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HOW LIMITING INTERNATIONAL VISITOR VISAS HURTS SMALL TOURISM BUSINESS

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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HOW LIMITING INTERNATIONAL VISITOR VISAS HURTS SMALL TOURISM BUSINESS

WEDNESDAY, JUNE 19, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:20 a.m. in Room 2360, Rayburn House Office Building, Hon. Donald Manzullo [chairman of the Committee] presiding.

Chairman MANZULLO. The Committee will come to order. Just a little bit of information as we wait for Ms. Velazquez. Here she is. Good morning. How are you?

The way the panel is set up, as we do with most of our hearings here, it is more for a conversational style. The purpose of the hearing is to try to work towards a resolution of the topic that is at hand.

I have advised the Commissioner who is here after traveling an entire week that if a question is asked by a Member of Congress and he feels more comfortable having a member of his staff answer the question because it is technical, then that option is totally up to you, Commissioner.

The purpose is to get as much information out in the best source that you have, so if you have to ask someone to come up all we ask is that person just introduce themselves and spell their name for the record and proceed to answer the question.

Mr. ZIGLAR. Thank you, Mr. Chairman.

Chairman MANZULLO. Today the Committee will focus on the importance of international tourism to our nation's small businesses. Over 25 million overseas visitors came to our country in 2000, giving us a trade surplus of $14 billion. Last April, the INS proposed a rule to change the automatic default period for tourist visas from non-waiver countries from six months to 30 days.

I understand there has been a lot of confusion about this proposal. Many media reports say that all visitors would be limited to stay in the U.S. for a maximum of 30 days. However, the proposal will grant any international visitor from a non-visa waiver country the time they believe is appropriate to visit the U.S. up to six months, provided they can demonstrate to an INS immigration inspector a rationale for staying in the country for more than 30 days.

Regardless of this clarification, the proposal may well endanger the confidence of foreign travelers desiring to visit the U.S. for longer than 30 days. According to an INS fact sheet, the new rule will require visitors to, and we quote, "explain to an INS immigra-

tion inspector the nature and purpose of their visit so the inspector can determine the appropriate length of stay. While INS inspectors will make every effort to determine a fair and reasonable time period, the burden of proof rests with the alien. When the time needed to accomplish the purpose of the visit cannot be determined, INS will grant a 30 day period of admission."

The proposed rule itself states that "where there is any ambiguity whether a shorter or longer period of admission would be fair and reasonable under the circumstances" then the visa will be issued for 30 days.

The main justification for this proposal is to fight terrorism, obviously an extremely important objective, yet this policy change has very little to do with fighting terrorism. In yesterday's Washington Times, there was a report about the growing threat of terrorist forces recruiting disaffected U.S. citizens with passports in order to avoid our immigration laws.

There must be a better way to accomplish the legitimate objectives of the INS without significantly damaging the U.S. travel and tourism industry. We certainly need better sharing of intelligence data so that our consular officers abroad and our immigration inspectors at the border know who to deny entry into the United States.

The INS also claims this rule will not have a significant economic impact on a substantial number of small entities because this rule only applies to non-immigrant aliens visiting the U.S., not to small entities. They also claim this is not a major rule that will have an impact on the economy of $100 million or more. The INS has not provided research or any documentation to substantiate this statement made in the proposed rule.

The travel and tourism industry in the U.S. is dominated by small businesses. This industry relies heavily on international visitors for their livelihood. In 2000, the Commerce Department estimated that 939,000 visitors from non-visa waiver countries contributed almost $2.1 billion to the U.S. economy. That is a significant impact in my book.

Finally, I have a concern about how our Canadian friends will be treated under this new rule. Currently, most Canadians crossing our border do not need a passport. They are not given anything in paper by our INS immigration inspectors documenting how long they are allowed to stay in this country because they are automatically assumed to have a default admission period of six months. Yet how will this rule affect them?

While I welcome Homeland Security Director Tim Ridge's clarification to deliver a formal notice to Canada saying Canadians can still head to the U.S. for up to six months, it is also preferable for this to be included in the final rule. Canadians have a vested interest in not staying in the U.S. beyond six months because otherwise they will lose their health insurance and also have to pay U.S. taxes.

There were nearly 14.6 million arrivals of Canadian citizens through our border in 2000. They spent nearly $10 billion in the U.S., including $162 million in my home state of Illinois. How this issue affecting Canadians is resolved is of great interest to me. Continued progress on the Smart Border plan with our Canadian

friends will probably do more to fight terrorism than any other initiative.

I now yield for the purpose of an opening statement to my colleague and good friend from the Empire State, Mrs. Velazquez.

[Chairman Manzullo's statement may be found in the appendix.]

Ms. VELAZQUEZ. Thank you, Mr. Chairman. Tourism benefits American small businesses from shops and charters to airline suppliers and concessionaires. It is hard to overestimate the influence of this sector. During the last decade, travel and tourism became an established leader in a modern services economy.

When counted as an export contribution, travel and tourism more than doubled, from $26 billion in 1986 to $90 billion in 1996. This sector is our number one services export and has produced a trade surplus every year since 1989. Here is a demonstration of tourism on the local level. In 1996, a record 46.5 million people visited the United States. Every one spent an average of $1,500, including a third on lodging, another third on retail and a fifth on food.

Clearly, international travel to the United States is a vital small business export, just like selling software or wheat. It boosts our GDP and supports more than one million jobs. How the Immigration and Naturalization Service's new regulations for tourist visas will affect this vibrant and vital sector should concern this Committee.

After September 11, the INS had to act to protect our security. Most of the terrorists involved in the attacks were in this country on valid entry visas. In fact, nine of the 19 known hijackers were in the country on tourist visas. The INS rewrote the rules on nonimmigrant visas, including tourist visas, and the President has proposed to create an entire new Department of Homeland Security as part of a broad restructuring process. We must not forfeit our oversight and duty to stem any unanticipated consequences during this push to secure the country against future terrorist attacks.

We are here to examine the impact of the INS' proposed reform of the B–1/B–2 visa procedures. While this move is an attempt to address an area of concern, it should not result simply in a false sense of security while inconveniencing visitors and disrupting our vital and growing small business tourism sector.

It is apparent that the INS has not fully examined or anticipated the impacts of these vast changes as required by the Regulatory Flexibility Act and SBREFA. The INS must also conduct outreach and consider less burdensome regulatory alternatives.

The new regulations eliminate the six month visa and reduce most stays to 30 days. This will clearly inconvenience a majority of visitors since a 30 day visa means the average visitor of 20 days has about a week and a half leeway to make their trip. Given that, many potential visitors may simply choose somewhere else to go.

This new policy deters the people we want to visit, those who stay the longest and spend their money at small businesses across this country. This is the effect that we wish the INS would consult with small businesses on before taking.

With a close look at this regulation, we can increase security in the visa process without adversely affecting small business. We should also fix a firm time frame to develop new rules and ensure

predictability for visitors. Most importantly, this process cannot be concluded without small business input.

As in most things, achieving the best balance of all the interests involved should be our goal. This Committee needs to assert oversight powers now at the very beginning of the effort to restructure our government's homeland security infrastructure before it becomes too big and unwieldy.

Thank you, Mr. Chairman.

[Ms. Velazquez's statement may be found in the appendix.]

Chairman MANZULLO. Thank you. We have in our midst Ron Erdman from the Department of Commerce. Ron, where are you?

Mr. ERDMAN. Right here in the back.

Chairman MANZULLO. Ron, could you have a seat somewhere up front just in case some statistics come up that we need in your position as Deputy Director of Travel and Tourism at the Department of Commerce? We would be able to have you come and give those stats for us. If you could have a seat here next to Laura over there against the wall, that would be fine. Thank you.

We look forward to the testimony of the witnesses. We have a five minute clock. That clock is not going to apply to the first two witnesses. The first witness is Jim Ziglar. I do not know how it could apply to a videotape of Governor Bush. Mr. Ziglar, we welcome you here. We know you have been on extensive travel. We look forward to your testimony. Thank you, sir.

STATEMENT OF THE HONORABLE JAMES W. ZIGLAR, COMMISSIONER, U.S. IMMIGRATION AND NATURALIZATION SERVICE

Mr. ZIGLAR. Thank you, Mr. Chairman. I appreciate your calling this hearing so that we can have a chance to discuss the INS' recently published proposed rules with respect to B–2 visitors and B–1 visitors to the United States.

I would like to briefly explain our reasons for issuing this proposed rule and clarify some misinterpretations and misperceptions. First, let me make it very clear that this is not a 30 day rule for visits to the United States. Our proposal is to admit all visitors for up to, but not more than, six months based on the purpose and stated duration of their visit. Experience and data indicate that six months far exceeds the average length of stay for most visitors.

Since admission to the United States is not automatic, we also propose to place responsibility to explain the purpose and length of stay on B–2 visitors for pleasure. That is how we currently and have for a long time admitted B–1 visitors for business.

In instances where there is ambiguity over the exact nature of the visit, INS proposes a default admission period of 30 days. That is where someone cannot tell you why they are here or how long they plan to stay here. Then the default period will be 30 days, but it is not a maximum period that visitors get. The period is based upon what is reasonable and fair to accomplish the purpose of the visit.

As the public, media and other interested persons have digested these proposed changes, a number of misperceptions have arisen regarding the rule, in particular that the INS is seeking to establish again a 30 day time limit on visits to the United States. That

is simply not true. I keep repeating that because I think it is important for people out there to understand that.

I know some have said that this rule will not enhance our security. I believe that claim is simply not true. The very reason for these changes is the concern highlighted by the activities of the 19 hijackers that an individual can enter the United States for an almost automatic six months and potentially can file for an extension and stay a year or more without having to validate substantially the reasons that they are here.

As you know, 18 of the 19 hijackers entered the United States on B–2 visitor visas. In addition, an automatic six month admission period with a generous extension policy may lead individuals to develop permanent ties to the United States, including employment, although illegal, that contributes to the process of visa overstays.

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

Nearly all of the 19 hijackers maintained valid status while planning the attacks of September 11. They made concerted efforts to do so, it is logical to assume, because that made them less likely to come to the attention of federal authorities.

By limiting the stay of individuals who do not have legitimate reason to be in the United States for long periods of time, there is a greater likelihood that those with bad intent will appear on the radar screen of law enforcement officials. This proposed rule will also complement our developing an entry/exit system to record the arrival and departure of foreign nations, something that has been mandated by the Congress.

I believe that it is the misunderstanding that we are reducing B–2 visitors for pleasure admission periods to only 30 days that has led to the conclusion that the travel and tourism industry would be harmed. The INS inspections program is carrying out a rigorous and will carry out a rigorous education program to ensure that all immigration inspectors fully understand that any default period is not a new maximum admission period. Our inspectors today determine a fair and reasonable period of admission for those entering as B–1 visitors for business. This concept is not new for our men and women at the ports of entry.

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

Mr. Chairman, let me just divert from my text here for a minute and make a personal comment about that. I spent most of my career, in fact the major portion of my career, working on Wall Street in New York, an industry that is very sensitive to the economy of

this country. Just look at what the stock market does day in and day out.

I can tell you that I am personally very concerned about any security measure that would have an impact on our economy for the simple reason that if we do not have a strong economy, we are not going to have the resources to protect ourselves, so it is an iterative process.

I think you will see that in terms of the way we are trying to deal with some border issues in terms of trying to have a fast pass, if you will, concept between the Canadians and the U.S. and the Mexicans and the U.S. where we identify people and we have tamper-proof ways of having cards that they can pass across the border that indicate who they are and say they have the right kind of documents and that sort of thing. I mean, we are working very hard to try to ameliorate the effects, the adverse economic effects, of security measures.

I am no less concerned about this issue than I am about the so-called fast pass, if you will, between those two countries, so you are not talking to someone here who is unaware of the economic consequences. I spent my entire life in the private sector dealing with economics and the impact on markets and other things.

Our proposals make sure that every visitor applying for admission is questioned thoroughly in order to determine a fair and reasonable period of admission. It is reasonable to expect that anyone traveling to the United States should be able to articulate to the inspector the desired period of admission, be it verbally or with documents that outline the nature of the trip. Requiring individuals to justify their itinerary and length of stay is prudent policy, particularly in light of the post September 11 world.

This proposed rule is just one of a series of steps that we are taking to bolster the integrity of our nation's immigration system. We have issued a number of necessary, if not universally popular, directives. For example, we directed the INS to publish changes to our foreign student regulations, and this summer we will begin to deploy the automated, internet based SEVIS system that monitors foreign students attending American institutions of learning.

In a similar vein, I directed that no application or petition for immigration benefits be approved before appropriate security checks have been conducted. We have also instituted more robust checks on refugees, and overall we have instituted policies requiring higher levels of approval when we grant parole or deferred inspection at our ports of entry.

We must take steps to minimize our vulnerability to those who would exploit our generous system, and it indeed is generous. Of equal importance are steps to guard against the erosion of public confidence in our long and rich tradition of welcoming people to this country.

Our aim is not to stifle international tourism and the significant impact that tourism has on our economy. Our aim is to make the admission process to the United States safer and less vulnerable to abuse.

The B regulation is a proposed rule. The Administration is open to persuasion and argument. I understand that people have raised their concerns in good faith. This hearing and the significant num-

ber of public comments will certainly play a role in how we draft the final rule on this issue. This give and take in public discourse is what this country is all about.

Thank you again for the opportunity. I am sorry I went over my time, but I appreciate the opportunity to be here.

[Mr. Ziglar's statement may be found in the appendix.]

Chairman MANZULLO. Thank you, Commissioner.

Our next witness will be Pamella Dana, and I think you want to introduce your boss to us. Is that correct?

Ms. DANA. Yes, sir.

Chairman MANZULLO. Okay. Bring the mike real close to you.

STATEMENT OF PAMELLA DANA, DIRECTOR OF THE OFFICE OF TOURISM, TRADE AND ECONOMIC DEVELOPMENT FOR THE STATE OF FLORIDA

Ms. DANA. On behalf of the State of Florida, thank you, Mr. Chairman and Ranking Member Velazquez and Members of the Committee, for inviting me to join you this morning.

As Florida is Director for the Office of Tourism, Trade and Economic Development, I am very honored to be before you today to introduce Governor Jeb Bush's videotaped testimony. On that note, I would like to offer special thanks to your staff who made the arrangements possible for this videotape.

This hearing is very important to many states, but none more than Florida. With 70 million visitors to our state annually, of which eight million are from international destinations, tourism is Florida's largest industry. It is a $50 billion industry, employing 850,000 people. Small businesses comprise the bulk of those involved in the travel industry, and they depend upon the robust flow of domestic and international visitors to our state to keep afloat. As such, the proposed INS regulation to limit international visitor visas has far reaching economic implications for our state.

This issue originally came to the Governor's attention from the Canadian Snowbird Association, a membership group of 100,000 plus. The Governor has been heavily involved in this issue ever since. While he could not be here today, he wanted to do this videotape to stress and emphasize the importance of this issue to our state.

With that, I will ask that we run the Governor's testimony, and I thank you for your time and consideration.

Chairman MANZULLO. I think we are going to work on some lights here.

[Videotape played.]

STATEMENT OF THE HONORABLE JOHN ELLIS "JEB" BUSH, GOVERNOR, STATE OF FLORIDA

Governor BUSH. Mr. Chairman, Members of the Committee, thank you for allowing me to speak to you today in response to the Immigration and Naturalization Service's proposed rule on limiting international visitor visas.

Let me preface my comments by emphasizing that the safety and security of our nation and its borders are of utmost importance. I support, as do the people of Florida, every reasonable effort on the

part of the federal government to ensure that our citizens are protected from terrorist activities.

At the same time, we must not impose unreasonable restrictions on the millions of international visitors who come to this country wishing only to enjoy our nation's natural beauty, exciting destinations and the hospitality of our people.

My state, Florida, is among the world's most popular visitor destinations. Last year, we welcomed nearly 70 million people. Of that 70 million, about one in ten, or nearly eight million, came to us from a country other than the United States.

Although the majority of these international visitors only spend a week or two in Florida when they visit, there is a substantial number who stay longer, sometimes for several months. Many of them own vacation property in Florida or stay with family or friends who live in Florida. These are the visitors who would be directly impacted by any move to impose a universal 30 day limit on the length of time non-citizens can stay in this country.

Of the eight million international visitors to Florida, nearly three million are presently required to secure visas to enter the United States and would have their length of stay restricted under the proposal. Their contribution to our economy is commensurate with their significant numbers; more than $3 billion in spending and nearly $200 million in state sales tax revenue.

Further, the relative misunderstanding of what the proposed rule change would actually mean to international visitors seeking to travel to the United States is widespread. We have experienced considerable correspondence from individuals and organizations around the world who either believe that the proposed rule changes would prohibit any international visits to the United States beyond the 30 days or that the proposed rule is in fact already in effect. Such misperceptions have led many to ponder other vacation destinations beyond the United States or a sell off of their vacation investments and properties in Florida.

Confusion in the marketplace caused by simple misunderstandings could also make it difficult for tour brokers and operators to sell U.S. destinations for fear that clients would not be able to complete their itineraries in the United States.

With all of these considerations in mind, I would urge the Committee to carefully weigh the impact that this proposal would ultimately have on valued international tourism to the United States.

Thank you for your kind attention.

[Governor Bush's statement may be found in the appendix.]

Chairman MANZULLO. I want the record to indicate that Governor Bush stated that he personally wanted to be here, but could not because of a commitment in California. Is that correct?

Ms. DANA. Yes, sir.

Chairman MANZULLO. Does that conclude the Governor's testimony?

Ms. DANA. Yes, it does.

Chairman MANZULLO. Okay. Thank you very much.

The next witness will be Tom Sullivan. Tom, I am going to start the five minute clock on this, but you are used to it, and you usually conclude in a lot shorter time than that. I look forward to your testimony.

STATEMENT OF THE HONORABLE THOMAS SULLIVAN, CHIEF COUNSEL, OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

Mr. SULLIVAN. Thank you, Mr. Chairman, Ranking Member Velazquez, Members of the Committee. Thank you for the opportunity to appear before you this morning to address the impact on small business of the INS proposal to reduce the default period for admissions under a B–2 tourist visa.

My name is Tom Sullivan. I am the Chief Counsel for Advocacy at the SBA. As Chief Counsel, I am charged with monitoring federal agencies' compliance with the Regulatory Flexibility Act. Please note that my office is independent and that the views expressed in my statement do not necessarily reflect the views of the Administration or the SBA.

The Regulatory Flexibility Act requires agencies to prepare small business impact statements when proposing new regulations. The analysis is prepared in order to ensure that agencies consider their economic impact on small business and that agencies consider reasonable alternatives that would minimize the impact of rules on small entities.

The Act exempts agencies from these requirements if they certify that the rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. If the head of the agency makes such a certification, the agency should provide a factual basis for the certification.

I would like to point out that last year the Office of Advocacy worked with regulatory agencies and convinced them many times to change their approach prior to finalizing rules to the tune of $4.1 billion in cost savings. We are proud of the fact that these savings were achieved by sitting agencies down with small business and working through difficult issues.

The savings were achieved without sacrificing environmental protection or sacrificing worker safety. The billions of dollars saved goes back into our economy, allowing small businesses to hire new employees, invest in new computers or provide health care for their employees.

On April 12, INS proposed a rule limiting the period for admission for B non-immigrant aliens. Under the current rules, a foreign tourist is allowed to stay a minimum of six months under a B–2 tourist visa.

It is my office's understanding that the new INS proposal will eliminate the minimum six months admission period and establish greater control over a B visitor's ability to extend status or change status to that of a non-immigrant student. For the purpose of this hearing, my comments are limited to the aspects of the proposal which eliminate the minimum admission period for B–2 visitors.

In the Regulatory Flexibility Act section of the INS proposal, they certify that it would not have a significant economic impact on a substantial number of small entities. In my view, INS' certification is deficient because it does not consider the impact that the proposal may have on members of the travel and tourism industry who you will hear from directly in a few minutes.

Representing small business, we are concerned about the potential impact of the INS rules. Department of Commerce statistics in-

dicate that in the year 2000 foreign visitors spent $70 billion in this country. SBA's statistics indicate that the majority of the travel and tourism industry are small business.

For example, 95 percent of all travel agencies and 84.5 percent of the tour operating businesses are currently defined as small business. However, the proposal will affect more than travel agencies and tour operators. It will have a foreseeable impact on other small businesses like hotels/motels, restaurants, sightseeing bus companies and souvenir shops.

If foreign travelers decide to travel elsewhere due to the uncertainty that we believe is inherent in this new visa policy, the travel and tourism industry could lose billions of dollars. Advocacy asserts that this impact is not only logical, it is foreseeable. Yet INS, in their proposal, made little effort to analyze that potential impact.

Here in this proposal, flushing out the small business impact and considering alternatives that may have assisted INS in finding a more effective solution is the way we would have recommended they proceed. The Office of Advocacy is obviously sensitive to how the government approaches international visitors in the wake of the September 11 terrorist attacks. We want to make sure that the regulatory approaches protect both our national security and our economic security.

Unfortunately, the INS proposal, in our view, appears to accomplish one, but not necessarily the other. The impact that the proposal could have on the travel and tourism industry is a serious concern, especially since the industry, made up almost entirely of small business, is struggling to recover from September 11. As the independent voice for small business within the federal government, I urge INS to consider less burdensome alternatives.

Thank you for the opportunity to appear today. I am happy to answer any questions that you may have about my statement.

[Mr. Sullivan's statement may be found in the appendix.]

Chairman MANZULLO. Thank you.

Our next witness is Mark McDermott, the chairman of the Western States Tourism Policy Council and director of the Arizona Office of Tourism. Mark, if you want to pull that mike closer? We look forward to your testimony.

The complete statements of all the witnesses and all the Members of Congress will be incorporated into the record without objection.

STATEMENT OF MARK McDERMOTT, DIRECTOR, ARIZONA OFFICE OF TOURISM, ON BEHALF OF THE WESTERN STATES TOURISM POLICY COUNCIL

Mr. MCDERMOTT. Thank you, Mr. Chairman. Good morning, Members of the Committee. I appreciate that you are going to be hearing a lot of the same sort of testimony from most of us this morning. In fact, most of what I have to say has already been said indeed by the Chairman and by the Ranking Member, as well as by previous speakers, so I will be very brief with my remarks and get right to essentially our conclusions.

