005. The RRS is actively processing the current caseload of McCain Amendment cases and expects all pending cases to be interviewed by USCIS by September 30, 2005. There have been no instances where McCain Amendment applicants have experienced difficulty obtaining their passports.

The GVN is also cooperating on the processing of the few remaining ODP HO cases for ethnic minorities from the Central Highlands. Only one case

(consisting of seven people) remains to be cleared for interview. This is a decrease of three cases and nine persons since last year.

In June 2002, the RRS completed interviews of the 704 cases determined eligible for consideration for refugee status under the ODP sub-program for former United States Government employees (commonly referred to as the U-11 program). These cases had not previously been interviewed because the United States suspended the program in 1996. The RRS currently has five remaining cases pending USCIS interview. Of the cases approved for refugee resettlement in the United States, only two cases have yet to depart Vietnam. Neither is restrained from leaving by the GVN.

The U.S. Government has held talks with the GVN to re-open the HO, U-11 and V-11 (former employees of U.S. private businesses and organizations) categories for individuals who could not access processing during the previous operation of the program. The USG closed registration for most ODP refugee programs on September 30, 1994 (Central Highlands ethnic minorities were given three additional years to register). In December 2004 the two governments reached agreement to re-open registration for the three categories in the near future. A public announcement will initiate what will now be called the Humanitarian Resettlement (HR) process and new applications for the HO, U-11 and V-11 categories will be accepted by the United States for thirty months following the HR announcement. The attitude of the Vietnamese government has been positive and cooperative with respect to USG proposals.

We are concerned about the situation in the Central Highlands. Unrest there in 2001 and again in 2004 was a result in part, of concerns about economic inequality, discrimination, land rights and freedom of religion. Historically, some members of ethnic minority groups from this area have faced challenges in accessing our refugee resettlement programs due to difficulty in communication and travel as well as restrictions by local officials. Some 650 Montagnards fled to Cambodia following the 2004 demonstrations. We continue to press Vietnamese authorities to permit the United Nations High Commissioner for Refugees access to the area to monitor Montagnards who return home. Additionally, we continue to encourage Vietnamese authorities to permit international and non-governmental organizations access to the Highlands to implement development and assistance programs to help reduce tensions among the Highlands population.

To date, the RRS has received a total of 97 Visa-93 following-to-join petitions for families of ethnic minority refugees resettled out of Cambodia in 2001-2002. Thus far, 12 of these families (56 persons) have been able to obtain their passports and have been approved by USCIS for resettlement in the United States. Of the remaining 85 cases (348 persons), the U.S. Mission has confirmed that 41 of these cases (172 persons) wish to pursue their petitions and continues to advocate with the GVN for the expeditious issuance of passports.

Although officials of the national government have been responsive and have repeatedly expressed a desire to work with the USG on all such family reunification cases, some local and provincial level officials have hampered issuance of passports for family members of individuals deemed to have left the country illegally (without passports.) When such situations arise, the United States presses the GVN to address these problems at the local or provincial level to expedite passport issuance to these families. Delays in passport issuance in these cases remain an ongoing concern. Through continuing engagement, including by the Ambassador and the Consul General in Ho Chi Minh City, with local, provincial, regional and national officials, there has been steady progress in passport issuance. There are good prospects for concluding this issue over the next year.

The few cases known to the USG by virtue of the aforementioned programs in which individuals are impeded from obtaining passports are being steadily reduced through an ongoing dialogue between the United States Government and the Vietnamese authorities. The continuation of U.S. immigration and refugee programs; our ongoing bilateral dialogue and the extension of the Jackson-Vanik waiver should resolve any remaining problems.

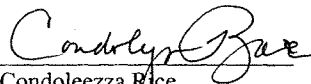
Determination
Under Subsection 402(d)(1) of the Trade Act of 1974, As Amended –
Continuation of Waiver Authority

Pursuant to the authority vested in the President under the Trade Act of 1974, as amended, Public Law 93-618, 88 Stat. 1978 (hereinafter “the Act”), and assigned to the Secretary of State by virtue of Section 1(a) of Executive Order 13346 of July 8, 2004, I determine, pursuant to Section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by Section 402 of the Act will substantially promote the objectives of Section 402 of the Act. I further determine that continuation of the waiver applicable to Vietnam will substantially promote the objectives of Section 402 of the Act.

This determination shall be published in the Federal Register.

~~JUN 21 2008~~

Date


Condoleezza Rice
Secretary of State