My name is Mark McDermott. I am the director of the Arizona Office of Tourism and currently serve as chairman of the Western States Tourism Policy Council. Just for your information, the coun-

cil was formed in 1996 and is a consortium of currently 13 states, including Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

Our mission is to advance the understanding and increase the support for public policies that enhance the positive impact of travel and tourism on the economy and the environment of its member states and communities and their related businesses, principally small businesses.

In all 13 of these western states, tourism is a dynamic and vital part of the economy, and it ranks among the top three providers of jobs in each western state and generates billions of dollars in payroll and taxes in the west.

International visitation, especially from Canada and Mexico, is a major economic contributor to each of these states, and, Mr. Chairman, most of this economic activity, as you know, because you have already stated, primarily benefits small businesses for tourism in the nation and in the west and is predominantly small business with many of these small businesses ranking truly as mom and pop operations such as restaurants, motels, RV parks, campgrounds and vendors.

The importance of international travel cannot be understated as it pertains to us and tourism in the west, as well as into the entire country. The visitation and economic impact figures for international tourism, including visa waiver and non-visa waiver countries, has already been stated, so I will not reiterate those.

I will state, though, that for the particular purposes of those of us in the west, Arizona provides a good example, aside from the major tourism states of California and Nevada, in that in 2001, in our state nearly 315,000 Canadian visitors spent about $208 million and from Mexico, using 2000 figures, 1.5 million Mexican visitors spent more than $740 million in Arizona.

I have mentioned Canada and Mexico in particular because we believe that the confusion and misunderstanding about the proposed ruling is having a particular effect on these significantly important sectors of Arizona's and the west's international tourism market.

Just as a quick aside, in our state of Arizona, according to the Arizona Travel Parks Association, during the seven month winter season of October through April Canadians occupy up to 25 percent of the sites in many parks, and in some parks the figure approaches 50 percent of Canadian occupancy, so it is obvious that the impact on Canadian and potentially Mexican visitors of the confusion that prevails right now is already beginning to take place.

While the WSTPC respects and appreciates the good intentions and the national security focused good intentions of those who have drafted this proposed rule and that the aim is not to stifle international tourism, we are concerned that it is in fact doing just that. It will do more harm than good.

The proposed rule as stated in general terms and the implementation and enforcement procedures and requirements are undefined and unclear, causing uncertainty and endangerment of confidence on the part of potential international travelers and, perhaps even

more importantly, on the part of tour operators planning tourism programs for these international travelers.

We believe the proposal is seriously flawed for the following principal reasons. Implementation of the proposed rule will result in congestion and delay at ports of entry, which will discourage international visitors to the U.S.

The proposed rule will seriously jeopardize tourism business in the U.S. from Canadians. I will speak to that for a moment here. Since Canadians entering the U.S. are not required to have visas now and would not be so required under the proposed rule, it is unclear how they would be handled. We do not know what documents will be required from them to prove the purpose or the duration of their visit, and we are concerned that a strenuous and precise enforcement of this rule will have a debilitating effect on Canadian travel, which will have a severely negative impact throughout the west.

The proposed rule could potentially seriously jeopardize cross border travel by Mexicans into the U.S. for many of the same reasons having to do with uncertainty, and the conditions for granting extensions of stay fail to include residential leasing or renting as reasonable justifications. They pertain, as we understand them to be written right now, only to home ownership, as opposed to rental or leasing of vacation homes.

To avoid negative impact on the proposed rule, WSTPC supports the reasonable alternative that has been proposed by the Travel Industry Association of America. TIA urges that a 90 day default be granted to all B visitors and that it be extended upon request and review.

In conclusion, Mr. Chairman, we believe that this proposed rule will unjustifiably jeopardize the economies of states and communities in the west and throughout the nation, and we respectfully suggest that it is a classic example of the costs of regulation far exceeding the benefits. In fact, we suggest it should be withdrawn.

If not withdrawn, we respectfully urge that the rule as proposed be substantially modified in at least three respects. One, instead of a variable, unpredictable length of stay for B visa visitors, the final rule should adopt a fixed period of 90 days as described earlier, allowing extensions up to 12 months. Canada and Mexico should be explicitly exempted from the final rule, and it should be clearly stated that the rule makes no changes in how Canadians and Mexicans are treated and processed as they enter the U.S.

Three, lease and real properties should be regarded as equivalent to ownership when considering extensions of the length of stay.

Thank you again, Mr. Chairman. WSTPC will be happy to provide any additional information that may be relevant and important to the Committee. This concludes my remarks.

[Mr. McDermott's statement may be found in the appendix.]

Chairman MANZULLO. You will have set the record for saying the most in the least amount of time.

Mr. MCDERMOTT. Evelyn Wood served me well.

Chairman MANZULLO. Is that what it is? That is great.

I do not know when the bells are going to come up, and I want to keep the continuity going here. I am going to go down to the end of the table to John Lewis.

Mark, can you hand the mike over to Mr. Lewis?

In your testimony, Mr. Lewis, could you briefly give your background? We look forward to your testimony.

STATEMENT OF JOHN LEWIS, RETIRED, FORMER ASSISTANT DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, NATIONAL SECURITY DIVISION

Mr. LEWIS. Yes, sir. Thank you, Mr. Chairman.

Chairman MANZULLO. You have to pull it a lot closer than that.

Mr. LEWIS. Thank you, Mr. Chairman and Members of the Committee.

I know the first thing when you look at the witness list you might ask what in the world is this guy doing here, but, quite frankly, I was asked by the Chairman to come and add some different perspectives, a counterintelligence and counter-terrorism perspective.

Given my own background, I retired from the FBI, as indicated on the witness list, in September, 1998, as Assistant Director in Charge of Counterintelligence and Counter-Terrorism Programs. In that capacity, I also served as chairman of the International Association of Chiefs of Police Committee on Terrorism and chairman of the National Counterintelligence Policy Board. When I retired, I took a job in New York as global security director for a major financial institution, retiring two months ago.

Now, given the fact that clearly there are a lot of misunderstandings about this particular proposal, as Commissioner Ziglar pointed out and others, I am not an INS expert, but I am simply going to ask, as the Chairman has asked me to do, some different perspectives to maybe think about.

First of all, aside from the fact that in my judgement, and this is based on my experience with the Bureau, and I also should mention I served a tour abroad, INS is clearly understaffed and, in my judgement, in a very poor position to make any kind of meaningful judgement regarding people seeking entry into the U.S.

Secondly, it is difficult to talk about entry into the U.S. without considering the visa approvals process conducted by Consular Affairs officers around the world. With all due respect, I am aware of many one to two minute interviews as to whether or not a person is granted a visa. The usual focus is sufficient ties, that he or she will return and also have financial means to travel and return from the U.S.

Given the fact that virtually every type of immigration has been exploited by terrorists, to focus on a minimum admission policy alone, quite frankly, makes little sense to me, especially putting the burden on the alien in effect to establish his or her bona fides to enter and stay in the U.S.

Since this proposal is post September 11, I fail to see how this would make us more secure. To me, it does not focus on keeping out the most dangerous terrorists and criminals, but would have a chilling effect to more law abiding, poor or middle class potential visitors rather than the terrorist criminal individuals and groups or groups who, quite frankly, have no qualms to get past our controls. Ultimately, the whole issue of immigration to include visa

issues and entry into the U.S. rests on proper screening and tracking.

These observations, and I will only make a few; that is why I am only going to talk for a couple of minutes here, and they are not all inclusive, nor are they in any particular priority, but these are some of the things I would ask that maybe you congressmen and women and look into.

Consular Affairs must be upgraded and better integrated with INS to ensure visa applicants are properly checked. According to the Center for Immigration Studies, page 7, 41 of 48 terrorists were approved for a visa by an American consulate overseas.

The screening process should include access to all suspected criminals and terrorists across the federally held databases. I know a lot of strides have been made in that regard, but Consulate Affairs has to get involved, too, and not just with a cable back to the States.

Next, better our ability through liaison and technical means to detect fraudulent passports with our visa waiver program countries. I will not go into all the issues regarding certain countries where most of these terrorists came from and, quite frankly, how many of them got a visa without even appearing before an American.

Next, fund and institute a computerized entry/exit system. The fact of the matter is our current system is neither timely nor totally adequate to track visitors to the United States. I know we have the I–94 program, but, to the best of my knowledge, this is all still done by hand and not computerized.

Next, to fully support the fingerprinting of visa applicants from high profile countries supporting terrorism. A photograph is obtained already through the visa application process.

Lastly, and I know again there have been some strides made in this regard, but, in my own mind, having dealt with a lot of police over the years, it is inadequate. I am sorry. I missed out of turn here. It should be ensured that all other federal agencies, as well as state and local law enforcement authorities—by that I mean the cop on the street—has access related to any information placed in federally held law enforcement databases related to visitors to the U.S.

To make a phone call to check on somebody and have to wait for a response I do not think is adequate. I recognize that this might be very controversial, but the fact of the matter is the guy who makes the stop, the speeding stop or whatever, it would really be nice if he or she had some access to this information if something is there.

Lastly, and probably the main reason I offered to come here, is that in any organization that petitions or sponsors a person to come to the U.S. either as a student or on a work permit, that organization should be responsible to report whether he or she is still in the U.S.

I understand the schools have now been tasked with this requirement. I do not know how that is operating, but how about businesses? I know that when you petition or sponsor someone to come in if they leave your employ it is supposed to be up to them to notify INS. Well, to my way of thinking that is whistling in the wind.

That is the extent of my remarks, Mr. Chairman.

[Mr. Lewis's statement may be found in the appendix.]

Chairman MANZULLO. We appreciate that. Thank you very much. Our next witness is Neil is it——

Mr. AMRINE. Amrine.

Chairman MANZULLO. Amrine. Okay. Neil is the president of Guide Service of Washington, Inc., on behalf of his company and also on behalf of the Travel Industry Association of America. We look forward to your testimony.

STATEMENT OF NEIL AMRINE, PRESIDENT, GUIDE SERVICE OF WASHINGTON, ON BEHALF OF THE TRAVEL INDUSTRY ASSOCIATION OF AMERICA

Mr. AMRINE. Thank you, Mr. Chairman.

Chairman MANZULLO. Could you pull your mike up a little bit closer there? Thank you.

Mr. AMRINE. Thank you, Mr. Chairman. Mr. Chairman, Ranking Member Velazquez and Members of the Committee, I appreciate the opportunity to testify before you regarding INS' new proposed rule on the minimum admission period for B–2 visa holders.

I am Neil Amrine, president of Guide Service of Washington, and I am testifying today on behalf of the Travel Industry Association of America or TIA. Guide Service provides tours and other travel services for the D.C. area and its attractions for both domestic and international travelers. We have about 100 tour guides working in 20 different languages.

T.I.A. is the national non-profit organization representing all components of the $545 billion U.S. travel and tourism industry. TIA's mission is to represent the whole of the travel industry, to promote and to facilitate increased travel to and within the United States.

Guide Service of Washington and the entire travel industry believes that INS' proposal to change the admission period for travelers from six months to a shorter and poorly defined reasonable period will deter international travel to the U.S. It is entirely possible inspectors could assign admission periods for less than the length of a visitor's tour package. This new proposed rule will not increase security, but it will drive travelers to other international destinations.

Based on my years of experience, I can foresee many reasons why the INS as a result of the proposed rule would fail to assign the correct admission period to each international visitor. Some typical situations the rule does not take into consideration are optional add on tours. Most tour operators offer optional add ons for their tours; for example, a two day trip to Las Vegas in addition to a week long tour of Los Angeles.

It is not unusual for visitors to want to see additional sights and destinations after they have arrived in the United States. The new proposed rule would prevent tourists from purchasing these additional services and will restrict the ability of American business to sell their product.

Family. International visitors will often spend additional time with family that live in the U.S. after their tour has concluded. This means that the tourists will not leave the country when the

rest of the tour group leaves. These tourists do not always know exactly what their family member has planned for them when they first arrive in the United States.

Unforeseen events. Trips to the United States do not always go as planned. I have seen many instances where thunderstorms have shut down international flights out of Dulles or JFK, and the tour has to spend an additional night here. I am also aware of times when the tour bus breaks down, stranding travelers long enough that they miss their flight. Without the flexibility of a set admission period, INS could be swamped with requests for extensions. What will the INS do to travelers that only overstay a day or two in these situations?

The primary problem with the INS' new proposed rule is the lack of certainty created by eliminating the minimum admission period. If the INS rule is implemented as written, it will be extraordinarily damaging to the U.S. tour market. Without the certainty of a minimum admission period, neither the tour company nor the traveler can afford the risk of a trip cut short in the United States.

T.I.A. believes a reasonable alternative would be to reduce the minimum admission period for B–2 visa holders to three months or 90 days. This fixed time period would allow international tour operators and individual travelers to plan their trips to the United States with certainty while meeting INS' goal of significantly reducing the minimum admission period granted to B–2 visitors.

I would like to thank the House Small Business Committee and the SBA for their leadership in assisting small businesses after September 11. My company received one of the new Small Business Administration economic disaster loans that became available for companies in the travel and tourism industry last fall, but I am baffled and frustrated that my government would turn around and propose a rule so harmful to my industry. As I see it, the federal government is providing me with a loan, but making it harder for me to pay it back.

I urge the Members of this Committee to work with the INS, the Justice Department and the White House to stop this rule from being implemented as written. The travel industry proposal of a 90 day admission period is a reasonable alternative.

Thank you for the opportunity to appear before you today, and I look forward to answering any questions that you might have.

[Mr. Amrine's statement may be found in the appendix.]

Chairman MANZULLO. Thank you for your testimony.

Our next witness is Del Highfield, owner of the Camping Resort of the Palm Beaches, West Palm Beach, Florida. Perhaps in January we should consider a field hearing.

Mr. HIGHFIELD. I think that would be an excellent idea. You all come on down now, you hear?

Chairman MANZULLO. I think that Commissioner Ziglar might be interested in coming there also on the same topic. That is correct.

Mr. Del Highfield is the owner of his own business testifying on behalf of that business and also on behalf of the National Association of RV Parks and Campgrounds. We look forward to your testimony.

Mr. HIGHFIELD. We will leave the light on for you.

Chairman MANZULLO. All right.

STATEMENT OF DEL HIGHFIELD, OWNER, CAMPING RESORT OF THE PALM BEACHES, ON BEHALF OF THE NATIONAL ASSOCIATION OF RV PARKS AND CAMPGROUNDS

Mr. HIGHFIELD. Mr. Chairman, Members of the Committee, my name is Del Highfield, owner of Camping Resort of the Palm Beaches located in Palm Beach County, Florida. I am honored to be here this morning as a small businessman representing more than 8,000 commercial RV parks and campgrounds across the U.S.

I am here to speak on behalf of my 3,800 colleagues who are members of the National Association of RV Parks and Campgrounds, known as ARVC. ARVC is the national trade association that represents the commercial RV park and campground industry in the U.S. The industry employs more than 120,000 full-time and seasonal employees and serves some 40 million avid RVers and campers. It is the strong position of ARVC that this proposed INS rule must not be adopted in its current form.

Allow me to take a moment to tell you about my business and its relationship to the issue before you this morning. My park just happens to be the exact size of the national average of commercial parks within ARVC, just 133 campsites. We are a modest small business with gross annual sales of around $800,000.

We are the quintessential mom and pop operation. We have a paid staff of only two full-time and six part-time employees, and each year we have an annual occupancy of 87 percent with over 42,000 site nights rented. Due to the high cost of business in south Florida, however, our profit margin is minimal, and high occupancy is the only way we stay in business.

Canadian visitors represent 25 percent of my total revenues or over $200,000 a year. According to the Palm Beach County Tourist Development Council, these visitors at our park alone place another $250,000 into our local economy. Without their ability to stay long periods of time, our ability to continue to operate would be in serious question.

We are the rule in the Florida tourism market, not the exception. Our camping, tourism and hospitality industries heavily depend on Canadians. Regulatory changes that would shorten the length of stay for Canadians or other international visitors or any new rule that discourages long winter stays in the U.S. for foreign visitors will have a severe impact on our RV industry, as well as our economy, taxes and employment.

According to the Florida Association of RV Parks and Campgrounds, the number one source of out-of-state campers in Florida is Canada. Most Canadians travel to Florida in the winter months. They stay longer, and they stay longer than non-campers. They average 45 days and spend approximately $1,400 per trip.

In all, Canadian campers and RVers contribute approximately $280 million to the Florida economy each year. This large group of vacationers is vitally important to the Florida camping industry and the state as a whole. Other Sun Belt states would suffer similar losses, we are sure.

Loss of Canadian RV business in the southern tier will be felt by all states along routes from Canada to the south. This will be especially true in such tourism dependent areas as Branson, Nashville, Smokey Mountains, Myrtle Beach, Williamsburg, Las Vegas

and other areas as Canadians travel to Sun Belt states like Florida, Texas, Arizona, New Mexico, Nevada, Alabama, Mississippi and California.

The proposed rule will create delays, confusion and frustration at all international ports of entry. Detailed questions will be necessary to determine the purpose of an international visitor's trip. Challenges are likely to the validity of documents. INS inspectors will either be given extraordinary latitude or will have to follow extremely detailed guidelines. Either course is unattractive. The outcome will be frustrated international visitors who will not want to repeat this experience in the future.

Canadians are not required to have visas, but they are subject to the B visa provisions. Presumably, they will be questioned about the purpose of their visit in the same manner as overseas folks. Like all B visa visitors, they will have to obtain official documents verifying legal entry and approved length of stay, clearly a major and unsettling change for our Canadian friends.

One anomaly in the proposed rule would be particularly damaging to RV parks. While home ownership is declared to be a valid basis for getting an extension of stay, leasing or renting a residence or an RV site is apparently not. Canadian RVers often spend long periods in the United States and may lease or rent an RV park site for up to six months. We strongly urge that leasing or renting property be treated equally with ownership as a valid reason for extending a visit.

We also support the proposal of the TIA that a 90 day admission be granted to all B visa holders, which could be extended to six months. This seems to be fair, reasonable and avoids many of the problems in the proposed rule.

In summary, Mr. Chairman, ARVC believes that the proposed rule must be substantially modified to ensure minimum negative impact on tourism and that extensions of stay should be granted for leased or rented property in the same manner as owned property.

We believe prompt action is critical so this issue is resolved no later than late summer so the Canadians and southern tourism businesses can adequately prepare for a prosperous and successful winter 2002–2003.

Thank you once again, Mr. Chairman, for the opportunity to appear here today. I would be happy to respond to any questions.

[Mr. Highfield's statement may be found in the appendix.]

Chairman MANZULLO. Thank you very much.

Our next witness is Ellen White, who is president of the Canadian Snowbird Association. I did not know there was such an association. I see you are wearing your Canadian whites in anticipation of the heavy snows coming this winter and then you all coming down south to spend lots of tourism dollars.

I notice that part of your resume is that you are an amateur artist and writer, and I imagine you will be have something else to write about after your experience here testifying before the U.S. Congress. We look forward to your testimony.

STATEMENT OF ELLEN WHITE, PRESIDENT, CANADIAN SNOWBIRD ASSOCIATION

Ms. WHITE. Thank you very much, Chairman Manzullo and honored Committee Members. I am Ellen White. I am president of the Canadian Snowbird Association, and I am an active snowbird. Actually, I am a winter Texan. We are not called snowbirds in Texas.

I am honored to appear before the House Small Business Committee on behalf of the almost 100,000 members of the Canadian Snowbird Association and all of the 447,800 Canadians who enjoyed the United States' hospitality for 31 days or more each year.

We fully understand and support the need to control the alien population within the United States. The events of September 11 changed the world forever, and greater security is now a way of life.

The Canadian Snowbird Association is extremely concerned with the INS' proposed changes to the B–2 visitors visa regulations. The uncertainty of snowbirds' access to their winter homes and destinations in the United States and particularly the length of that access has already caused upset, confusion and, in our opinion, will result in a substantial reduction in tourism to the United States.

We respect the fact that Canadian retirees are subject to inspection, as are any other visitors to your country, but we have proposed to the INS an amendment to the regulation. Snowbirds vacation for up to six months of the year, primarily in Florida, Texas, Arizona and California. Governor Jeb Bush estimates the dollars left in Florida alone by foreign travelers at $5.5 billion, generating $500 million in state sales tax revenue.

While a great many of our members own property in the United States and live in their second homes for six months of the year, as we have already heard, a large number are retired and do not own property. Rather, they rent or they travel by recreational vehicles.

Regardless of the accommodation, Canadian snowbirds pay all fees and utilities that are required and applicable United States taxes that are requested. We support local restaurants, grocery stores and the entertainment industry. As the majority of snowbirds drive, we purchase gasoline in the United States. We use American garages for maintenance. Should the regulation pass unchanged, the loss of snowbird activity will reverberate through the United States as the enroute states and tourist attractions will also be affected by the loss of these visitors.

Mr. Chairman, last year Canadians spent more than $7 billion while here on vacation. Fifteen million Canadians crossed our border, ten million of those trips for pleasure. Additionally, while taking into account the influx of short-term visits to snowbirds by friends and family each year, the dollar amount rises considerably.

Although technically a Canadian does not need a visa to enter the United States, the border inspector must have some standard to apply. The standard that has been applied to date is the same as that applied to a B visitor visa. A person must have a residence in Canada which he has no intention of abandoning and visits the United States temporarily for pleasure and has the finances to provide for the duration of the stay.

Our concern is that the criteria as enumerated in the proposed regulation, 214.2(b)(1), as applied to Canadians will have a devastating effect. It seems logical in determining whether a longer stay than 30 days would be fair and reasonable reference would be made to the proposed subsection which enumerates the only circumstances which an extension would be granted.

It does not seem reasonable that one could be granted a longer period in the initial inspection for a reason which would not permit an extension. There is no criteria for one who simply wants to stay longer than 30 days to enjoy the warmth and hospitality of the southern state.

Your southern weather makes us feel better, and it often keeps us healthier. At the impulse of an inspecting officer, a snowbird, one who contributes to the United States economy, may have their winter plans completely destroyed.

Just yesterday, we received a call from a member who was most upset. The gentleman's neighbor attempted to cross the Ambassador Bridge on Monday, June 17, at approximately 6:00 a.m. He was denied entry and told it was because he did not have the deed to his Florida residence with him. When handed a form, no written reason was given.

Our member called to ask if there was any official document list issued by the INS for snowbirds to follow to ensure that they could travel. As far as we know, there is none. I do know, however, that we have another frightened snowbird, and the regulation has not even gone into effect.

On Monday, Director of Homeland Security Tom Ridge assured our Deputy Prime Minister John Manley that Canadians would not be affected by those proposed regulations. Chairman Manzullo, we were thrilled by the announcement. Now all we ask is that his promise be followed through and written into the regulation.

To that end, we will submit into the record a copy of our letter sent to Mr. Ziglar of the INS with our proposed wording to clarify the status of Canadians.

[Ms. White's statement may be found in the appendix.]

Chairman MANZULLO. That letter will be admitted as part of the record and as part of your testimony. Thank you very much.

Ms. WHITE. Thank you.

Chairman MANZULLO. Our next witness and last witness is Mark Hjelle, vice-president and general counsel, The Brickman Group, from Langhorne, Pennsylvania, speaking on behalf of the American Nursery & Landscape Association. It is not really related to this hearing, but——

Mr. HJELLE. I will try to tie it in.

Chairman MANZULLO [continuing]. You are invited to comment, and we look forward to your testimony.

STATEMENT OF MARK HJELLE, VICE-PRESIDENT AND GENERAL COUNSEL, THE BRICKMAN GROUP, ON BEHALF OF THE AMERICAN NURSERY & LANDSCAPE ASSOCIATION

Mr. HJELLE. Thank you very much, Mr. Chairman. Chairman Manzullo, Representative Velazquez and Members of the Committee, thank you for the opportunity to share my concerns on the

impact of the recent INS proposal to limit the period of admission for B–2 non-immigrant alien tourist visas.

My name is Mark Hjelle, and I am vice-president and general counsel of The Brickman Group headquartered in Langhorne, Pennsylvania. Brickman is a privately held and family owned company that has been in business since 1939. Brickman employs approximately 2,000 full-time employees and another 5,000 seasonal workers. Brickman generates over $300 million in annual revenues from businesses in 28 states.

My comments also reflect the concerns of the American Nursery & Landscape Association and the Associated Landscape Contractors of America, our industry's two national trade associations. At first glance, it may seem as if the nursery and landscape industry does not have an interest in the INS proposal to limit the duration of B–2 tourist visas. This proposal would not affect the H–2B non-immigrant work visas that Brickman and other green industry companies utilize in order to make up shortfalls in their seasonal work forces or any other business visa category, as far as I can tell.

In addition, it is not entirely clear to me that the proposed INS requirement would have a chilling effect on tourism. Persons who plan to come to America as a tourist for more than 30 days certainly should have a plan for how they are going to spend that time. I do not have a particular problem with requiring someone who is going to be here that long as a tourist to present a plan of their activities while in this country.

On the other hand, I do not believe that reducing the default period is going to result in better INS control of aliens. The Committee is quite right that an individual can overstay a 30 day visa as easily as any other visa. The real question is what the INS proposes to do in 30, 60 or 90 days that they currently are not doing for those overstaying six month visas.

However, considering the magnitude of this country's economic dependence on foreign travelers for business, as well as tourism, it is valuable that we are having this discussion. The nursery and landscape industry is extremely sensitive to issues involving immigration policy as our businesses are highly dependent on alien labor.

The reliance of the green industry on foreign labor is primarily borne out of the historic reluctance of U.S. domestic workers to pursue the employment opportunities offered in this rapidly growing industry with estimated annual revenues of $14 billion. Many jobs in the green industry are low skilled, physically demanding, seasonal and must be performed in a variety of inclement weather conditions.

Therefore, while our industry is exceedingly security conscious, we strongly urge this Committee and Congress as a whole to be very careful not to unduly restrict alien movements or create well intended administrative remedies that quickly turn into roadblocks that negatively impact the flow of legal and essential workers into this country.

As an example of this well intentioned but poorly executed administrative remedy I am talking about is an INS recent policy requiring security checks on all named beneficiaries for H–2B non-immigrant work visas. It is completely understandable why the

INS would want to check the backgrounds of these individuals. However, the reality of the situation is that the processing of these applications is already severely backlogged.

With no additional resources being provided to the INS for implementation of this new security check, current backlogs, as much as 75 days in some offices, will undoubtedly grow longer, forcing many employers to either miss their dates of need or pay a per petition fee of $1,000 for so-called premium processing.

The surge of anti-immigrant fervor after the 9–11 tragedies, coupled with difficult and time consuming border crossings, has greatly impacted many foreign workers legally employed in the green industry. Many were afraid to return to their native countries and are now working with fraudulent work authorization documents. Others were too scared to return to America regardless of the fact they had good paying jobs with long-term security waiting for them here.

As a result, many employers in our industry lost valuable and trusted workers. Consequently, we are greatly concerned with the ramifications limiting tourist visits will ultimately have on other visa programs for those aliens seeking to gain lawful entry into the U.S. for non-tourist purposes like employment.

When all is said and done, I do not believe reducing the default period on B–2 tourist visas is a major problem. I do see that there could be potential benefits, but I strongly encourage Congress to continue to fight on behalf of small businesses everywhere to ensure a continued safe and smooth flow of lawful aliens into and out of America.

This is essential for the purposes of travel and tourism, as well as employment opportunities offered by guest worker programs by industries unable to attract sufficient U.S. domestic workers.

Again, thank you for the opportunity to participate in this discussion.

[Mr. Hjelle's statement may be found in the appendix.]

Chairman MANZULLO. Thank you very much. I understand the relevance because you are perceiving a pattern that could directly impact your industry, and I appreciate your tying that in.

I have several questions here. Mr. Ziglar, it must be ten to one against you on the witness table, including the President's brother. This is not an easy situation for you to be in, but I guess you asked for it by becoming the Director of the INS. We appreciate the hard work that you are putting in and certainly appreciate your heart and wanting to do what is best for the nation.

I do have some questions. I have the proposed rule in front of me. Do you have that in front of you, Commissioner? I want to make particular reference to it. It is on page 18,068. Not that many are directed to this. It is about six pages on this particular regulation.

Mr. ZIGLAR. I have it right here.

Chairman MANZULLO. Page 18,068. That is correct.

Mr. ZIGLAR. I have it. I just have to find it.

Chairman MANZULLO. It is the area that talks about the Small Business Regulatory Enforcement Fairness Act. It is in the upper left-hand corner. Do you see that, Commissioner?

This was what Mr. Sullivan had testified to. He said the rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Act. The statement here says, "This rule will not result in an annual effect on the economy of $100 million or more, a major increase in cost or prices or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the U.S. based companies to compete . . ."

Could you tell me what documentation and what study and what econometric designs were used to come to that conclusion?

Mr. ZIGLAR. Being outnumbered ten to one, I grew up in Mississippi. I know how it is to be outnumbered ten to one.

Let me make a comment. I did not ask for this job. I was recruited for it.

Mr. Chairman, the analysis, as I understand it, that was undertaken here was based upon the statistics that we had in front of us with respect to the average median length of stay of individuals who are coming into the country.

Keeping in mind, of course, that anyone coming in under the visa waiver program, which has about 28 countries, major countries, which the major portion of our tourism comes in from, they are not affected by this because the visa waiver program has its own set of rules unimpacted on this.

The Canadians, for example, there is again this misperception issue with respect to Canadians, and that is that, as you know, Canadians come in without any requirement of an I–94 being processed. In fact, up until September 11, we did not even basically require Canadians to document that they were Canadian citizens. Maybe some ID. No passport. Now we at least ask for some kind of ID to establish some prima facie case that they are Canadians, but they are not asked for I–94s.

The I–94 is the vehicle by which the fair and reasonable time will be documented on that. There is nothing in these regulations that will require the I–94 to be processed, and so the Canadians will automatically by virtue of the way it is structured fall under a six month period, which is the maximum period of stay under the regulations as it was the default period before. That is, a fair reading of the regulations would suggest to you that is the way now.

Going back to your question, based upon the statistics that we had in front of us and us even assuming that you had some kind of 30 day maximum limit, which it is not, and I keep saying that. It is not. It would have not a material impact on the economy unless everyone who stayed over 30 days just refused to give us any information about the purpose of the intended length of their stay.

If you look at it from a common sense point of view, and on the statistics it would suggest to you that the way the regulations are structured would not have that impact.

I must repeat again that all that we are asking for is that somebody who comes here on——

Chairman MANZULLO. I understand, but, I mean, when you made this statement, prior to making the statement had you talked to any of these industry groups here?

Mr. ZIGLAR. I did not personally, but our——

Chairman MANZULLO. Was anybody here talked to by INS to quantify this statement?

Mr. ZIGLAR. Well, I did not personally, but I know that our people were talking to individuals in the industries.

Chairman MANZULLO. These people here represent the industries. Is there anybody here from INS that talked to anybody in the industry? Do you want to raise your hand?

I would submit, Commissioner, that what has happened here is somebody took a guess at this. When you look at the State of Florida alone, which is it three billion or five billion, Ms. Dana? Five billion?

Ms. DANA. Yes.

Chairman MANZULLO. The total amount.

Ms. DANA. Of international visitors?

Chairman MANZULLO. Yes.

Ms. DANA. We have eight million that come in.

Chairman MANZULLO. Could you put the mike up to you, please?

Ms. DANA. Annually, we have eight million international visitors, and that is of the 70 million that come in.

Chairman MANZULLO. And how much do they spend?

Ms. DANA. We estimate $8 billion.

Chairman MANZULLO. $8 billion. Did anybody from INS confer with you or the State of Florida prior to the promulgation of this proposed regulation as to the economic impact?

Ms. DANA. No, sir, not on this issue. We have worked well with the INS, but not on this issue have we been consulted.

Chairman MANZULLO. Commissioner Ziglar, I guess what I am looking at here and the reason I am asking this question is I think that this is conjecture that appears in these regulations.

The Small Business Regulatory Enforcement Fairness Act is critical to the small business industry. That is one of the reasons this Committee exists. What we see here is, and I will be quite frank with you, a lack of scholarship that went into this statement.

Mr. Sullivan talked about it. The people in the various industries talked about it. If you are going to even consider going ahead with this rule, I would suggest you withdraw it and then comply with SBREFA before you put out a new proposed regulation.

That is a tremendous concern to us because I think somebody here just guessed at it. When you look at the misunderstanding coming from this proposed rule to the fact that somebody from INS has already not allowed a Canadian resident to come in without their deed, I do not know what you looked at, but it is obvious the industry was not consulted.

Mr. ZIGLAR. Well, Mr. Chairman, let me say, number one, about the Canadian that came in. I just asked while this was going on to find out the name of that person and the name of the inspector because I find that a bit surprising given the fact that we do not generally make inquiries of Canadians other than some basic identification unless there is a reason the inspector has to question the admissibility of that person. Not all Canadians are admissible. There are reasons not to.

We put Canadians like everybody else in the secondary from time to time and raise questions. Now, there may be some situation here where there is a question that needed to be raised, and I

think in the absence of more facts it is a bit unfair to use this as an example.

Mr. Chairman, also let me just say this. A fair reading of the regulation does not suggest that we have a 30 day maximum period for people coming in. We have a fair and reasonable time that they will be granted based upon the intent, purpose and length of the proposed trip.

If you read the regulation, that is what it says. I do not know how you build an assumption on the economic impact of a regulation if people either intentionally or unintentionally misread it for whatever purpose.

Chairman MANZULLO. It is not the assumption. The issue is it is not so much the legal effect. I am sorry. It is not so much the legal language of a regulation. It is how people interpret it.

You know, I practiced law for 22 years. I have with me Carol Weineke, who has been with me since 1971. She has done immigration law in the office for ten years, and she has been through probably 5,000 cases. She teaches immigration law to other congressional offices.

This is extremely confusing. It is so confusing. The confusion is so paramount that the only way to stop the confusion is simply to withdraw the regulation and say that this does not make sense. We do not want to stop tourism because the best of intentions on the part of INS would not get around the confusion that could cause the harm to the tourism industry.

I am not blaming the INS for causing the confusion. I know that you worked hard with the press in order to get out the word as to the exact nature of this.

Ms. Velazquez?

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. Commissioner, given the testimony that we heard here from all the witnesses, including the President's brother, what type of steps are you prepared to undertake? It is the opinion of everyone here that this indeed will have an economic impact on small businesses. What will be the type of action that you will take in order to address these concerns?

Mr. ZIGLAR. Congresswoman, first let me point out that this is not a regulation by the INS in the vacuum. This is a regulation that was fashioned throughout the Administration with a number of people involved in it. We had a hand in it. Obviously we are the authority issuing that regulation.

It is also a proposed regulation. It is not in effect. It is out there. We have gotten a lot of comments. We obviously will consider those comments. I have read some of them myself. We will as an Administration—not as the INS alone, but the Administration. We will consider those comments, as well as the comments that have been made here today and made by Members of Congress both publicly and privately.

Ms. VELAZQUEZ. I understand. Mr. Commissioner, at the beginning of your testimony you said that there is misconception and misinterpretation, and there is so much confusion. If there has been an industry in our economy that has been impacted the most after the events of September 11, it is the tourism industry. Then you add your proposed regulation. That brings more confusion and,

therefore, will have a more negative impact on these type of businesses.

My question to you is based on what we heard. Are you prepared today to take the extraordinary step of convening a panel the same way we do with OSHA and EPA to work on this issue?

Mr. ZIGLAR. Well, I am certainly——

Ms. VELAZQUEZ. And, yes, SBREFA, and based on the assertion from the Chief Counsel of SBA, Mr. Tom Sullivan, that indeed this will have an economic impact on small business.

Mr. ZIGLAR. Well, I am certainly willing to discuss this with various components of the industry. Convening a panel runs into the Federal Advisory Committee Act, so I am not sure that I would convene a panel, but I am certainly willing to advise and deal with the industry in the context that it does not violate the law.

Ms. VELAZQUEZ. I would like to hear Mr. Tom Sullivan's opinion on this. Will that affect SBREFA?

Mr. SULLIVAN. Commissioner Ziglar may not be as familiar with this panel process as our colleagues at EPA and OSHA are.

Basically, pre-proposal EPA and OSHA sit down with folks like the small business owners that are represented around this table and try to, at one point, put out the agency's intention. In the case of INS that is to protect our nation's borders, and, at the same time, flush out how they can do that while minimizing the economic impact on small business.

This is a formalized panel process with OMB, Dr. John Graham, who heads their regulatory office there, our office and the promulgating agency. While INS is not subject to the panel requirement, what the Congresswoman does bring up is would we be able, in the time frame that is allowed between proposed and final rules, to sit down with Office of Advocacy, representatives from the small business groups, travel and tourism, and INS to flush out whether there is in fact a less burdensome alternative that would preserve the security of small business, but also preserve the security of our nation's borders.

Mr. ZIGLAR. I was not aware of this panel process. I am not skilled in bureaucratic matters. I apologize. I do know about the Federal Advisory Committee Act.

Ms. VELAZQUEZ. Well, now that you are part of the federal government I guess that you have to become more accustomed to that.

Mr. ZIGLAR. I sometimes am not surprised why the American people are so cynical about government with all the bureaucracy we have sometimes, but I am certainly happy to work with industry. That is where I spent my career.

Ms. VELAZQUEZ. Mr. Sullivan, I just would like for you to clarify to the Commissioner that FACA does not apply.

Mr. SULLIVAN. Actually, I know that FACA, the Federal Advisory Committee Act, does not apply to the panels convened by EPA and OSHA.

I would be happy to consult with the Committee subsequent to this hearing on whether or not there are FACA considerations that would prevent Commissioner Ziglar from sitting down with our office, small businesses and really hammering out, in addition to the 10,000 comments that have been received by INS, a solution that

preserves both the security of small business and the security of our country.

Ms. VELAZQUEZ. Commissioner, would you be prepared to say that you will convene such a panel?

Mr. ZIGLAR. Congresswoman, I am more than happy to do whatever makes sense in the context of getting the right input. Whether it is FACA or a panel or whatever makes sense, I am happy to do that.

I just know I ran into this FACA thing on the entry/exit system, so I am, you know, a little sensitive to trying to reach out to industry, and now we have all these crazy—we have all these rules. Excuse me.

Ms. VELAZQUEZ. You said it. I did not say it.

Chairman MANZULLO. I want to make sure that that remark, crazy, gets into the record.

Ms. VELAZQUEZ. Mr. Commissioner, is that a yes?

Mr. ZIGLAR. Yes. I am more than happy to do whatever makes sense. This panel thing, I know nothing about it other than what I have just been told.

Ms. VELAZQUEZ. I would like for Mr. Sullivan to explain to the witnesses here and to me what type of recourse the people and the businesses that will be impacted by this proposed rule will have if we do not have a panel that really addresses some of the issues that have been raised this morning.

Mr. SULLIVAN. I think what we have heard today through the statements of small business owners and trade associations is that if the rule is implemented without the degree of certainty that is necessary as written then there may not be recourse other than a severe detrimental financial effect to small businesses.

What we have heard from the Commissioner right now is very encouraging, and that is to go beyond the letter of the rule making process, which can be bureaucratic, and sit down with interested groups so that we can hammer out a less burdensome solution.

I know that after hearing the Commissioner's personal commitment to do that and also hearing of that commitment within the government that his word constitutes a significant movement in a direction to appease small business concerns.

I am pleased that he is going to be responsive to small business interests and I am also pleased that he is going to be responsive and report back regularly to this Committee on how we have progressed.

Ms. VELAZQUEZ. I just want to make it clear that if nothing happens in terms of putting together a process, a panel review process, for these businesses to be able to discuss and for the agency that proposed the rule to understand and to conclude that indeed there is not going to be an economic impact or not.

We do not know based on the testimony that we heard; if nothing happened where we put together a vehicle for this to be clarified that there is indeed a legal recourse for those businesses that will be impacted.

Mr. ZIGLAR. Congresswoman, I just want to make it clear that I am one member of a big Administration. You certainly have my expression of willingness to deal with this. I cannot just on my own

commit to any particular format, but certainly whatever powers of persuasion I have, I will attempt to make sure that that happens.

Ms. VELAZQUEZ. Well, I just want to mention here that when the Administration came out with the prescription drug card, community pharmacists all over the country raised a red flag, and they said they would be impacted.

When a vehicle was not proposed for them to be able to present their case or make their case, they went to Court. Then there was a judicial decision made to that effect. What we are following here is the letter of the law regarding SBREFA.

Mr. SULLIVAN. Congresswoman, I would like to respond to your original question, because I feel as though I have not been completely responsive. You asked what the legal recourse is, and the legal recourse is to challenge a rule in Federal Court that the agency's decision was made arbitrarily or capriciously.

Now, I think that what we have heard both from myself and from the Commissioner is that we would not like for it to get to that point because, as we know, it is a lengthy and expensive process when you go through this type of litigation, which does not necessarily immediately help the purposes of INS, this rule, and the economic security of small business.

I think what you have heard is the commitment from both of us to sit down and try to put aside bureaucratic processes and administrative legal actions and work through this so that we have a good solution.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you.

Mr. Grucci.

Mr. GRUCCI. Thank you, Mr. Chairman. I do not know if you can hear me or not, but I will try anyway. First, let me just thank you for your leadership on this issue and Ranking Member Velazquez for her leadership on this.

I just need to comment. An 18,068 page document? I guess it takes the brightest minds in Washington to come up with a concise document like that.

Chairman MANZULLO. If the gentleman would yield? The proposed regulation I think is four or five pages, but it is part of an 18,068 page document.

Mr. GRUCCI. That is correct. The Federal Register. Right. Thank God for Reagan's Paper Reduction Act, or this thing could have swelled to 18,070 pages. It could have really gotten out of control.

Ms. VELAZQUEZ. It seems, Mr. Chairman, that it did not work.

Mr. GRUCCI. Reclaiming my time, Commissioner, first let me applaud you for your quick action on behalf of the INS to take up the issue of who comes into our country very seriously and try to make our borders safe.

I would like to address this issue from a different direction if I may, and I hear what this esteemed panel has been saying. I have been fighting the fight with the travel agencies on an issue that I believe to be very important to the small businesses. It is, our five major airlines decided unilaterally to reduce their commissions to the airlines—to the travel agencies; I am sorry—and all at the same time keeping their own on-line travel agent going and paying them commissions.

I think that is wrong. They received a hell of a wallop, and the Members of Congress got a sucker punch, I believe. That being said, the industry has expressed their concerns here today about being able to continue to go forward.

The issue of the length of stay may have some relevance to being able to thwart another attack, but I believe, as I heard one of the speakers say, that to me it would make more sense to put that effort, that energy, that money and that time into tracking, detection, research.

Yesterday I attended a technical seminar given by one of the corporations in my district, Symbol Technology, who is part of a consortium to come up with a whole new tracking methodology for visas, for passports, et cetera. It was an eye opener the technology that sits out there.

We are not talking about having to reinvent the wheel. We are talking about taking systems that are currently out there and readapting them for current use. That would seem to make a lot of sense to me.

The elimination of the length of stay from 60 days down to 30 days. If someone is going to come in there——

Chairman MANZULLO. Six months.

Mr. GRUCCI. I am sorry. Six months down to 30 days. If somebody is going to come here to do some damage, they are going to come, and they are going to get in here, and they are going to do it. Certainly it only took a matter of hours for our airlines to be used as weapons of mass destruction, and someone conceivably could have fit in that 30 day window of opportunity that is now being proposed.

We have situations where our borders are porous, that people are flowing through undetected without any visas. I have extended an invitation. I know circumstances have arisen on a number of occasions that prevented you from visiting the district that I represent to demonstrate to you firsthand some of the problems that we have with the illegal immigration, the amount of people that are in a community that is just deteriorating the community and tearing it apart.

I would like to extend to you another opportunity for you or a deputy of yours to come to visit the district. I would hope that we could arrange a date. I understand the incidences that happened in the past have got in the way of that, and I do not fault you for that, but I would like at the conclusion of this hearing to have a moment of your time to confirm a time when we can get together. I think it is important that you see the issue firsthand.

Do you believe that by doing this six months to 30 days is a better approach than trying to tighten up our borders by preventing the illegal immigrants from coming in and putting in a stronger and a more advanced tracking mechanism so that we do not impact the tourism industry?

There are good people that do come to this country. We do not want to prevent them from coming. We do not want to stop them from getting here, and we do not want to impact them to a point where they say listen, it just does not make any sense.

I do not believe that a great deal of people come specifically to stay in my district, but they certainly come to visit New York, and

they come and they spend time out in my district. My area is kind of an afterthought of New York City. After they go to the city and they see all the great things there are in the city, they come out and look at the wine areas. They come to the beaches. They spend several weekends out in our tourism area.

That is good for our tourism industry. I would hate to see that evaporate because people feel that they have a limited amount of time to spend in the United States. And say I will take my money and my time, and I will go elsewhere in the world.

I would like to hear your thoughts on addressing the issue of detection and tracking versus collapsing the time coming into the country.

Mr. ZIGLAR. Congressman, let me articulate my vision of how we ought to be doing this business. I rarely get a chance to do this in a hearing because it is so specific questions.

My vision of this is that our borders start a long way away from our physical borders. They start out there in some country that has a name. There are people there who want to come into the United States. They go to the consular, unless they are a visa waiver. They go to the consular office to get a visa.

Now, what we need to have is intelligence information that is available at that consular office that says that this is someone that we do not want to give a visa to. That is where it starts is good intelligence that is shared with all of the points of contact that these people may have and all the law enforcement agencies.

Let us take the 19 hijackers. There was at the time they got their visas no intelligence information on them, so they got to the port of entry, and they came into the United States. Fifteen of them came in on B–2s, three of them came on B–1s, and one came on an F, I believe it was. Fifteen of those people, including Mohammed Atta and Alshehri, came in here on B–2s. They were granted automatically six months to stay in the United States.

Now, we do not have an effective entry/exit tracking system. We do not have yet and we do not yet have an effective student tracking system. We are putting both of those in place.

We do have the I–94 process, which is very effective on counting who is coming in, but we miss 15 percent of them on the way out. Even though it is fairly paper based, it is in a database, so we do have a way of figuring out when people are here and most of whom leave when they leave, but it is slow. It is getting better.

I am absolutely committed to bringing together all of these technological resources so that we have information available at every point that it needs to be available. It is not just INS information. It is FBI, CIA, Department of State, NSA, whoever it happens to be, that we have a profile of these people in terms of I do not mean profiling, but who are these people that are coming here.

In any situation that you have, there are going to be people that we do not have any intelligence information about. They may be young. They may have avoided the law, but they are here with an intent to do something. Mohammed Atta and those guys came in here, and they had six months to be in this country. They did not concoct that conspiracy overnight. That conspiracy was concocted over a long period of time. They ran under the radar screen.

Under this new proposal, what the intent of it is from a security point of view is to do several things. Number one is that when people get here and they want to come to the United States, our inspectors ask them a question, and that is what is the purpose of your trip, and how long do you intend to be here.

Now, legitimate travelers do not have a problem with that, I do not believe. They say okay, I am coming to see Aunt Tillie, and I am going to be here six weeks. Well, in the normal course of things under this new regime we would probably give them two months. We always try to give a little bit additional like on business visas than they ask for.

If somebody comes here and says oh, gee, I do not know. I am just coming to the U.S., and I am going to hang out around here. I do not have any intention of where I am going or where I am staying. That is where the 30 day default provision comes in.

In the case of a guy or people like Mohammed Atta and those kind of people, I think, frankly, that is a good rule, but from an enforcement——

Mr. GRUCCI. If I may, Commissioner? If you are going to ask that question and you are going to get an answer like that, to me that would send up a huge red flag. Maybe this person ought not to be given access at all until we find out exactly what they are going to do. Why default to 30 days, let the person in for 30 days and then see what they are going to do?

Mr. ZIGLAR. Well, Congressman, maybe I was being a hair facetious. The fact is that a lot of people come to this country and say I just wanted to come to the U.S. I want to travel around. I do not really have any particular time frame that I want to leave, but I know I have six months.

In a case like that, then our inspectors will ask a lot of additional questions. I mean, our inspectors by virtue of the 500 million people they see every year, they get a second sense about people, and that is when we put them in a secondary. If we are not asking them questions, but we are just by default under the law giving them six months, we have a lot less eyesight on who these people are. That is part of this.

It also has an enforcement element to it, and that is that that person who comes in here and gets 30 days, if they stay past 30 days they are in overstay status. Now, if they have six months and we have some concern about them—they are here, but they are in status—it is hard for us to do anything. If they are going to throw themselves out of status, then we have a grounds if we have some concerns about them to go pick them up and send them elsewhere. We have that.

We believe that this new rule—not a 30 day rule, but the new rule—also will facilitate the beginning of our entry/exit system implementation. We believe that it is creating the transition area for us to do the entry/exit.

I think also that if we have regulations that say when you come here you have to state why you are here and how long you are going to be here, I think that has a deterrent effect. That makes people understand that if they are legitimate that is not a problem, but it is a deterrent effect. It says that the United States is serious

about knowing who is in our country and the conditions under which they come.

I doubt very seriously that Joe Six Pack out there——

Mr. GRUCCI. I do not think it is the questions that are creating the problem, if I may. I do not think it is the questions of asking who are you, where do you come from, what are you going to do and how long you are going to stay here that is the issue.

The issue to me seems to be that we are not doing a good enough job, and I believe that you will agree. We are not doing a good enough job in stopping the illegal immigrants from coming in.

We have taken great steps, I believe some of it at your direction, to divide the INS into sections and to strengthen up areas, and I would hope that that would at least give us an agent that we can get into the New York area that can come out and do enforcement, instead of being told that we do not have anybody that could come out and take a look at illegal immigration.

It just seems to me that the issue, in using your own example that our borders start in some far off land with a different name, that we ought to have the intelligence on that person before they even come to apply for the visas.

If we knew that when someone applied for a visa hey, this is a bad guy, we better not let this person in if there is some tracking taking place by the CIA or the FBI or the Coast Guard or some other agency or even your own agency, then it does not matter if it is a 30 day, 60 day, 90 day or 120 days that they are allowed.

If this person is a bad guy and we could capture that bad guy by just asking a few questions, then it seems like we should be able to beef up our intelligence network and our information gathering system to even prevent that person from getting the opportunity to apply for a visa.

Chairman MANZULLO. Mr. Grucci, let me go to Mr. Issa here to make sure everybody has an opportunity.

Mr. GRUCCI. Thank you, Mr. Chairman.

Mr. ISSA. Thank you, Mr. Chairman.

Commissioner, I am going to follow up directly on Mr. Grucci's start and just do a little arithmetic calculation. We have 8.5 million, according to the U.S. Census, overstays, illegals, all of them combined, people who are not supposed to be here that we estimate are here. We did that on a recent census.

That means we had 19 bad guys who murdered 3,000 Americans, but for each one of those we have 447,368 people that could be bad, but we do not know because we do not know where they are. We just know that that is the estimated amount of undocumented people in this country, most of whom commit no crimes. That gives me kind of the whole question.

You know, I very much support the fact that you are taking action, and I know in this town that if you do not want to be criticized, do nothing, and you can usually get away with it, so I do not want to overly criticize you on putting up the concept of a 30 day default. I do think, during the process, if you hear the kinds of things you heard here today, you will be much more in doubt about "when nobody asks for any more, give them 30 days".

Certainly I would agree that if someone says I just want to come here and spend a week that giving 30 days is reasonable. The ques-

tion is if somebody says I want to come here, and I want to stay for an indeterminative period of time up to six months. I am going to go see this sight and this sight and this sight.

Then I happen to support this panel that probably, unless you have research that has been reasonably done, that you probably ought to give it to most people because of the 447,000 plus people that you are not even addressing, and the tens of millions of people who come to this country just to be here on vacation, snowbirds in not just Florida, but in Arizona and in California, it would be a problem. They would like to say I am going to stay here until the weather warms up. Therefore, you know, I would like more than a month.

Mr. ZIGLAR. Yes.

Mr. ISSA. Having said that, I would like to dovetail further on this whole question of outside the borders, at the borders, inside the borders and ask you a question that rises from that immigration reform and is still pending to the breakup of the INS versus the Border Patrol and I guess now the switch to Homeland Defense being in your hierarchy.

The secondary checkpoints that are in my district in San Clemente and Temecula, I believe, are no longer needed or not effective. We sometimes disagree on some of these points. How much do they cost to operate with those 270 personnel, at least one of whom could potentially be looking for criminal aliens in Mr. Grucci's district?

Mr. ZIGLAR. Congressman, I am sorry. I do not have the budget figures on that particularly. I did not anticipate this sort of question in preparing for those kind of numbers, but I will be glad to get it to you.

Mr. ISSA. Well, I am going to give you just the opportunity. My staff has been requesting that for more than two months and has not been able to get it.

This afternoon at 2:00 p.m., INS witness Joseph Green will testify in front of the Immigration Border Security and Claims Subcommittee, of which I am on. I would appreciate it if the information could be there at that time after several months of official requests and not getting it.

I support Mr. Grucci's very statement and I think some of the other statements that yes, we will go along with you I am sure on reasonable changes that include perhaps some form of shortening for people who say I am only coming for a week. Give him 30 days.

I do not think in the end, after your evaluation of comments and criticisms, that there will not be a tendency by all of us here, all of us in the small business community, to try to accommodate this initiative of yours because in fact we should not just punish people who try to have solutions that may help.

At the same time, to believe that with 8.5 million undocumented people in this country that we do not know where they are, many of whom came in and overstayed months or years ago, that 270 people waving 200,000 people a day through a checkpoint knowing that one in 20 of those is an undocumented worker and only catching ten per checkpoint per day is the solution.

I hope that just as we are working with you, and the small business community wants to be supportive as much as possible, that

you also will look at these other areas and give us the safety we could get if we removed thousands of criminal aliens every year instead of necessarily concentrating on the same old game of well, this being a deterrent.

As someone who is a border region congressman, to say it is a deterrent to put 270 people 70 miles inside our country and say that is deterring when there are 8.5 million people north and east of them, I have to ask you to please re-evaluate that, and I would very much appreciate getting the cost figures so we can begin evaluating the cost effectiveness of that.

With that, I yield back the balance of my time, Mr. Chairman.

Ms. VELAZQUEZ. I just would like to ask the Commissioner. Out of the 19 hijackers, how many were illegal or undocumented?

Mr. ZIGLAR. Well, they all came in legally. At the time that it happened, I believe three of them were out of status. I believe that is correct. Three of them were out of status, overstays.

Mr. ISSA. And one was incarcerated.

Mr. ZIGLAR. Well, then you have to go with 20. Yes. Right.

Chairman MANZULLO. Mr. Commissioner——

Mr. ZIGLAR. By the way, could I add one thing?

Chairman MANZULLO. Of course.

Mr. ZIGLAR. Of that 8.5 million estimate, and there are various estimates, of course, out there, approximately——

Mr. ISSA. I only took the census from the United States Census. I do not have a better one. I happen to think it is a lot higher, but my opinion is more subjective.

Mr. ZIGLAR. Well, I am just saying there are a lot of estimates. That is one that you recited.

Our estimate is that about 40 percent of that 8.5 million are people who came here in overstay status, as opposed to people who came across the border illegally, so they came here, were inspected and then put themselves in overstay status.

I think one of the reasons that we suggested this regulation was that we believe it does have a deterrent effect on the overstay part of that component.

Mr. ISSA. If I could have the indulgence of the Chair? I want to support that concept because I do believe that when someone is encouraged to just kind of hang around for six months when they came in just saying they wanted to stay a week and see Auntie that you may very well be right. At the end of a month they begin working. They begin working somewhere for cash. They begin transitioning into being more of an overstay.

That is where I want to be very supportive, of not announcing any initiative as dead on arrival until we look at the tradeoffs, but I think, having gotten the governor before I left, the point is that there are large groups of people who regularly ask for, have valid reasons and should be granted far more than 30 days, and we recognize that there is a middle ground that I very much hope when you are looking at the proposed rule versus the final rule that you would make those adjustments.

At the same time, you have a huge job on your plate in other areas, and I think this Committee and the small business community and the American people want to be supportive to find out how we can help you with the 8.5 million, which may rise or fall, based

on your initiatives, a few million, but will still always be a lot bigger than 19 or 20.

Mr. ZIGLAR. Congressman, the intent of this regulation is not to stick everybody with 30 days, as I have said a hundred times. That person that comes in on a visa and says, you know, I want to tour the United States and I may be here two or three months, the next question is okay, give us an idea of where you want to tour.

You know, based upon the questioning they will give them a three month admission period or whatever happens to be fair and reasonable for the purpose of the trip. That is the whole purpose of the regulation.

Chairman MANZULLO. Mr. Highfield is shaking his head. Would you respond to that question and answer?

Mr. HIGHFIELD. Yes. Thank you, Mr. Chairman. I, too, represent a little, tiny business person, and I can tell you that I grew up in Pontiac. The questions that they asked when I would go across to go drinking in Windsor, okay, when it was 18 years old across the way——

Chairman MANZULLO. Are you talking about the rib place just over the border?

Mr. HIGHFIELD. Right.

Chairman MANZULLO. Okay.

Mr. ISSA. What did they ask when you came back is the question.

Mr. HIGHFIELD. We knew the great questions and the great answers to give. Quite frankly, from a practical standpoint for those that have been doing it, these type of question things are, quite frankly, a crock.

If you are going to allow people to come in, just give them a defined reason. We are renting a campsite for five months in Corpus Christi. Okay. Here it is. Okay. Give us six months.

This 30 day thing is just impractical. I used to go back and forth across the border hearing all that stuff all the time. This kind of stuff will have absolutely no effect except to slow it down, and once in a while if you get a person who is a little grouchy and the INS inspector or the Customs person does not like it, boom. He is going to give him the shaft. That is the only way it works.

I am sorry about speaking English, but that is the bottom line. Let us be practical.

Chairman MANZULLO. I did not mean to get into your fraternity days.

I have a couple more questions, and that is just for clarification. Am I correct in saying that the requests for extensions do not apply to Canadians? Is that correct?

Mr. ZIGLAR. The way it works is because of the special status that Canadians have——

Chairman MANZULLO. Right.

Mr. ZIGLAR [continuing]. They would come in without an I–94, which means that they would in effect default to six months so that if they wanted to stay additional beyond that six month period then they would have to seek an extension, but that is the way it is now, Mr. Chairman.

Chairman MANZULLO. The cost of travel is in the thousands. We did some research. A tourist class airfare from Warsaw to Chicago is around $2,000. From Bombay is about the same. I say that be-

cause we have a lot of Poles and a lot of Indians in our congressional district.

Let me just give the experience of Carol Weineke again who has been through this hundreds, if not thousands, of times. She is the person in my office who does the actual immigration work that is the expert as far as I am concerned.

Her question, which is mine, is with the cost of travel in the thousands of dollars, individuals when they arrive soon discover there is much to see and at that point realize more time is needed. This is Mr. Amrine's statement and Mr. Highfield's. To file an extension today takes 60 to 125 days to adjudicate with a cost of over $100 to make the application to extend.

Coming from a person who actually assists my constituents in the extension process, what we are submitting to you today is the extension requests that you will have if this proposed regulation goes into effect, there will not be enough federal employees in the United States at every single agency to begin to handle those adjudications when today a lot of people are out of status between the time when their six months ends and they are waiting for an additional amount of time.

My question goes to the statement that was made by Mr. McDermott that there really is not enough INS personnel. There could never be enough personnel in order to enforce this regulation.

Mr. ZIGLAR. Mr. Chairman, let me make a couple of points. Part of it is good news, and that is that at two of our service centers we are down to 30 days for processing I–539s, which include extensions and other things.

Chairman MANZULLO. Does that include Chicago Service Center?

Mr. ZIGLAR. The other two of them are at 60 days, and we hope to have them at 30 days, which would cover the entire country, within the next couple of months, so we are making some real progress on that.

Now, on the question of extensions I have no quarrel, which has not really been talked about here, but I have no quarrel with a lot of the comments that have been made that the grounds for extension under the new regulation are far more difficult than they have been in the past, and I think that is something we clearly have to look at as an Administration.

It is absolutely incumbent upon us at the INS that if we are going to have tighter rules that we have the processing ability to create those extensions or exceptions that are allowed by law. That is clearly a high priority issue for us at the INS.

I believe that we will get this right. If it is not right now, we will get it right, and the burden on the INS will be minimal in the long term in terms of trying to reach those goals of processing.

I am not quite sure if that answers your question.

Chairman MANZULLO. Well, it does except I think you are overly confident of the fact that there is going to be a tremendous amount of requests for extensions. There already is now. Carol has handled hundreds of these where people come for the very purpose of visiting the United States, and then they just want to stick around longer and spend their dollars.

I have some other questions, but I want to yield to Ms. Velazquez.

Ms. VELAZQUEZ. Mr. Chairman, just to follow on your line of questioning. Mr. Commissioner, what did we do in the 1980s? Did we not extend to six months precisely because of what the Chairman is describing here today?

Mr. ZIGLAR. That is correct. Well, that is what they tell me. I was not around in the 1980s for this job, but I am told it was because of the backlogs that we have.

Now, the other side of this is that we are trying to fix our system so that it is much more automated so that we can handle these kinds of requests at a much faster pace.

Ms. VELAZQUEZ. I would like to have your optimism. You know, if in the 1980s we extended——

Mr. ZIGLAR. In this job you have to be optimistic or you jump out the window.

Ms. VELAZQUEZ. Mr. Commissioner, if in the 1980s we went to six months because we could not handle the backlog, how do you expect now that we are going to be able to have the resources?

Mr. ZIGLAR. Congresswoman, I do not believe that if this is properly fashioned that we are going to have that much of a problem in terms of additional I–539s being filed with us.

Chairman MANZULLO. I wanted to ask a question. Mr. Issa, I will recognize you.

Mr. Lewis, I would want to have your input on this. This is where I have problems. When you look at this proposed regulation, the whole purpose of it is aimed at fighting tourism. Tourism? Boy, is that Freudian. Fighting terrorism. You can tell where the heart of this Chairman is. That is correct. Fighting terrorism.

I read on page 18,066 in the first paragraph it says, "Why is the Service proposing to reduce the maximum admission period for B–1 and B–2 visitors from one year to six months?" The answer, and I just cannot accept this answer. The answer says: "As previously noted, Service regulations at . . ." and it gives the numbers, ". . . currently provide that a B–1 visitor for business or B–2 visitor for pleasure may be admitted for a period of up to one year. As the attacks of September 11, 2001, demonstrated, this generous period of stay is susceptible to abuse by aliens who seek to plan and execute acts of terrorism."

I do not know who wrote this, but this is saying that if you stay another 90 days, you are going to devise your terrorism intent after you get here. The article in today's Post talked about these clowns on September 11th. They really started planning that stuff after the bombing of the embassies in Africa.

[The information may be found in the appendix.]

They are very sophisticated. They are very smart; so smart to the effect that even if the most sophisticated computers had been in effect only two of those guys would have been caught at the issuance of the visa stage because their backgrounds were clean.

As I read this, somebody is going to do an act of terrorism that comes into the United States. He is still going to remain legal whether he asks for 30 days or whether he asks for six months because if he does not want to come under scrutiny he is going to play the game.

I would like your comment on that and Mr. Lewis' comment on that.

Mr. ZIGLAR. Mr. Chairman, I will go first. The regulation here goes much beyond terrorism. That reference obviously is a core reference, but the whole issue here of people coming to the United States under our very generous system and overstaying their stay or coming here and creating connections, being illegally employed and then overstaying, coming here and engaging in marriage fraud or document fraud. I mean, we have a problem that Congressman Issa mentioned, and that is that we have a lot of people here who are illegally here.

This regulation is just one part of a lot of other things that we are attempting to do both at the INS and throughout the Administration not to deter people from coming here legitimately, but to have better eyesight on who is here and who comes, who stays and who leaves.

I am not confused. I have come up to this body more times I think than any other Administration witness now, and it has been made pretty clear to me that people are not happy about the things that go on with respect to people coming into this country and overstaying their welcome and engaging in fraud and all of those sorts of things.

This is just one of a holistic approach to trying to not deter tourists and not deter legitimate immigrants or any of that sort of thing, but to do things that most other countries do, and that is they have better eyesight on the people who are in their country for whatever reason they are here, whether it is tourism or whatever. It is a part of a long-term plan that it has been made clear to me by the Congress and particularly on the House side that that is what they expect, and they expect it yesterday.

You know, if you are looking for a miracle in this area, you are going to have to look a whole lot higher up than where I am on the seventh floor of the INS, but I have to tell you. We are trying to do our best. You know, we do not always hit it just right on the nail on the head. Given the resources that we have or do not have and how strained we are and what we are trying to do, we are doing our best with what we have.

Mr. LEWIS. Yes, sir. Thank you. First of all, when you look at al-Qaeda, and I do not know that these documents have been publicly made available, but I know it has been stated that in the training manual that the al-Qaeda has there is a section on how you handle being interviewed for not only entry to a country, but also law enforcement stops, how you handle everyone else that might have cause or reason to interview. That is my concern about the interviews at the entry point once they have been given a visa.

Secondly, you know, my heart goes out to INS. They have an enormous job to do. I keep going back to the screening process and the tracking once they are here. These individuals are trained in how to avoid detection. Again I go back to what this regulation will do, which I see many reasons for it, but it is in my mind not related to stopping terrorists.

As far as planning goes, yes, it has been publicly stated now I guess in hearings yesterday that this al-Qaeda or the skyjackings and suicide attacks on the World Trade Center and the Pentagon, the planning process started in 1998 and in Germany for the most part.

If you get into the local areas of what they might do here, yes, they do go out, and they look at different facilities. They photograph it, draw up schemes or schematics, and ultimately they look for some kind of blessing to attack that target. There could be as many as 30 ongoing sites that they are looking at or organizations, businesses, federal facilities, but they might only end up selecting one or two.

I think that might be what the Commissioner, when he is talking about or when others are talking about what al-Qaeda does or terrorists—Hezbollah does the same thing—in a particular country. I hope that answers the question.

Chairman MANZULLO. Let us take two more short questions.

We have some other responses. I am sorry. Go ahead. Ms. White?

Ms. WHITE. Not if you are still talking on terrorism.

Chairman MANZULLO. Hang on just a second. Let us get the mike in front of you so we can hear you.

Ms. WHITE. I was not really thinking about terrorism as such at this time. I am sorry. Maybe my question is out of place.

I just feel that I am not getting an answer for my people. Our phone lines in our offices are ringing sometimes 25, 35 times a day from Canadian people. I mean, a lot of these people are 50, 60, 70, 80, and they are worried.

All they are seeing is what has been put out on the documents so far, and they are worried. They are scared. This is June. They will be planning whether they are traveling as tourists or not.

It is nice to say that Canadians are not part of this, but there is nothing that we can really tell them. There is nothing in writing. There is nothing that we can really tell our people.

They are scared to go to the border. If you are scared to do something and you are 75 or 80 years old, we have to buy insurance. We have to buy insurance for five or six months before we go. If we have to plan two months before we get to the border, then get there and are scared that somebody is going to say no, you cannot go for six months. We will only let you go for four.

Chairman MANZULLO. Ms. White, if I recall, the Commissioner said that this regulation does not apply to the Canadians to the extent of the extension. Is that correct, Commissioner? Did I hear that right?

Mr. ZIGLAR. For Canadians, given the arrangement we have with them, they are not subject to the so-called I–94 process, which means that they come in for inspection and they have a date stamped on their I–94.

In this case, they are not coming in being asked how long are you going to stay. It will fall back to the six month default period. After six months—I am sorry. The six month maximum stay period. After six months, if they want to stay they can file for an extension on the grounds that are in the regs.

Chairman MANZULLO. Okay. The request for the extension as to the Canadians would be the same as everybody else. It is only unexpected events, such as an event that occurs that is outside the alien's control and prevents the alien from departing the U.S., compelling humanitarian reasons, such as emergency continuing medical treatment.

The fact that a Canadian may want to stay more than six months just to visit more or sun more, they would be ineligible under this proposed language. They would need to go back home.

Mr. ZIGLAR. Mr. Chairman, as I said earlier, I share some concerns about the restrictive nature of the extension process. It is something that I feel like needs to be looked at very carefully.

Chairman MANZULLO. I appreciate your candor. Thank you.

Mr. McDermott, you had a comment?

Mr. MCDERMOTT. Just a particular comment, Mr. Chairman, with regard to——

Chairman MANZULLO. Could you pull the mike closer to you?

Mr. MCDERMOTT. With regard to the issue that it is our opinion, my opinion from the perspective of the tourism industry and our western states group in particular, that the particular confusion with regard to the language having to do with fair and reasonable, as well as the 30 days, is where the real problem is centered around.

In other words, visitors who are intending to be here for anything more than 30 days, and even those intending to be here for less and are not certain about what is going on, are fearful, as you heard Mrs. White say, that they are going to arrive at the border, they are going to arrive at their entry point and then be interrogated, and then some INS agent is going to determine for them how long they can stay regardless of how long they wish to stay, intend to stay or whatever. Their plans could be terrifically disrupted.

Now, it is that kind of fear on the parts of potential travelers and the parts of businesses such as tour operators and travel agents and so forth that are planning tours for folks that has the propensity to deter the visitation that, therefore, could so severely impact the tourism industry in a country that, by the way, has already been losing international tourism market share for the past several years since closing down our United States Travel and Tourism Administration. We are further exacerbating our situation because of the lack of clarity and the problems of communication that have already permeated this particular issue.

We need to get clarification in the language as it pertains to Canadians in particular out there post haste, and then we need to get clarification as to exactly what does fair and reasonable mean in terms of what is going to happen to a person in terms of their interrogation at a border, at an entry point, and then, furthermore, what exactly would constitute necessity to be defaulted to 30 days.

Chairman MANZULLO. Let me make a suggestion. Mr. Commissioner, do you have it within your authority to give a simple letter to Ms. White that she could put up on the internet and send to all of her members that just states matter of fact that this regulation does not apply to them, and it may apply at the six month extension, but that six month extension would be a year off even thinking about it?

Would that satisfy you, Ms. White, just something very simple?

Ms. WHITE. It would be very good.

Chairman MANZULLO. Is that possible? Could you work with her on that?

Mr. ZIGLAR. Mr. Chairman, I cannot send that letter without—I mean, I cannot go to the restroom without getting OMB's approval, so I would have to go through them to clear the letter, but I certainly would try to do that.

Chairman MANZULLO. Let me make a suggestion. I am going to get very serious here.

I would like a commitment to start those talks with a deadline to have that letter out in two weeks. If it is not out in two weeks, I may entertain a further hearing to bring you in and ask you to bring in your sleeping bags and your toothbrush. I am serious. We had to do this once before in order to effect a change for travel agents.

I am not going to have our good friends in Canada, our number one trading partner discouraged from visiting America. I have been a member of the American-Canadian Inter-Parliamentary Exchange for ten years. I was the chairman for one year. The Canadians are so upset with this rule—I was just with them four weeks ago at our Inter-Parliamentary Exchange—that they have formed a task force among the Canadian MPs to figure out what they have done to offend the United States. That is how serious this is with our Canadian friends.

I had to bring in Dr. Graham and the head of the SBA with the same threat. I am serious. This has to be taken care of immediately with the Canadians. I would ask that there be a letter that would be drawn and approved within two weeks or I can guarantee you I will take everything I can do here to compel the appearance and get that letter out. We cannot sacrifice hundreds of millions of billions of dollars because of bureaucratic change.

If you need help with Dr. Graham and he will not talk to you, I will have both of you here at the same time, and you can discuss it in open court in order to get the thing done.

Mr. ZIGLAR. I did not mean to suggest that OMB is a problem. I just said that I——

Chairman MANZULLO. They are a problem. They move slowly.

Mr. ZIGLAR. I just said I cannot unilaterally with respect to something like this issue a letter.

Chairman MANZULLO. No. I understand, but what we have here on the table, and, as I said before, the purpose of this Committee is solutions oriented. The Canadians cannot wait for the rules to be promulgated.

Ms. White is here testifying. We had a member of the Canadian Parliament who was going to testify, but because of technicalities Senator Grafstein could not come. That would have been the first time that a Member of the Canadian Parliament would have testified before a Committee of the United States Congress on how impacted and how offended the Canadians are over this particular proposal.

I would suggest, and I am going to follow up on it, that Ms. White have within her hands some type of a directive. I do not care if it is an internal memo that you send to Mike behind you that somehow finds its way into my hands that I can send to her that has your initials on it. I am serious. We have to get creative here. People from Canada are there. These rules do not apply to the Canadians. I just hope we got that message out.

Even something that simple that finds its way into my hands that I can give her, that will save a lot of angst and also create a lot of money that could be here in the United States.

Would that help you out?

Ms. WHITE. Yes, certainly. We will not only put it on our website. We will make certain that all our Canadian press gets it as well.

[The information may be found in the appendix.]

Chairman MANZULLO. Okay. There we are.

Mr. Issa.

Mr. ISSA. Mr. Chairman, I might suggest that I think we in the hearing have a clear understanding from the Commissioner, based on hearing testimony, that in fact Canadians do have an automatic six month entry.

I might suggest that we pose that understanding in the form of a letter which we can, of course, make available to all the panel members at this time, and then subject them to permission from Mitch Daniels, or whoever it has to be, a response that would come back in a timely fashion.

I think today we could publish something for the record in the form of an understanding which we send as a letter that already says what we believe we heard here. I think that would go a long way with Members of Congress clearly understanding that. To be honest, if it comes back incorrect, we are the body that could make changes necessary to make it correct.

Mr. ZIGLAR. Mr. Chairman, could I respond to that?

Chairman MANZULLO. Of course.

Mr. ZIGLAR. I do not mean to sound bureaucratic, but I also am a lawyer.

Mr. ISSA. We forgive you.

Mr. ZIGLAR. I have been recovering for 22 years. The word automatic is not a right word. That is assuming. The regulations are this way now. That is assuming that a Canadian is otherwise admissible to the United States.

The way it would be now is they would go to the six months. I just want to make that clear that we are not all of a sudden saying everybody from Canada, even if they are not admissible, can come in.

Mr. ISSA. So the letter or the memo really should say that nothing has changed under U.S. law with regard to the Canadians?

Chairman MANZULLO. That would be the easiest thing for the Canadians with the exception of that request for an extension.

Mr. ZIGLAR. Yes. Well, the six month total—in effect, that is right.

Chairman MANZULLO. At least the first six months.

Mr. ZIGLAR. You would have to explain it carefully.

Chairman MANZULLO. The first six months.

Mr. ZIGLAR. Right. Yes.

Chairman MANZULLO. Okay. I mean, I would be willing to work with you on a one sentence thing like that, or perhaps there is something.

Mr. ISSA. Our lawyers and your lawyers can get together——

Chairman MANZULLO. Yes.

Mr. ISSA [continuing]. And create the letter necessary to be clear and concise.

Mr. ZIGLAR. No, no, no. We will keep lawyers out of this so it will be understandable.

Chairman MANZULLO. Then I have to get out of it. If we could work with your assistant, Mike, who was in our office yesterday, on drafting something very simple that perhaps could fly by the OMB that we could get, then we have your assurance that you would work closely with us on that?

Mr. ZIGLAR. Sure.

Chairman MANZULLO. Thank you.

Mr. ISSA. Mr. Chairman?

Chairman MANZULLO. Do you have a question?

Mr. ISSA. I actually have a question.

Chairman MANZULLO. Okay.

Mr. ISSA. That part was helping with yours. Now this is mine.

Chairman MANZULLO. Okay. You have a question and Mr. Grucci had a final question. Is that it? Okay.

Mr. ISSA. Yes. I think we will be quick. Sort of as a wrap up question, Mr. Commissioner. If I understand correctly, you are now very aware, at least as a result of this hearing, of the balance between the revenue that we receive and the huge amounts of taxes that are gleaned from tourism. And I am going to assume it is far greater than the amount of money necessary for you to improve your office in other ways that would not stifle tourism, with the knowledge that Congress supports you and can give you alternatives that keep that revenue coming in, thus paying for the programs of interior enforcement that you need. Hopefully that will be considered in your rule making in this process.

The other one is purely a concern, and that is that I hope, and I hope I will get a response here today, that those other things which are being floated around that affect your department that basically say if you are Saudi, if you are this, if you are that, we are going to put you in a special category of high risk and, therefore, we are going to say we do not want this group of tourists or this group of tourists, this group of investors, this group of investors.

I would hope that in light of what we did to Americans of Japanese descent in World War II, you would recognize that, notwithstanding our special relationship with certain countries that are longstanding and unrelated to anything other than large traffic and other relations, but with those who are generally in the pot of all other nations I would hope be color blind, religious blind, nationality blind, and that in all of your rule making, that would be made extremely clear.

I must admit that there have been a few ideas floated, and they have been all over the paper, that essentially say 1.1 billion Muslims need not apply and that they will somehow be further scrutinized. Currently the Syria limitations, basically shutting them off, indicate a direction that way.

I would hope I would hear today that that is an anomaly and certainly not the direction you plan on going.

Mr. ZIGLAR. Congressman, as you know, I have made the statement several times, and I will expand it a little bit, that it was evil, not immigrants, and I will expand it to say it was evil, not immigrants and tourists, that caused September 11.

As you also know, I am the resident libertarian around here, so I am a free trader, and I am all of those things that I always felt was a classic Republican, as opposed to otherwise, so I struggle with these kinds of things every day probably way too much for my own emotional health at times, but I understand where you are coming from, and I share that view.

Chairman MANZULLO. Mr. Grucci.

Mr. GRUCCI. Thank you. Commissioner, I just want to ask a quick question on your intentions now with hopefully the restructuring of the INS taking place.

Mr. ZIGLAR. Which one, Congressman?

Mr. GRUCCI. Well, hopefully it is somewhere in those 18,068 pages.

In all seriousness, the enforcement side of the INS. What are we doing at, A, the borders and, B, once someone does penetrate our borders? In my region on Long Island, for example, I have been grappling with this issue, and I might get a little parochial now if I may.

For a number of years, when I was the town supervisor there I tried to get an INS representative to come out and discuss the issue with me. You know, the person chuckled on the other end of the phone and said you want me to come out to your town? I am one person, and I have this entire region. They explained the entire region that they have to cover. There was absolutely no way that one person could deal with all of that.

Are we sending more inspectors out onto the streets? Can I get inspectors to come out to my District to take a look at the problem to see if indeed we could round up some illegal immigrants and send them back home? Those that are legal that belong here and deserve to be here, leave them alone. The situation is just boiling to the point where there may not be lynchings today. I cannot guarantee that going forward.

Mr. ZIGLAR. Congressman, let me give you some statistics, some facts, so you will understand the dimension of the problem that we face.

I currently have roughly 1,920 investigators worldwide. We are authorized around 2,100, as I recall. We are having a huge attrition problem throughout INS just like everybody else is primarily because of the Transportation Security Administration's ability to pay more money, but I have 1,922.

Roughly half of those are now still committed to working exclusively with the FBI on the terrorist investigations, so that gives me down to let us say roughly 1,000. I then have about 300 that are by prescription of the Congress dedicated to certain things like quick response teams and some other things, so I am down to 700 special investigators worldwide.

Our priorities, and obviously with terrorism we have the 1,000 over there already. Our priorities are, number one, rounding up criminal aliens, and there are a lot of them out there, then breaking up smuggling rings, then doing investigations on fraud and other kinds of things, and then after that we get down to the enforcement, if you will, of situations like you describe where there is not a criminal alien or smuggling and that sort of thing.

We have run out of investigators a long time before we ever got down to that priority. It is really a matter of resources as to where we can put our people at this point. I hate to poor mouth, and I always used to say yes, you know, I have heard that before, but then I look at the numbers, and I realize if I am going to meet the priorities.

Now, I will say this in defense of the INS. Way before I got there they had asked for a substantial increase in investigators, special agents, to do this kind of work. They have uniformly not gotten it.

I mean, INS, by the time it gets through the process, we get, you know, maybe 20 percent of what we really think we need over the history. I have studied the history. I mean, we are up against the wall in terms of having resources to do the kinds of things that are regarded as interior enforcement.

Mr. GRUCCI. I do appreciate your problem, but it does not help me with the problem that I have.

Mr. ZIGLAR. I understand.

Mr. GRUCCI. Out of those 700 people, if you could just send two my way for a couple of weeks and just let them do a sweep of the area, I think that that would go a long way in helping relieve a major problem.

Chairman MANZULLO. Perhaps you could work out an earmark for the INS.

Ms. VELAZQUEZ. Yes. On Long Island we have beautiful landscape. You might run into the risk of not knowing who is going to cut your lawn or wash the dishes in the restaurant.

Mr. GRUCCI. Reclaiming my time, I will tell you who cuts my lawn, and it is not an illegal immigrant. I can assure you of that.

Ms. VELAZQUEZ. It was a joke. Mr. Commissioner, before we adjourn I just would like to know. I know that you said to me when I asked you in terms of addressing the serious concerns about the economic impact that the proposed regulation is going to have on the tourism industry you said that whatever it takes, and I took that as a way to say to us that you are committed yourself to convene a meeting with those representatives and your office. What would be the time frame for such a meeting?

Mr. ZIGLAR. Well, soon. I do not have my schedule in front of me, but I would suggest that we can do that in the next week or two.

Ms. VELAZQUEZ. Okay. If you can inform this Committee, I would ask, you know, that he submit to us a report of such an effort.

Chairman MANZULLO. I just want to thank all the witnesses here for a really good hearing. As I said at the beginning of our hearing here in Small Business, the reason we have one panel is to have interaction among the people who propose the regulations and those who are impacted by it.

Commissioner Ziglar, you have done a marvelous job, an exemplary job, of defending a very difficult regulation; not that I accept all of your answers on it, but they are given with a good heart, with a good spirit, with an honest mind, with a person who has a sincere desire to serve this country, from a person who has obvious integrity and a person who, in my opinion, is probably the best person for the job under these very difficult circumstances.

You have a full understanding of the business impact on this. You have a compassion for people. You have the right attitude. You

took a job that is very difficult, coming into it knowing you would have to appear before Congressional Committees.

I just want to commend you for your statesmanship and the way you have answered these questions and for your candor and for your dedication to public service.

As to the rest of the members of the panel, I think you share with me the insights that we have learned about the every day life of a commissioner and also his openness and willingness to work with the business community, especially with the tourism industry.

I also appreciate the long range view as to what INS needs to do. I am glad that we provided a forum for you. I wish that C-SPAN were here because that message has to get out.

I trust that within the next week or so that we can work together very diligently to quell as much misinformation as possible and to work towards a very quick amelioration of the misinformation so that the tourists can come to our country and spend lots and lots of money.

This Committee is adjourned.

Mr. ZIGLAR. Thank you, Mr. Chairman.

[Whereupon, at 12:50 p.m. the Committee was adjourned.]

OPENING STATEMENT
CHAIRMAN DONALD A. MANZULLO

Today the committee will focus on the importance of international tourism to our nation's small businesses. Over 25 million overseas visitors came to our country in 2000, giving us a trade surplus of $14 billion. Last April, the Immigration and Naturalization Service (INS) proposed a rule to change the automatic default period for tourist visas from non-waiver countries from six months to 30 days.

I understand that there has been a lot of confusion about this proposal. Many media reports said that all visitors would be limited to stay in the United States for a maximum of 30 days. However, the proposal will grant any international visitor from a non-visa waiver country the time they believe is appropriate to visit the United States, up to six months, provided that they can demonstrate to an INS Immigration Inspector a rationale for staying in the country for more than 30 days.

Regardless of this clarification, this proposal may well endanger the confidence of foreign travelers desiring to visit the U.S. for longer than 30 days. According to an INS fact sheet, the new rule will require visitors to:

"explain to an INS Immigration Inspector the nature and purpose of their visit so the Inspector can determine the appropriate length of stay. While INS Inspectors will make every effort to determine a fair and reasonable time period, the burden of proof rests with the alien. When the time needed to accomplish the purpose of the visit cannot be determined, INS will grant a 30-day period of admission."

The proposed rule itself states that "where there is any ***ambiguity*** whether a shorter or longer period of admission would be fair and reasonable under the circumstances" the visa will be issued for 30 days (emphasis added).

The main justification for this proposal is to fight terrorism – an extremely important objective. Yet, this policy change has very little to do with fighting terrorism. In yesterday's Washington Times, there was a report about the growing threat of terrorist forces recruiting disaffected U.S. citizens with passports in order to avoid our immigration laws. There must be a better way to accomplish the legitimate objectives of the INS without significantly damaging the U.S. travel and tourism industry. We certainly need better sharing of intelligence data so that our Consular Officers abroad and our Immigration Inspectors at the border know who to deny entry into the United States.

The INS also claims that this rule will not have a significant economic impact on a substantial number of small entities because this rule only applies to non-immigrant aliens visiting the United States, not to small entities. They also claim that this is not a major rule that will have an impact on the economy of $100 million or more. The INS has not yet provided research to substantiate this statement made in the proposed rule. The travel and tourism industry in the United States is dominated by small businesses. This industry relies heavily on international visitors for their livelihood. In 2000, the

Commerce Department estimated that 939,000 visitors from non-visa waiver countries contributed almost $2.1 billion to the U.S. economy. That's a significant impact in my book.

Finally, I have a concern about how our Canadian friends will be treated under this new rule. Currently, most Canadians crossing our border do not need a passport. They are not given anything in paper by our INS Immigration Inspectors documenting how long they are allowed to stay in this country because they are automatically assumed to have a default admission period of six months. Yet, how will this rule affect them? While I welcome Homeland Security Director Tom Ridge's clarification to deliver a formal notice to Canada saying that Canadians can still head to the U.S. for up to six months, it's also preferable for this to be included in the final rule. Canadians have a vested interest in not staying in the U.S. beyond six months because otherwise they will lose their health insurance and they will also have to pay U.S. taxes.

There were nearly 14.6 million arrivals of Canadian citizens through our border in 2000. They spent nearly $10 billion in the U.S., including $162 million in my home state of Illinois alone. How this issue affecting Canadians is resolved will be of great interest to me. Continued progress on the *Smart Border* plan with our Canadian friends will probably do more to fight terrorism than any other initiative.

I now yield now for the purposes of an opening statement from my good friend and colleague from the Empire State, Ms. Velàzquez.

STATEMENT
of the
Honorable Nydia M. Velázquez
Hearing on Proposed Changes to 'B' Visas
June 19, 2002

Thank you, Mr. Chairman.

Tourism benefits American small businesses, from shops and charters to airline suppliers and concessionaires. It is hard to overestimate the influence of this sector. During the last decade, travel and tourism became an established leader in a modern services economy.

When counted as an export contribution, travel and tourism more than doubled from $26 billion in 1986 to $90 billion in 1996. This sector is our number one services export and has produced a trade surplus every year since 1989.

Here is an demonstration of tourism on the local level. In 1996, a record 46.5 million people visited the United States. Every one spent an average of $1,500 --- including a third on lodging, another third on retail, and a fifth on food.

Clearly international travel to the United States is a vital small business export, just like selling software or wheat. It boosts our GDP and supports more than one million jobs.

How the Immigration and Naturalization Service's new regulations for tourist visas will affect this vibrant and vital sector should concern this committee.

After September 11, the INS had to act to protect our security. Most of the terrorists involved in the attacks were in this country on valid entry visas. In fact, nine of the 19 known hijackers were in the country on tourist visas.

The INS rewrote the rules on non-immigrant visas, including tourist visas, and the President has proposed to create an entire new Department of Homeland Security as part of a broad restructuring process.

But we must not forfeit our oversight and duty to stem any unanticipated consequences during this push to secure the country against future terrorist attacks.

We are here to examine the impact of the INS' proposed reform of the B-1/B-2 visa procedures. While this move is an attempt to address an area of concern, it should not result simply in a false sense of security --- while inconveniencing visitors and disrupting our vital and growing small business tourism sector.

It is questionable whether the INS has fully examined or anticipated the impacts of these vast changes on small business. The Regulatory Flexibility Act and SBREFA also require the INS to conduct outreach and consider less burdensome regulatory alternatives. It appears that the INS has not fully complied with the law.

The new regulations eliminate the six-month visa and reduce most stays to 30 days. This will clearly inconvenience a majority of visitors. The average tourist visit to the United States is 20 days. A 30-day visa means the average visitor has about a week and a half leeway to make their trip. Given this risk, many potential visitors may simply chose somewhere else to go.

This new policy deters the people we WANT to visit --- those who stay the longest and spend their money at small businesses across this country.

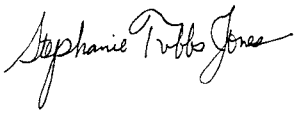
This is the effect that we wish the INS would consult with small businesses on before taking.

I hope that by examining these regulations, we can reach alternative solutions to satisfy increased security in the immigration process without adversely affecting small business. In addition, it makes a lot more sense to fix a time-frame rather than leaving the process in permanent flux.

Most importantly, this process cannot be concluded without small business input. As in most things, achieving the best balance of all the interests involved should be our goal.

But this committee needs to assert oversight powers now, at the very beginning of the Herculean effort to restructure our government's homeland security infrastructure, before it becomes too big and unwieldy to undo.

Thank you, Mr. Chairman.



Congresswoman Stephanie Tubbs Jones
Statement
Proposed Changes to 'B' Visas
Committee on Small Business
June 19, 2002

Mr. Chairman, Ranking Member Velazquez, Colleagues and Guests:

It is clear that such a significant shortening of the 'default' period of admission for persons desiring 'B' visas will have a detrimental effect on small businesses. These small businesses make up 95% of the tourism industry, arguably the industry most devastated by 9/11.

I recognize that at this time security is a top priority for all of us. But, as several of my colleagues have mentioned, this particular rule change would do little to prevent terrorists from entering the country. Furthermore, it is just as easy for an alien to overstay a thirty-day visa, as it is to overstay a six-month visa. The majority of 9/11 hijackers were guilty of this type of violation. We need to examine how visas are issued and how visa laws are enforced, but any rules set forth must avoid` punishing an already depressed industry.

I would like to join Ranking Member Velazquez and echo her call for the INS to convene a panel discussion with representatives from the tourism industry. It is apparent that in drawing up this new rule, the INS ignored the stipulations for consultation set forth in the Regulatory Flexibility Act. Commissioner Ziglar, the eight other panelists before us have all stated their opposition to your rule change. These panelists represent small businesses, tourists and law enforcement. It is absolutely necessary for you to consult these groups when composing rules that will so obviously affect them.

I just have a few things to say in conclusion. First, I want to reemphasize my support for making meaningful changes to existing regulations in order to prevent future attacks. These changes must be meaningful in order not to create a false sense of security. Furthermore, such changes must be discussed with the small business community so that adverse effects on these businesses will be minimal. Finally, I want to support my colleague Representative Issa in his insistence that future rule changes not be born out of prejudice.

Mr. Chairman, thank you for my time.

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Congressman Tom Udall
3rd Congressional District of New Mexico
Small Business Committee
Hearing—INS Proposed Changes to B Visas
6/19/02

Chairman Manzullo and Ranking Member Velasquez:

Thank you very much for holding this hearing today. The district that I represent, and the state of New Mexico as a whole, is heavily reliant on the tourism industry. The New Mexico Department of Tourism estimates that over 10 million tourists visit New Mexico and spend $3.6 billion in a calendar year. The ebbs and flows of tourism heavily impact many small businesses in all sectors of the economy in New Mexico. Therefore, this hearing will be of great interest to me to hear how this proposed change to the B visas will affect our national security, as well as its impact on travel and tourism.

I would like to thank the members of the panel for testifying before the committee today. I very much look forward to hearing what you have to say about this issue.

Obviously, in light of September 11 and the fact that a number of the terrorist hijackers were foreign nationals legally admitted to the United States, we must increase scrutiny of who is getting into the country, why they are here, and how long they are staying. While I strongly support these efforts, I am concerned that this particular rule will result in very little gain in our nation's security, and will have a negative impact on travel and tourism, which will, in turn, negatively affect business in New Mexico and throughout the country.

In addition, I am concerned that this rule does not fully comply with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) and that INS did not conduct sufficient outreach to the small business community as part of development of this rule.

I am hopeful that the testimony of all of you here today will help shed some light on these questions and concerns. Furthermore, I am hopeful that this hearing will help result in a rule that will increase the security of our borders without having an overly negative impact on our nation's small businesses, particularly those in the travel and tourism industry.

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Again, I look forward to hearing the testimony of the panel and thank you Mr. Chairman and Ranking Member Velasquez for allowing me an opportunity to offer my remarks.

STATEMENT OF

JAMES W. ZIGLAR
COMMISSIONER
U.S. IMMIGRATION AND NATURALIZATION SERVICE

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS

REGARDING

PROPOSED B2 VISITOR VISA REGULATION
AND ITS IMPACT ON SMALL BUSINESS

JUNE 19, 2002

2360 RAYBURN HOUSE OFFICE BUILDING

10:00 A.M.

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

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

Intent of the Proposed Rule

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

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

Next, we propose similar rules for all visitors by eliminating the minimum period of admission that currently applies only to visitors for pleasure. In place of the 6-month minimum period of admission, the INS is proposing that visitors for pleasure will be

admitted for a period of time that is fair and reasonable for the completion of the purpose of the visit. This is the current standard being applied to visitors for business.

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

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

Misperceptions about the Proposed Rule

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

The proposal is to admit all visitors for an initial period of up to, but not more than, 6 months based on the stated purpose and duration of their visit. Experience and data indicate that 6 months far exceeds the average – and the median – length of stay of

most visitors. While we propose to limit all visitors to a maximum initial period of 6 months, we also propose to place responsibility to explain the purpose and length of stay on B-2 visitors as is the case today for B-1 visitors for business.

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

National Security and the Need for the Proposed Changes

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

In order to support national security against future terrorist threats, our proposals make sure that every visitor applying for admission is questioned thoroughly in order to determine a fair and reasonable period of admission. And it is reasonable to expect that anyone wishing to enter the United States should be able to articulate to the inspector the desired period of admission, be it verbally or with documents that outline the exact nature

of the trip. Requiring individuals to explain their itinerary and length of stay is prudent policy for our post-September 11th world.

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

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

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

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

The Inspections Process

Some have expressed concern that these proposals would overwhelm the inspections process. We take issue with that assessment. As a general matter the immigration laws confer broad authority on the INS to determine who is admissible to the United States. Every person seeking to enter the United States must satisfy the immigration inspector that he or she meets the requirements under law. The INS has proven its ability to exercise this authority judiciously.

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

ability to properly exercise broad authorities was again tested. We again met the challenge.

Comments about the proposal

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

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

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

immigration rules apply is part of the planning. It is our role to ensure the rules are clear and understandable.

Individuals planning extended holidays or seeking medical attention in our world-renowned institutions should not alter their travel plans on the assumption the INS will restrict their visit to only 30 days. Rather, they should be educated about the need to state their travel plans to the immigration officer in order to ensure a period of admission that is consistent with their plans. We have many partners in developing and disseminating the facts – the accurate message – in ways that are helpful to prospective visitors. And as I have just noted, we fully intend to work with other government agencies and our outside partners to make sure that individuals planning trips to the United States are fully informed of any changes that are adopted regarding admission periods. In particular, we will work with the government of Canada to address the concerns that many Canadian citizens have about the provisions of the proposed rule.

Economic Impact on Small Businesses

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

INS statistics show that 73% of visitors for pleasure complete their visit and depart from the United States within 30 days of arrival. Of this group, 51% depart the

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

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

Conclusion

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

JEB BUSH
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T. NINA OVIEDO
DIRECTOR

Testimony of Governor Jeb Bush
House of Representatives Committee on Small Business

June 19, 2002

Mr. Chairman, Members of the Committee, thank you for allowing me to speak to you today in response to the Immigration and Naturalization Service's proposed rule on limiting international visitor visas.

Let me preface my comments by emphasizing that the safety and security of our nation and its borders are of utmost importance. I support, as do the people of Florida, every reasonable effort on the part of the federal government to ensure that our citizens are protected from terrorist activities.

But at the same time, we must not impose unreasonable restrictions on the millions of international visitors who come to this country wishing only to enjoy our nation's natural beauty, exciting destinations, and the hospitality of our people.

My state, Florida, is among the world's most popular visitor destinations. Last year, we welcomed nearly seventy (70) million people. Of that 70 million, about one in ten, or nearly eight (8) million, came to us from a country other than the United States.

Although the majority of these international visitors only spend a week or two in Florida when they visit, there is a substantial number who stay longer--sometimes for several months. Many of them own vacation property in Florida, or stay with family or friends who live in Florida. These are the visitors who would be directly impacted by any move to impose a universal 30-day limit on the length of time non-citizens can stay in this country.

Of the 8 million international visitors to Florida, nearly 3 million are required to secure visas to enter the U.S. and would have their length of stay restricted under the proposal. Their contribution to our economy is commensurate with their significant numbers: more than 3 billion dollars in spending and nearly 200 million dollars in state sales tax revenue.

Further, the relative misunderstanding of what the proposed rule change would actually mean to international visitors seeking to travel to the U.S. is widespread. We have experienced considerable correspondence from individuals and organizations around the world who either believe that the proposed rule changes would prohibit any international

visits to the United States beyond 30 days—or that the proposed rule is, in fact, already in effect. Such misperceptions have led many to ponder other vacation destinations beyond the United States, or a sell-off of their vacation investments and properties in Florida.

Confusion in the marketplace caused by simple misunderstandings could also make it difficult for tour brokers and operators to sell U.S. destinations for fear that clients would not be able to complete their itineraries in the U.S.

With all of these considerations in mind, I would urge the Committee to carefully weigh the impact that this proposal would ultimately have on valued international tourism to the United States.

Thank you for your kind attention.

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Testimony of

The Honorable Thomas M. Sullivan

Chief Counsel for Advocacy

U.S. House of Representatives
Committee on Small Business

Date:	*June 19, 2002*
Time:	*10:00 A.M.*
Location:	*2360 Rayburn House Office Building*
Topic:	*Impact on Small Business of the Immigration and Naturalization Services' Proposal to Limit the Period of Admissions for B-2 Tourist's Visas*

Created by Congress in 1976, The Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. The Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate, directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Issues are identified through economic research, policy analyses, and small business outreach. The Chief Counsel's efforts are supported by offices in Washington, D.C., and by Regional Advocates located across the United States. For more information on the Office of Advocacy, visit http://www.sba.gov/advo, or call (202) 205-6533.

Chairman Manzullo, Ranking Member Velazquez, Members of the Committee, good morning and thank you for the opportunity to appear before you today to address the impact on small business of the Immigration and Naturalization Services' (INS) proposal to reduce the default period for admissions under a B-2 tourist visa and INS's compliance with the Regulatory Flexibility Act in that proposal.

My name is Thomas Sullivan and I am Chief Counsel for the Office of Advocacy at the U.S. Small Business Administration. As Chief Counsel for Advocacy, I am charged with monitoring federal agencies' compliance with the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). Please note that the Chief Counsel of Advocacy's views are my own and do not necessarily reflect the views of the Administration or the U.S. Small Business Administration.

Before discussing INS's treatment of the RFA in its recent proposal to reduce the default period for admissions under a B-2 tourist visa, I would like to give you a brief overview of the Regulatory Flexibility Act and our office's responsibility. Congress enacted the RFA in 1980 after determining that uniform federal regulations produced a disproportionate adverse economic hardship on small entities. In an attempt to minimize the burden of regulations on small entities, the RFA mandated administrative agencies to consider the potential economic impact of federal regulations on small entities and to examine regulatory alternatives that achieve the agencies' public policy goals while minimizing small business impacts.

Agency compliance with the RFA, however, was not judicially reviewable. Therefore, agencies could not be held accountable for their noncompliance with the statute. As such, many agencies ignored the RFA and did not conduct full regulatory flexibility analyses in conjunction with their rulemakings. In response to the widespread agency indifference, Congress amended the RFA in 1996 by enacting the Small Business Regulatory Enforcement Fairness Act ("SBREFA"). The 1996 Amendments reshaped the requirements of the RFA and provided for judicial review of agencies' final decisions under the RFA.

The RFA requires agencies to prepare and publish an initial regulatory flexibility analysis, when proposing a regulation, and a final regulatory flexibility analysis, when issuing a final rule, for each rule that will have a significant economic impact on a substantial number of small entities. The analysis is prepared in order to ensure that the agency has considered the economic impact of the regulation on small entities and that the agency has considered all reasonable regulatory alternatives that would minimize the rule's economic impact on affected small entities. The RFA exempts an agency from these requirements if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." If the head of the agency makes such a certification, the agency must provide a factual basis for the certification.

On April 12, 2002, Immigration and Naturalization Service (INS) published a proposed rule on *Limiting the Period of Admission for B Nonimmigrant Aliens.* Under the current regulations, a foreign tourist is allowed to stay a minimum of 6 months under a B-2 tourist visa. It is Advocacy's understanding that the proposal will eliminate the minimum 6 months admission period of B-2 visitors for pleasure; reduce the maximum admission period of B-1 and B-2 visitors from 1 year to 6 months; and establish greater control over a B visitor's ability to extend status or change status to that of a nonimmigrant student. For the purpose of this hearing, my comments are limited to the aspects of the proposal which eliminate the minimum admission period of B-2 visitors.

Whereas the current rules provide foreign visitors with a guaranteed length of stay, the length of stay under the proposal will not be determined until the foreign visitor arrives in the United States. Moreover, the proposal places the onus of explaining the amount of time for the length of stay on the foreign visitor. If the length of stay cannot be determined, the INS agent will issue a visa for thirty days.

In the Regulatory Flexibility Act section of the proposal, INS certified that the proposal would not have a significant economic impact on a substantial number of small entities. The basis for the certification was that the proposal applies only to nonimmigrant aliens visiting the

United States as visitors for business or pleasure. In that the courts have interpreted the RFA as only requiring agencies to consider the economic impact of the proposal on the entities that the proposal will directly impact, the certification is not blatantly erroneous. However, as stated in the Office of Advocacy's comment letter on the proposal, a copy of which is attached to my testimony, in terms of meeting the overall spirit of the RFA, INS's certification is deficient because it does not consider the impact that the proposal may have on members of the travel industry.

After reviewing the proposal, Advocacy became concerned about the potential impact that it could have on small entities. The Department of Commerce's statistics indicate that in the year 2000, foreign visitors spent 70 billion dollars in this country. SBA's statistics indicate that the majority of the members of the travel and tourism industry are small entities. For example, 95% of all travel agencies and 84.5 % of the tour operating businesses are currently defined as small entities. However, the proposal will affect more than travel agencies and tour operators. It will also have a foreseeable impact on other small businesses like hotel/motels, 95.7% of which are small; restaurants, 98.2% of which are small; sightseeing bus companies, 92.7% of which are small; and souvenir shops, 98.7% of which are small. If foreign travelers decide to travel elsewhere due to the uncertainty that is inherent in the daunting visa policy, the travel and tourism industry could lose billions of dollars. Advocacy asserts that such an impact is not only logical, it is foreseeable. Yet, INS made no effort to analyze the potential impact that the proposal would have on small entities that cater to foreign travelers.

Although a strict interpretation of the RFA may not require an analysis of the travel and tourism industry, Advocacy asserts that when the potential impact of a regulation is foreseeable and economically devastating to a particular industry, an agency has a duty to perform a regulatory flexibility analysis from the standpoint of good public policy. The RFA not only requires the agency to consider the economic impact, it also requires the agency to consider less burdensome alternatives for achieving the goal.

Here, considering alternatives may have assisted INS in finding a more effective solution to the problem of national security without having an unnecessarily burdensome economic impact on members of the travel and tourism industry. Instead, INS has proposed a rule that may not address the stated goal of increasing national security, but may be economically devastating to small businesses in an industry that has yet to recover from the tragedy of September 11th.

The impact that the proposal could have on the travel and tourism industry is an extremely serious concern that needs to be addressed. As the independent voice for small business within the Federal government, I urge INS to give serious consideration to less burdensome alternatives to this proposal.

Thank you for the opportunity to appear today. I am happy to answer any questions that you may have about my testimony.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

OFFICE OF THE CHIEF COUNSEL FOR ADVOCACY

May 13, 2002

Via Electronic & Regular Mail

Mr. Richard Sloan
Director
Regulations and Forms Services Division
Immigration and Naturalization Service
Room 4034
425 I Street, NW
Washington, DC 20536
E-mail: insregs@usdoj.gov

Re: INS No. 2176-01: Proposed Rule on Limiting the Period of Admission for B Nonimmigrant Aliens

Dear Mr. Sloan:

By way of introduction, Congress established the Office of Advocacy of the U.S. Small Business Administration (SBA) under Pub. L. No. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is also required by Section 612 of the Regulatory Flexibility Act (RFA) (5 U.S.C.§§601-612) to monitor agency compliance with the RFA. In 1996, Congress enacted the Small Business Regulatory Enforcement Fairness Act which made a number of significant changes to the Regulatory Flexibility Act, the most significant being provisions to allow judicial review of agencies' regulatory flexibility analyses.

On April 12, 2002, the Department of Justice, Immigration and Naturalization Service (INS) published a proposed rule in the *Federal Register*, Vol. 67, p. 18065 on *Limiting the Period of Admission for B Nonimmigrant Aliens.* The proposal will eliminate the minimum admission period of B-2 visitors for pleasure; reduce the maximum admission period of B-1 and B-2 visitors from 1 year to 6 months; and establish greater control over a B visitor's ability to extend status or change status to that of a nonimmigrant student.[1] INS asserts that the changes are necessary to enhance its ability to support the national

[1] The Office of Advocacy's comments are limited to the aspects of the proposal that will eliminate the minimum admission period of B-2 visitors for pleasure and reduce the maximum admission period of B-1 and B-2 visitors from 1 year to 6 months. Advocacy is not addressing the aspects of the proposal which establish greater control over a B visitor's ability to extend status or change status to that of a nonimmigrant student.

FEDERAL RECYCLING PROGRAM PRINTED ON RECYCLED PAPER

security needs of the United States. *Id.* While the Office of Advocacy recognizes the importance of national security, Advocacy is concerned about the potential economic impact that this proposal may have on small entities in the travel and tourism industry.

International Travel and Tourism Industry

In 2000, approximately seven million travelers visited the United States with B-1 or B-2 visas. Foreign visitors to the United States provide a significant influx of income to the economy. In the year 2000 alone, foreign visitors spent $70.1 billion in this country. The preliminary estimate for overseas spending within the United States in 2001 is $61 billion. Tourists spend money on transportation, hotels, food, tours, attractions (e.g. monuments, museums, entertainment), and souvenirs.

Small businesses provide many of the goods and services to foreign travelers. For example, in the tour operators industry, 2,722 businesses out of 3,222 businesses, or 84.5 percent of the tour operators, are currently defined as small. Tour operators are responsible for ensuring that transportation, accommodation and facility providers, and lecturers (guides) are paid.[2] Advocacy asserts that it is reasonable to assume that a foreign visitor would utilize the services of a tour operator if only to overcome language and currency barriers. If a foreign visitor participates in an organized tour, there is a high probability that the tour operator will be a small business.

The Proposal Will Have A Foreseeable Economic Impact on the Travel and Tourism Industry

The RFA requires administrative agencies to consider the effect of their actions on small entities, including small businesses, small non-profit enterprises, and small local governments. See 5 U.S.C. §§ 601, et. seq.; *Northwest Mining Association v. Babbitt*, 5 F. Supp. 2d 9, (D.D.C., 1998). When an agency issues a rulemaking proposal, the RFA requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis [IRFA]" which will "describe the impact of the proposed rule on small entities." 5 U.S.C. § 603(a); *Id.*

The law states that an IRFA shall address the reasons that an agency is considering the action; the objectives and legal basis of the rule; the type and number of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the proposed rule; and all Federal rules that may duplicate, overlap or conflict with the proposed rule. The agency must also provide a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. 5 USC § 603(c).

Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. If the head of the agency makes such a certification,

[2] Based on the North American Industry Classification System description of a "tour operator."

the agency shall publish such a certification in the *Federal Register* at the time of the publication of the general notice of proposed rulemaking along with a statement providing the factual basis for the certification.

The RFA portion of the proposal states:

> "The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C.§605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies only to nonimmigrant aliens visiting the United States as visitors for business or pleasure. It does not affect small entities as that term is defined in 5 U.S.C.§601(6)."

The Office of Advocacy agrees that only nonimmigrant aliens will have to comply with the regulation. However, Advocacy disagrees with the assertion that it will not affect small entities. Advocacy asserts that this rule will have a foreseeable impact on the travel industry, even though they do not have to directly comply with the mandates under this rule.

If foreign visitors believe that they may not be able to enter the country for the intended length of their stay, they may take their vacation dollars and go elsewhere. As stated previously, foreign visitors added $70.1 billion to the US economy in 2000. If the visitors decide to go elsewhere, the US travel industry may lose that money. Advocacy submits that a high-dollar loss to an industry that is still reeling from the impact of September 11, 2001, could be devastating.

INS Should Perform A RFA Analysis As A Matter of Public Policy

In that this rule will have foreseeable significant economic impact on a substantial number of small entities, Advocacy implores INS to perform an IRFA as a matter of good public policy. If INS were to perform an IRFA, it would not only explore fully the economic impacts of this rule, it would also need to consider less costly alternatives for the rule and solicit alternatives from the public that could address the safety concerns without unduly impacting the travel industry.

Conclusion

The travel and tourism industry suffered a significant decline in sales in the aftermath of September 11th. Reluctance to travel has had an overall negative impact on several aspects of the industry, made up almost entirely of small businesses. This proposal discourages foreign visitors at a time when the United States needs to be encouraging travel and tourism from abroad. Advocacy, therefore, submits that INS should withdraw the aspects of the proposal that would change the current rules regarding the length of stay by a foreign visitor. In the alternative, INS should conduct a full small business impact analysis and consider less

burdensome alternatives that may be incorporated into the final rule.

Thank you for the opportunity to comment on this important proposal. If you have any questions, please feel free to contact the Office of Advocacy at (202) 205-6533.

Sincerely,

Thomas M. Sullivan
Chief Counsel for Advocacy

Jennifer A. Smith
Assistant Chief Counsel
for Economic Regulation

STATEMENT OF MARK MCDERMOTT
CHAIRMAN, WESTERN STATES TOURISM POLICY COUNCIL
DIRECTOR, ARIZONA OFFICE OF TOURISM

TO

COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

IMMIGRATION AND NATURALIZATION SERVICE PROPOSED RULE ON "LIMITING THE PERIOD OF ADMISSION FOR B NONIMMIGRANT ALIENS"

JUNE 19, 2002

Good morning, Mr. Chairman and members of the Committee. Thank you for this opportunity to testify regarding a matter of considerable concern to a significant American industry and to state and local economies throughout the nation. I am Mark McDermott and I am pleased and honored to be here today as Chairman of the Western States Tourism Policy Council (WSTPC) and Director of the Arizona Office of Tourism.

The WSTPC

Formed in 1996, the WSTPC is a consortium of thirteen western state tourism offices, including the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. The mission of the WSTPC is to advance understanding and increase support for public policies that enhance the positive impact of travel and tourism on the economy and the environment of its member states and their communities.

In all thirteen of these western states, tourism is a dynamic and vital part of the economy. It ranks among the top three providers of jobs in each western state and generates billions of dollars in payroll and taxes in the West. International visitation, especially from Canada and Mexico, is a major economic contributor to each of these states. And, Mr. Chairman, most of this economic activity primarily benefits small businesses for tourism in the nation and in the West is predominantly small business, with many of these small businesses ranking as true "Mom and Pop" operations, such as restaurants, motels, RV parks and campgrounds and vendors.

The Proposed Rule

On April 12, 2002, the Immigration and Naturalization Service (INS) proposed a new Rule on "Limiting the Period of Admission for B Nonimmigrant Aliens." The proposed rule will make significant changes in the rules governing the period of time foreign visitors are permitted to remain in the United States. This rule will eliminate the current minimum six-month admission period for B-1 (business) and B-2 (tourist) visitors and instead limit the admission period to "a period of time that is fair and reasonable for the completion of the purpose of the visit." The maximum initial admission period for all B non-immigrant visitors is reduced from one year to six months.

When B-visa visitors enter the U.S., they will be required to explain to an INS Immigration Inspector the nature and purpose of their visit so the Inspector can determine the appropriate length of stay. While INS Inspectors will make every effort to determine a fair and reasonable time period, **the burden of proof rests with the visitor**. The rule provides little guidance as to what standards of proof or documentation will be acceptable. When the time needed to accomplish the purpose of the visit cannot be determined, INS will grant a 30-day period of admission as the default stay.

The rule allows extensions of a visitor's period of stay for certain stated reasons, including medical reasons, unexpected or compelling humanitarian reasons, or home ownership (for example, retirees who own vacation homes in the U.S.).

The INS has described this proposed rule as part of "its continuing effort to enhance homeland security and strengthen and control immigration in the United States."

Although Canadians are not required to have visas, the rules and regulations pertaining to B-visas also apply to them, as well as to visitors from Mexico.

National Security

WSTPC members, along with all Americans, are keenly aware that we have moved into a different era of our history since September 11, 2002. Indeed, it is likely that the travel and tourism industry suffered a more severe economic impact from 9/11 and its aftermath than any other industry. Travel and tourism business declines of more than 50% were common in the weeks and months immediately following that terrible day. Domestic tourism has rebounded only moderately since 9/11, while international visitation remains depressed.

We understand and support necessary steps by the INS and other government agencies to improve our national security.

But, Mr. Chairman, while realizing that there may be considerations and exigencies of which we are unaware, we do not understand how this proposed rule will enhance national security. It establishes no new criteria or standards for entry into the U.S. In fact, other than creating delay and inconvenience for all travelers, it would seem to do nothing to make it more difficult to enter the U.S. Also, the rule would appear to do little in and of itself to make it easier to trace and locate foreign visitors once they are in the U.S. We respectfully suggest that it is implausible to imagine that someone with malevolent intent who is allowed into the U.S. for three days, thirty days or six months will stay at a given address and neatly tailor his or her destructive plans to accommodate that schedule.

Importance of International Travel

According to the U.S. Department of Commerce Office of Travel and Tourism Industries (OTTI), in 2000 (2001 figures are not yet available), there were 7.0 million visitors to the U.S. from overseas non-visa waiver countries traveling on B-1 or B-2 visas, not including Canada and Mexico. Of these, 939,000 stayed longer than 30 days (average length of stay was almost 48 days). These travelers spend on average $46 per day, for a total expenditure of $2.1 billion.

The figures for the impact of visitors from Canada and Mexico are even more impressive. According to the OTTI, in 2000 (the last year for which national figures are available, more than 14.6 million Canadians visited the U.S. and spent more than $6.1 billion. Also in 2000, more than 10.3 million Mexicans visited and spent more than $5.1 billion.

The Arizona Office of Tourism estimates that in 2001 in our state nearly 315, 000 Canadian visitors spent about $208 million. From Mexico, using 2000 figures, there were nearly 1.5 million Mexican visitors, who spent more than $740 million in Arizona.

Also in my state of Arizona, according to the Arizona Travel Parks Association, during the seven month "winter" season (October to April) Canadians occupy 10%-25% of the sites in many parks and in some parks that figure approaches 50% for Canadian occupancy.

It is evident that any significant decreases in Canadian or Mexican visitors to the U.S. could have severe adverse economic impacts on the entire country and specifically, on Arizona and other states in the West.

Reasons for Concern

While the WSTPC respects and appreciates the good intentions of those who have drafted this proposed rule, we are concerned that it will do more harm than good. Although the proposed rule is stated in general terms and the implementation and enforcement procedures and requirements are undefined and unclear, we believe that, as proposed, it is seriously flawed for the following reasons:

(1) Implementation of the proposed rule will result in congestion and delay at ports of entry, which will discourage international visitors to the U.S.

It is unclear what explanation or documentation will be required to justify a particular period of admission. Visitors to the U.S. are likely to be confused and distressed by extensive interrogations, especially if they are not fluent in English. The questioning of visitors and the examination and verification of documents as to the purpose of the trip will require much more time – especially in cumulative terms – than is currently the case

Even if the average additional delay is no more than five minutes, when this is multiplied by millions of B-1 and B-2 visitors, the effect is obvious.

As congestion mounts, delays increase and lines grow longer, the tolerance and patience of visitors coming to the U.S. to relax and enjoy themselves can be expected to diminish. This will accelerate the trend that has developed since 9/11 of foreign visitors concluding that a trip to the U.S. is simply too aggravating and deciding to go instead to other locations in other countries to enjoy themselves.

International tour operators need certainty before bringing large groups of foreign visitors to the U.S. for extended, multi-week tours. For example, international tour operators cannot sell six-week tours unless they can be absolutely certain that everyone who purchases the tour will be admitted to this country for the full six weeks. It should be realized that these tours are sold months in advance of the actual visit.

(2) **The proposed rule will seriously jeopardize tourism business in the U.S. from Canadians**.

Since Canadians entering the U.S. are not required to have visas now and would not be so required under the proposed rule, it is unclear how they would be handled. We do not know what documents will be required of them to prove the purpose and duration of their visit. We are concerned that strenuous and precise enforcement of this rule will have a debilitating effect on Canadian travel, which would have a severely negative impact throughout the West.

The economic benefits of Canadian visitors, of course, are not limited to the states that are their ultimate destination. In the West, as they drive to Arizona, for example, or to California, Utah, Nevada or New Mexico, they pass through Washington, Oregon, Montana, Idaho, Wyoming and Colorado. As they travel in those states, they stay overnight, sometimes for more than a single night, and spend money on everything from food and supplies to souvenirs.

(3) **The proposed rule will serious jeopardize cross-border travel by Mexicans to the U.S.**

Although not as many Mexicans may travel to Arizona for tourist purposes as do Canadians, the proximity and economic interaction of the two nations means that the impact of Mexican visitors on the Arizona economy is actually much greater than that of Canadian visitors. The reverse is undoubtedly true of states along our northern border with Canada.

(4) **The conditions for granting extensions of stay fail to include residential leasing or renting as reasonable justifications**.

Home ownership and occupancy on a seasonal or occasional basis is regarded under the proposed rule as an acceptable reason for obtaining an extension of the time of stay. There would seem to be no reason not to include a leased or rented home in the same manner. Otherwise, as noted by the National Association of RV Parks and Campgrounds, an acute problem is presented for visitors leasing sites at resorts or RV parks on a long term basis.

To avoid the negative impact of the proposed rule, the WSTPC supports the reasonable alternative that has been proposed by the Travel Industry Association of America (TIA). TIA urges that a ninety day admission be granted to all B-visa visitors and that it be extended upon request and review. The WSTPC believes that extensions allowing the overall stay to last twelve months should be granted for reasonable cause. This would provide the certainty needed for international travel and enable the INS to focus its resources more effectively on identifying and preventing entry into our country of those with truly evil intentions.

Conclusion and Summary

Mr. Chairman, we believe this proposed rule will unjustifiably jeopardize the economies of states and communities in the West and throughout the nation. We respectfully suggest that it is a classic example of the costs of regulation far exceeding the benefits. It should be withdrawn.

If not withdrawn, we respectfully urge that the rule as proposed be substantially modified in at least three respects:

(1) **Instead of a variable, unpredictable length of stay for B-visa visitors, the final rule should adopt a fixed period of ninety days as described earlier, allowing extensions up to twelve months.**

(2) **Canada and Mexico should be explicitly exempted from the final rule and it should be clearly stated that the rule makes no changes in how Canadians and Mexicans are treated and processed as they enter the U.S.**

(3) **Lease and rental property should be regarded as equivalent to ownership when considering extensions of the length of stay.**

Thank you again, Mr. Chairman. We will be happy to answer questions or provide additional information that may be relevant and important to the Committee.

For further information, contact WSTPC Chairman Mark McDermott at 602.248.1490, or WSTPC Washington Representative Aubrey King at 202.251.6845.

John Lewis June 18, 2002

First, I am testifying as a private citizen.

Initial observations: INS is woefully understaffed, and, in my judgment, in a very poor position to make any kind of meaningful judgment regarding people seeking entry into the US. It is difficult to talk about entry into the US without considering the visa approvals process conducted by consular affairs officers around the world. With all due respect, I am aware of many one- to two-minute interviews as to whether or not a person is granted a visa (usual focus: sufficient ties that he/she will return home and also have financial means to travel and to return from US).

Given the fact that virtually every type of immigration has been exploited by terrorists, to focus on minimum admission policy alone makes little sense to me, especially putting the burden on the alien, in effect, to establish his/her bona fides to enter or to stay in the US.

Since this proposal is post September 11, I fail to see how this would make us more secure. To me, it does not focus on keeping out the most dangerous terrorists and criminals but would have a chilling effect to the more law-abiding poor or middle-class potential visitors rather than the terrorist/criminal individuals/groups who have no qualms (fraud, etc.) to get past our controls.

Ultimately the whole issue of immigration to include visa issues and entry into the US rests on proper screening and tracking.

Not all-inclusive nor in any priority, but as I see it, we need the following:

- Consular affairs must be upgraded and better integrated with INS to insure visa applicants are properly checked (41of 48 terrorists were approved for a visa by an American consulate. Center for Immigration studies, p. 7.). The screening process should include access to all suspected criminals and terrorists across all federally-held data bases.
- Better our ability, through liaison and technological means, to detect fraudulent passports with our visa waver program countries.
- Fund and institute a computerized entry-exit system. The fact of the matter is our current system is neither timely nor adequate to track visitors to the US.
- To fully support the fingerprinting of visa applicants from high-profile countries supporting terrorism. Photograph is obtained already through the visa application process.
- Any organization that petitions or sponsors a person to come to the US either as a student or on a work permit, that organization should be responsible to report whether he/she is still in the US. It is understood that schools have now been tasked with this requirement, but how about businesses?
- It should be insured that other federal agencies as well as state and local law enforcement authorities have ready access related to any information placed in the federally-held law enforcement data bases related to visitors to the US.

Testimony of

Neil Amrine, President
Guide Service of Washington, Inc.
On Behalf of
Travel Industry Association of America

Before the

Committee on Small Business
U.S. House of Representatives

On

INS' New Proposed Rule Eliminating
Minimum Admission Periods for B-2 Visas

June 19, 2002

Mr. Chairman, Ranking Member Velazquez, and Members of the Committee, I appreciate the opportunity to testify before you regarding INS' new proposed rule on eliminating the minimum admission period for international visitors entering the U.S. on a B-2 visa. The U.S. travel industry stands ready to work with Congress and the Administration to ensure that the safety of Americans, and all travelers – domestic and international – remains a top priority. But the travel industry is concerned that the new proposed rule will do little or nothing to improve our national security while potentially deterring thousands of international visitors from seeing America.

I am Neil Amrine, President of Guide Service of Washington, Inc., and I am testifying today on behalf of the Travel Industry Association of America, or TIA. My company was started in 1963 and has been operated by my family since 1988. Guide Service provides tours and other travel-related services for the DC area and its attractions for both domestic and international travelers. We serve all types of clients, from VIPs in limousines to schoolchildren in buses to families in mini-vans. We have about 100 tour guides working in 20 different languages.

TIA is the national, non-profit organization representing all components of the $545 billion U.S. travel and tourism industry. TIA's mission is to represent the whole of the travel industry to promote and facilitate increased travel to and within the United States. Its 2,100 member organizations represent every segment of the industry.

Guide Service of Washington, and the entire travel industry, believe that INS' proposal to change the admission period for travelers from six months to a shorter and poorly defined "reasonable"

period will deter international travel to the U.S. The new requirements placed upon travelers entering the U.S. would create a difficult situation for both the international visitor and the INS inspector, and transform inspectors into "vacation police," giving them overly broad, new powers with no guidance.

While international travelers expect delays and new procedures to ensure safety in the U.S., this expanded questioning would worsen the current environment at U.S. ports-of-entry. We also believe the specific admission periods proposed in this rule have the potential for inadvertently pushing visitors into overstay status.

TIA believes a reasonable alternative would be to establish a minimum admission period for B-2 visa holders at three months, or 90 days. The fixed time frame would allow international tour operators and individual travelers to plan their trips to the U.S. with certainty. It would also prevent longer lines at ports-of-entry, maintain an overall positive and welcoming experience for visitors entering the U.S., while meeting INS' goal of significantly reducing the default admission period granted to B-2 visitors.

Overview of International Travel to the U.S.

International travel and tourism to the U.S. is a vital component of our national economy. In 2000, over 50 million international visitors generated $103 billion in expenditures and accounted for over one million jobs nationwide. International travel and tourism to the U.S. is considered a service export, and in 2000, the U.S. had a positive balance of trade of $14 billion.

In 2000, the number of travelers to the U.S. from non-Visa Waiver Program countries with a B-1 or B-2 visa was almost 7 million. This group stayed an average of 20.5 nights in the U.S. and spent an average of $103 per day. Of these B-1 and B-2 visa holders, almost 939,000 (or 13.4%) stayed over 30 days. These "long-term" travelers (30+ days) stayed an average of 48 days in the United States and spent an average of $46 per day. If, as a result of the new rule, INS inspectors started using the 30-day default as the rule and as the maximum allowed time, this new rule would reduce spending by overseas travelers in the U.S. by almost $2.1 billion.

Characteristics of International Travel in the US

INS' proposal to assign specific admission periods is fraught with problems. Based on my years of experience, I can foresee many reasons why the INS, as a result of the proposed rule, would fail to assign the correct admission period to each international visitor. Following are some reasons why travelers would deviate from the standard tour:

1) "Optional Add-On" Tours - Most tour operators offer optional add-ons for their tours. For example, one tour operator offers a six-day tour of southern California. In addition to that package, a tourist could add a two-day trip to Las Vegas, or a two-day trip to San Diego. Sometimes these add-ons are offered to fill in last minute cancellations on other tours or take advantage of last minute openings at sites and attractions. Also, there may be opportunities for travel the visitor was not aware of before, but would like to take advantage of after the visitor has

entered our country. The "ticking clock" this new proposed rule would places on tourists prevents them from purchasing these additional services after they have entered the country and will restrict the ability of American business to sell their product.

2) Family - International visitors will often participate in a tour and then spend additional time in the U.S. with family who live here. This means that the tourist will not leave the country when the rest of the tour group does. It has been my experience that these types of tourists don't always know how much time they want to spend here with their family member, and don't always have the ability to communicate with that family member to make detailed plans about their extended stay. And sometimes the family member will offer to take the visitor on day trips outside of the DC area - say to Williamsburg - thus contributing additional business to the travel and tourism industry. However, the proposed rule could put an end to all of this. The INS rule is bad for families and bad for business.

3) Unforeseen Events - Trips to the U.S. do not always go as planned. I have seen many instances where thunderstorms have shut down international flights out of Dulles or JFK, and the tour has to spend an additional night in one of the area hotels. I am also aware of times when the tour bus broke down, stranding travelers long enough that they missed their flight. What will happen in these instances? I am fairly certain INS will not be able to process any requests for extension in a day or two. Will INS agents arrest these travelers because they missed their flight and spent one more day in the U.S.? Will INS deny these "one-day overstays" admission into the U.S. on future trips because the traveler overstayed?

Deterring International Travel

The primary problem with the INS' new proposed rule is the lack of certainty INS creates by eliminating the minimum admission period. The current law allowing six months for B-2 visitors permits nearly all visitors to complete their travels and exit the U.S. within that time frame. The new proposed rule eliminates the six-month minimum and replaces that with admission periods tailored for each traveler by the INS inspector at the time of inspection. It is entirely possible that an INS inspector would assign an admission period for the visitor that is LESS than the length of the visitor's itinerary or tour package. If no period can be determined, the inspector will assign a 30-day default period. Because INS describes the thirty days as neither a minimum nor maximum, inspectors could approve very short stays. Also, the rule allows the admission period to be extended only for "humanitarian reasons."

If the INS rule is implemented as written, it will be extraordinarily damaging to the U.S. tour market. The travel community will not sell the U.S. as a destination. When tours are cut short, either the travelers lose value on what they have bought, or the tour operator loses money when they financially compensate the travelers. Faced with the possibility that tourists will not be granted the time they need to complete their trip, tour operators will advise travelers to go elsewhere. Certainty is a necessity for international travel. Without the certainty of a minimum admission period, neither the tour company nor the traveler can afford the risk of a trip cut short in the U.S.

Even before it is implemented, this proposed rule is already causing confusion and concern among the international travel community. In some cases, tour operators in countries that would not be affected by this rule are alarmed and uncertain what this will mean for their tours to the U.S. This rule will have an effect on travel beyond those countries that require B visas for travel to the U.S. In marketing, perception is reality. And the reality is that this country is making it more difficult for legitimate international travelers to visit.

It is my opinion that if this rule is implemented as written, the resulting loss of international travelers will devastate the U.S. travel and tourism industry and harm the entire national economy. Stacked against the American traveler, international travelers spend more money and take longer trips. Although fewer in number, international travelers make a significant contribution to the growth and success of our industry. The new proposed rule has the potential to harm many businesses and communities that rely on international travel. And once driven away, international travelers will be very difficult to bring back.

No Appreciable Gain in Security

All of us in the U.S. travel industry understand the need to increase security. But these increases must be reasonable, they must be balanced against the economic prosperity that international travel brings to the U.S., and they must actually improve security.

For the reasons I mentioned above, it is possible that many well-intentioned travelers will overstay by a few days because of the new rule. What does this mean for the traveler? Will INS arrest them on the spot as they leave? Will these travelers be allowed to return to the U.S. on future trips? Will their fellow countrymen be able to obtain visas to visit the U.S. after the overstay rates dramatically shoot up? While I do not know the answers to these questions, I do know that international travelers will not want to deal with these issues and will choose to visit countries that are perceived to be more welcoming and eager to have their business. I also know that diluting our law enforcement resources to deal with the increased overstays this rule will create will not strengthen our country. It will weaken it.

This rule will fail to strengthen security because no comprehensive and effective entry/exit control system in place. Currently, INS can not accurately record all of the travelers who leave the country. There is no exit control at any land border ports-of-entry. So, with this rule, it is possible INS will searching for alleged overstays in the U.S. who have already left the country and driven into Canada. It would be premature for the INS to implement the provisions of the new proposed rule without first designing and implementing the national entry/exit control system.

A Reasonable Alternative

The travel industry believes that a reasonable alternative would be to allow all B-2 visa holders a three-month (90 days) admission period that could be extended to six months upon request and review. A three-month period would bring certainty and consistency to the entry process for

international travelers. Tour operators and individual vacationers could plan with certainty and travel with confidence knowing their trip will not be cut short prematurely. The three-month period would allow enough time for travelers to deal with unanticipated events without overstaying their visa or having to file for an extension.

The three-month period is comparable with the 90 days granted to travelers entering the U.S. from counties in the Visa Waiver Program. Used as a standard, this fixed period would prevent long lines from forming at primary inspection and allow inspectors to focus their attention where it should be – on determining the admissibility of the traveler and preventing the entry of those individuals who seek to violate U.S. immigration laws or cause harm to our nation.

Since the number of travelers needing stays longer than three months would be a tiny fraction of all B-2 visa holders, INS inspectors could evaluate such requests on an individual basis without creating backups and even longer inspection lines.

Conclusion

I would like to thank the House Small Business Committee and the SBA for their leadership in assisting small businesses after September 11th. My company received one of the new Small Business Administration Economic Disaster Assistance Loans that became available for companies in the travel and tourism industry last fall. I think it is wonderful that the federal government moved quickly to assist my industry. Which is why I am baffled and frustrated a rule so harmful to my industry has been proposed. As I see it, the federal government is providing me with a loan, but making it more difficult for me to pay it back.

INS' proposed rule on admission periods is unworkable. INS will be sending its agents to chase after travelers who have already left. How does that improve security? Will thousands of visitors be denied entry into the U.S. upon a return visit because they have allegedly overstayed a few days? All the while, U.S. workers will be losing their jobs as international travelers take trips to other countries.

The U.S. travel and tourism industry wants to help in the fight against terrorism. But our industry - and our country - deserves well thought-out programs that will actually work in the real world. I urge the members of this committee to work with INS, the Justice Department, and the White House to stop this rule from being implemented as written. The travel industry proposal of a 90-day admission period is a reasonable alternative. I urge you work with the Administration and the travel industry to produce border security initiatives that will meaningfully contribute to our security without deterring international visitors from seeing America.

Thank you for the opportunity to appear before you today. I look forward to answering any questions you might have.

TESTIMONY OF
DEL HIGHFIELD, OWNER
CAMPING RESORT OF THE PALM BEACHES
PALM BEACH, FLORIDA

ON BEHALF OF
THE NATIONAL ASSOCIATION OF RV PARKS & CAMPGROUNDS

REGARDING THE PROPOSED REGULATIONS TO LIMIT THE LENGTH OF STAY OF VISITORS TO THE US

BEFORE THE
SMALL BUSINESS COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

JUNE 19, 2002

Mr. Chairman, Members of the Committee.

I am Del Highfield, owner of the Camping Resort of the Palm Beaches, located in Palm Beach County, Florida. I am honored to address the Committee as a small business person representing the more than 8000 commercial RV parks and campgrounds across the United States. Specifically though, I am here to speak on behalf of my 3800 colleagues who are members of the National Association of RV Parks & Campgrounds, known as ARVC.

ARVC is the national trade association that represents the commercial RV park and campground industry in the United States. The industry employs more than 120,000 full-time and seasonal employees and serves some 40 million avid RVers and campers.

You will recall, Mr. Chairman, that just about 4 weeks ago, a number of members of the association were here in Washington and were honored by your presence at the annual ARVC Congressional Breakfast. At that time, ARVC was pleased to recognize your tremendous leadership here in the House of Representatives by presenting you with its annual Public Service Award. That award was presented to recognize the kind of decisive leadership you are once again demonstrating by convening this hearing. Congratulations, Mr. Chairman, on that award and thank you for allowing us to present our views on this onerous and unnecessary rule being put forth by the Immigration &

The National Association of RV Parks & Campgrounds
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Naturalization Service that would make it increasingly difficult for overseas visitors to come to the US for extended stays.

First, allow me to take a moment to tell you about my business and its relationship to the issue now before this Committee.

The Camping Resort of the Palm Beaches is located in Lake Worth, Florida in the heart of Palm Beach County. Our RV Park happens to be the exact size of the national average of commercial parks within the national association – just 133 campsites. We are a modest small business with gross sales of around $800,000 per year. We are the quintessential "Mom and Pop" operation with a paid staff of only 2 fulltime and 6 part time employees. Despite this fact we consistently rate in the top 10% of quality parks by national independent rating services. Each year we have an annual occupancy rate of 87% with over 42,000 site nights rented. Due to the high cost of living in South Florida, however, our profit margin is minimal and high occupancy is the only way we stay in business.

Canadian visitors represent 25% of our total revenues or over $200,000 per year. In addition, according to the Palm Beach County Tourist Development Council, these visitors – at our RV park alone - place another $250,000 into the local economy while they are staying with us. Canadian visitors stay twice as long as other tourists. Without their extended stays, our ability to continue to operate would be in question.

We are the rule in the Florida tourism market, not the exception. Florida's camping, tourism and hospitality industries depend heavily on Canadian visitors. Any legislation or rules changes that would have the effect of shortening the length of stay for Canadians or other international visitors, or any regulations or practices that would discourage or increase the difficulty of long winter stays in the US for foreign visitors, will have a severely negative impact on Florida's RV industry as well as on Florida's economy, tax base and employment.

According to the Florida Association of RV Parks & Campgrounds, the number one source of out-of-state campers in Florida is Canada, primarily Ontario and Quebec. Most Canadians travel to Florida in the winter months and are commonly referred to as Snow Birds. This valuable and large group of vacationers is vitally important to the Florida camping industry and the state as a whole.

Research by *Visit Florida*, the official Florida state tourism agency, shows that approximately two million Canadians visited Florida in 2000 and spent $1.5 billion dollars. Roughly 10% of all Canadians traveling to Florida camp at least once during their stay. This translates to almost 200,000 camping trips. Canadian campers stay longer and spend more than non-campers, averaging 45 days and spending approximately $1,400 dollars per trip. In all, Canadian campers and RVers contribute approximately $280 million dollars to the Florida economy annually.

This is not simply a threat to Florida campgrounds and the Florida economy. All the "Sunbelt" States would be similarly threatened. For example, the ARVC affiliate association in Arizona, the Arizona Travel Parks Association recently polled its members

on this important issue. While not scientific, the results indicate that the proposed changes in length of visas would have a drastic effect on Arizona's RV park and campground industry. Managers and owners of these Arizona facilities indicated that Canadians occupy from 10% to 25% of the spaces in many parks, with some parks reporting up to 50% Canadian occupancy. To discourage the length of stay of these Canadian visitors would have a severely negatively impact on Arizona tourism. Since Canadians who enjoy driving their RVs south during the winter are prime customers of many RV parks and campgrounds, we are especially concerned about the impact of the proposed rule on Canadian visitors. Although Canadians are not required to have visas, they are still subject to B-visa provisions. They will have to be interrogated about the purposes of their visits in the same manner as overseas visitors. We presume that they will have to obtain official documents verifying their legal entry and approved length of stay – clearly a major and unsettling change for Canadian citizens.

It is the strong position of the National Association of RV Parks & Campgrounds (ARVC) that the Proposed INS Rule on "Limiting the Period of Admission for B Nonimmigrant Aliens" should not be adopted in its current form.

As you've just heard in terms of Florida, ARVC is concerned that on the national level, the proposed rule as drafted will discourage international travelers from visiting all parts of the United States and it will have a substantial impact on the thousands of these travelers who stay at RV parks and campgrounds during their visits. They all make significant economic contributions to our national economy and our balance of payments. (In 2000, more than 50 million international visitors generated nearly $103 billion in expenditures, supported more than one million American jobs and were responsible for a positive balance of trade of $14 billion.)

In pursuit of undefined national security goals, this proposed rule will create delays, confusion and frustration at our international ports of entry – whether land, sea or air. Detailed questions are likely to be necessary to determine the purpose of an international visitor's trip to the United States. Challenges are likely to the validity of many of the documents that will be used to justify the trip. Either INS inspectors will have to be given extraordinary latitude or they will have to follow extremely detailed guidelines. Either route is unattractive. We believe that the outcome too often will be frustrated international visitors who will not want to repeat this unpleasant experience by returning to the United States in the future.

One particular anomaly in the proposed rule would be particularly damaging to RV parks and campgrounds. While home ownership is declared to be a valid basis for getting an extension of stay, leasing or renting a residence or an RV site is apparently not an acceptable reason. Canadian RVers in particular often spend more than six months in the United States as they enjoy warmer weather in our southern states and lease an RV park site or a rental RV sited in an RV park, or perhaps stay in more than one RV park during that time. We strongly urge that leasing or renting property be treated equally with ownership as a valid reason for extending a visit.

ARVC also wishes to support the proposal of the Travel Industry Association of America (TIA). TIA urged in its May 6th comments to the INS that a ninety-day admission be granted to all B-1 and B-2 visa holders, which could be extended to six months. This seems to us a very fair and reasonable alternative, which will serve national security needs while avoiding many of the problems in the INS Proposed Rule.

It is also important to note that a loss of snowbird RV business in the southern tier of the US will likely also be felt by all Sunbelt States along the routes from Canada to the Southern US and especially in such tourist areas as Branson, Nashville, the Smokey Mountains, Myrtle Beach, Williamsburg, Las Vegas and other areas that benefit from the large number of Canadian visitors who travel through the US on their way to their southern winter homes in Florida, Texas, Arizona, New Mexico, Nevada, Alabama, Mississippi and California. Fewer Canadians visiting the southern climate areas will reduce tourism business and concurrent expenditures in these and other areas as well.

In summary, Mr. Chairman, ARVC believes that the proposed rule should be substantially modified to ensure minimum negative impact on tourism, that Canadians should be exempted from its provisions and that extensions of stays should be granted for leased or rented property in the same manner as owned property.

We also believe that prompt action is critical so that this issue is resolved no later than late summer so both Canadians and southern tourism businesses can adequately prepare for a prosperous and successful winter 2002 and 2003 season. Delays will have a negative impact as potential winter visitors make alternative arrangements for their winter vacations. Likely areas that could benefit from any tightening of US winter visitor rules include Mexico, the Bahamas, and the Caribbean in general.

Thanks you once again Mr. Chairman, for the opportunity to appear here today and I would be happy to respond to any questions the Members of the Committee might have.

Statement:

Chairman Manzullo and Honoured Committee Members,

My name is Ellen White, and I am president of the Canadian Snowbird Association and I am an active snowbird.

With me is Heather Nicolson-Morrison, Executive Director of our Association.

I am honoured to appear before ***the House Small Business Committee*** on behalf of the almost 100,000 members of the Canadian Snowbird Association and all of the 447,800 Canadians who enjoy the United States' hospitality for 31 days or more each year.

We fully understand and support the need to "*control the alien population within the United States.*"

The events of September 11/01 changed the world forever and greater security is now a way of life.

The Canadian Snowbird Association is extremely concerned with the INS' proposed changes to the B-2 Visitors' Visa regulation.

The uncertainty of snowbirds' access to their winter homes and destinations in the United States, and, in particular, the length of that access, has already caused upset, confusion and in our opinion, <u>will</u> result in a substantial reduction in tourism for the United States.

We respect the fact that Canadian retirees are subject to inspection as are any other visitors to your country, but we have proposed to the INS, an amendment to the regulation.

Snowbirds vacation for up to six months of the year, primarily in Florida, Texas, Arizona and California.

Governor Jeb Bush estimates the dollars left in Florida alone by foreign travellers at 5.5 billion dollars, generating 500 million dollars in state sales tax revenue.

While a great many of our members own property in the United States and live in their second homes for six months of the year, a large number are retired and do not own property – rather, they rent or travel by recreational vehicle.

Regardless of the accommodation, Canadian snowbirds pay all fees and utilities that are required and applicable U.S. taxes that are requested.

We support local restaurants, grocery stores and entertainment industries.

As the majority of snowbirds drive, we purchase gasoline in the United States and use American garages for maintenance.

Should the regulation pass unchanged, the loss of snowbird activity will reverberate throughout the U.S. as the "enroute" states and tourist attractions will also be affected by the loss of these visitors.

Mr. Chairman, last year Canadians spent more than seven billion dollars here while on vacation. Fifteen million Canadians crossed our border – 10 million of those trips for pleasure. Additionally, when taking into account the influx of short-term visits to snowbirds by friends and family each year, the dollar amount rises considerably.

Although technically a Canadian does not need a Visa to enter the United States, the Border Inspector must have some standard to apply.

The standard that has been applied to date is the same as applied to the B Visitor Visa.

A person shall have a residence in Canada which he or she has no intention of abandoning and visits the United States temporarily for pleasure and has the finances to provide for the duration of the stay.

Our concern is that if the criteria as enumerated in the proposed regulation 214.2(b)(1) is applied to Canadians, it will have a devastating effect.

It seems logical that in determining whether a longer stay than 30 days would be "fair and reasonable" reference would be made to the proposed subsection (6) of 214.2(b), which enumerates the ONLY circumstances under which an extension would be granted.

It doesn't seem reasonable that one could be granted a longer period in the initial inspection for a reason which would not permit an extension.

There is no criterion for one who simply wants to stay longer than 30 days to enjoy the warmth and hospitality of the southern U.S.

Your southern weather makes us feel better and often keeps us healthier.

At the impulse of an inspecting officer, a snowbird, one who contributes to the U.S. economy, may have their winter plans completely destroyed.

Just yesterday, we received a call from a member who was most upset.

The gentleman's neighbour attempted to cross the Ambassador Bridge on Monday, June 17 at approximately 6:00 a.m.

He was denied entry and told it was because he did not have the deed to his Florida residence with him. When handed a form, no written reason was given.

Our member called to ask if there was any "official" document list issued by the INS for snowbirds to follow to ensure they travel, prepared.

As far as we know, there is none.

I do know, however, that we have another frightened snowbird – and the regulation hasn't gone into effect.

On May 16, Director of Homeland Security, Tom Ridge, assured our Deputy Prime Minister, John Manley, that Canadians would not be affected by these proposed regulations.

Chairman Manzullo, we were thrilled by this announcement.

Now all we ask is that his promise be followed through and written into the regulation.

To that end, I would like to submit into the record, a copy of our letter sent to Mr. Ziglar of the INS with our proposed wording to clarify the status of Canadians.

Thank you.

Canadian Snowbird Association
180 Lesmill Road, North York, Ontario M3B 2T5
1-800-265-3200

April 26, 2002

Director
Regulations and Forms Services Division
Immigration and Naturalization Service
425 I Street, N.W.,
Room 4034
Washington, DC 20536

Dear Director: RE: INS No. 2176-01
Proposed Regulation Limiting Periods of
Admission for B Nonimmigrant Aliens

SUBMISSION OF CANADIAN SNOWBIRD ASSOCIATION

BACKGROUND

The Canadian Snowbird Association Inc. (CSA) is an American and Canadian corporation representing Canadians who winter in the United States. Representations have been made to members of Congress and the Senate pertaining to non-immigrant issues, and the Association has appeared before the Immigration and Claims subcommittee of the House Judiciary Committee. The membership of the Association, numbering close to 100,000 Canadians, are persons who are primarily retired and spend several months each year in winter residence. Many do not own residences in the United States – they vacation in rental premises. The Canadian persons who are in this category number in the hundreds of thousands each year; not all, of course, members of the Association.

Although technically a Canadian does not need a visa to enter the United States, the Border Inspector must have some standard to apply in granting permission to the Canadian to enter the United States. The standard that has been applied to date is the same as applied to the B visitor visa. That standard has been that the person have a residence in Canada which he/she has no intention of abandoning and who is visiting the United States temporarily for pleasure, having the finances to provide for the person for the duration of the stay.

Our concern is that if the criteria as enumerated in the proposed regulation 214.2(b)(1) is applied to Canadians, it will have a devastating effect. A great many members of the Canadian Snowbird Association Inc. are retired persons who do not own residential property in the United States and wish to be in the United States for periods of four to six months.

It seems logical that in determining whether a longer stay than 30 days would be "fair and reasonable" reference would be made to the proposed subsection (6) of 214.2(b), which enumerates the ONLY circumstances under which an extension would be granted. It doesn't seem reasonable that one could be granted a longer period in the initial inspection for a reason which would not permit an extension.

The second concern is that the determination of initial period of stay is left completely to the discretion of the inspector as to an excess of 30 days without any direction whatsoever – the onus being upon the visitor to convince the officer that the "stated purpose" is valid, and that the period of time is "fair and reasonable." Most of the members of the Association, and of the thousands of others, come to the United States to escape the harsh weather in Canada. Obviously they have to stay more than 30 days. Is that "stated purpose" a valid one, and is that a valid reason to stay more than 30 days? Not if you have regard to subsection (6).

PROPOSAL

To remedy this matter, it is proposed that the initial period of stay for Canadians be six months, unless the Service has reason to limit the stay to a shorter period. This would be accomplished by amending proposed sec. 214.2 (b) (2), last sentence to read:

If it is not clear whether a shorter or longer period would be fair and reasonable under the circumstances, in light of the stated purpose of the alien's visit, the alien will be admitted for a period of 30 days, or, in the case of a Canadian Citizen or Landed Immigrant, for a period of 6 months.'

To alleviate the concern as to the standard to be applied considering the proposed subsection (6), it is suggested that a further ground (H) be added as follows:

(H) In the case of a Canadian Citizen or Landed Immigrant that the balance of convenience for the alien be in favor of the applicant remaining in the United States longer than the initial period granted, not to exceed 6 months, provided the alien is found to be otherwise admissible.

CONCLUSION

It is hoped that these suggestions will be considered in reviewing the proposed amendment to section 214.2(b). Other wording which may better accomplish the objects sought may be appropriate and the expertise of the drafters is called upon to improve upon the proposals. However, the concern on behalf of the members of the Canadian Snowbird Association Inc. is extreme, as one can only imagine the harm which implementation of the proposed changes would wreak, both on the aliens, and the beneficiaries of the business which the aliens do in the United States.

All of which is respectfully submitted this 26th day of April, 2002.

Ellen K. White

Ellen K. White
President

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Statement Before the United States House of Representatives' Small Business Committee Washington, DC

June 19, 2002

Mark Hjelle
Vice President & General Counsel
The Brickman Group, Ltd.
Langhorne, PA

Chairman Manzullo, Rep. Velazquez, and Members of the Committee, thank you for the opportunity to share my concerns on the impact of the recent INS proposal to limit the period of admission for B-2 nonimmigrant alien visas.

My name is Mark Hjelle, and I am vice-president and general counsel of The Brickman Group headquartered in Langhorne, PA. The Brickman Group has been in business since *1939.* It employs approximately 2,000 full time employees and another 5,000 seasonal workers. And it generates over $3 million in annual revenues from businesses in 28 states.

My comments also reflect the concerns of the American Nursery & Landscape Association (ANLA) and the Associated Landscape Contractors of America (ALCA), our industry's national trade associations. ANLA represents 2,300 growers, landscape firms, retail garden centers, landscape distribution groups and nearly 16,000 additional family farm and small business members of state and regional nursery and landscape associations. ALCA is a national association representing over 2,200 professional interior and exterior landscape contracting and supplier firms and related industry members.

At first glance it may seem as if the nursery and landscape industry doesn't have a dog in the fight over limiting the duration of B-2 tourist visas. This would not affect the H-2B visas The Brickman Group utilizes in order to make up shortfalls in our domestic workforce, or any other business visa category, as far as I can tell.

In addition, it is not entirely clear to me that the proposed requirement would have a chilling effect on tourism. Persons who plan to come to America for more than 30 days certainly have a plan for how they are going to spend that time. I don't have a particular problem with someone who is going to be here that long simply as a tourist having to say what they plan to do while in this country.

On the other hand, I agree with the notion that reducing the default period is not going to result in better INS control of aliens. The Committee is quite right that an individual can overstay a 30-day visa as easily as any other. The real question is what the INS proposes to do about it in 30, 60, or even 90 days that they aren't currently doing for those overstaying 6-month visas.

However, considering the magnitude of this country's dependence on foreign travelers for business as well as tourism, it is valuable that we have this discussion. The nursery and landscape industry is extremely sensitive to issues involving immigration policy, as our businesses are highly dependant on alien labor.

Our reliance on foreign labor is primarily borne out of the historic reluctance of domestic workers to engage in the employment opportunities offered in our agricultural and construction based industry. Many jobs in the industry are low-skilled, physically demanding, seasonal, and must be performed in a variety of weather conditions. Therefore, while our industry is exceedingly security-conscientious, we strongly urge this Committee and Congress as a whole to be very careful not to unduly restrict alien movements or create well-intended administrative remedies that quickly turn into roadblocks that negatively impact the flow of essential workers across our borders.

An example of this well-intentioned but poorly executed administrative remedy is the new INS policy requiring security checks on all named *petitioners* for H-2B visas. It is completely understandable why the INS would want to check the backgrounds of these individuals, however, the

reality of the situation is processing of these applications is already severely backlogged. With no additional resources being diverted to the INS for implementation of this new security check, current backlogs--as much as 75 days in some offices--will undoubtedly grow longer, forcing many employers to either miss their dates of need or pay the outrageous some of $1,000 for so-called "Premium Processing." Some have likened this fee to a sort of administrative extortion...either pay up, or you probably won't get your workers when you need them.

The surge of anti-immigrant fervor after the 9-11 tragedies coupled with difficult and time-consuming border crossings has greatly impacted many foreign workers engaged in our industry. Many were afraid to return to their native countries and are now working with fraudulent work authorization documents. Others were too scared to return to America regardless of the fact they had good paying jobs with long-term security waiting for them here. As a result, many employers in our industry lost valuable and trusted workers. Consequently, we are greatly concerned with the ramifications limiting tourists visas will ultimately have on other visa programs for those aliens seeking to gain entry into the U.S. for non-tourist purposes, like employment.

When all is said and done, I just don't see reducing the default period on B-2 visas as a major problem. I do see that there could be potential benefits, but I strongly encourage Congress to continue to fight on behalf of small businesses everywhere to ensure a continued safe and smooth flow of aliens into and out of America. This is essential for the purposes of travel and tourism, as well as employment opportunities offered by guest worker programs by industries unable to attract sufficient domestic workers.

Again, thank you for the opportunity to participate in this discussion.

Federal Register / Vol. 67, No. 71 / Friday, April 12, 2002 / Proposed Rules 18065

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214, 235 and 248

[INS No. 2176–01]

RIN 1115–AG43

Limiting the Period of Admission for B Nonimmigrant Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Immigration and Naturalization Service (Service) is proposing to amend its regulations by eliminating the minimum admission period of B–2 visitors for pleasure, reducing the maximum admission period of B–1 and B–2 visitors from 1 year to 6 months, and establishing greater control over a B visitor's ability to extend status or to change status to that of a nonimmigrant student. These changes will enhance the Service's ability to support the national security needs of the United States. These regulatory modifications are within the Service's authority under sections 214(a) and 248 of the Immigration and Nationality Act (Act) and will help lessen the probability that alien visitors will establish permanent ties in the United States and thus remain in the country illegally.

DATES: Written comments must be submitted on or before May 13, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC, 20536. To ensure proper handling, please reference the INS No. 2176–01 on your correspondence. Comments may also be submitted electronically to the Service at *insregs@usdoj.gov*. When submitting comments electronically, please include INS No. 2176–01 in the subject heading. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Craig Howie, Business and Trade Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW, Room 3040, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

Background

What Is a B Nonimmigrant Alien?

A B nonimmigrant is an alien whose admission to the United States is based on a temporary visit for business (B–1) or a temporary visit for pleasure (B–2). Section 101(a)(15)(B) of the Act defines the visitor classification as:

> An alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

Based on the statutory language, the Service has long held a B–1 nonimmigrant to be one seeking admission for legitimate activities of a commercial or professional nature such as meetings, conferences, or consultations in the United States in connection with the conduct of international business and commerce. A B–2 nonimmigrant is one seeking admission for activities relating to pleasure such as touring, family visits, or for purposes of receiving medical treatment.

Service regulations at 8 CFR 214.2(b)(1) currently provide that a B–1 or B–2 visitor may be admitted for an initial period of not more than 1 year. B nonimmigrants may request extensions of the period of admission by filing Form I–539, Application to Extend/Change Nonimmigrant Status.

What Is the Service Proposing to Change?

The Service is proposing to eliminate the minimum period of admission for a B–2 nonimmigrant visitor for pleasure, currently a 6-month admission. In place of the minimum period of admission for B–2 visitors, the Service is proposing that both B–1 and B–2 visitors will be admitted for a period of time that is fair and reasonable for the completion of the purpose of the visit.

The Service is also proposing to reduce the maximum period of admission for B–1 and B–2 visitors from 1 year to 6 months. The maximum increment of extension of stay will remain 6 months, and this 6-month maximum will apply to all B–1 and B–2 visitors.

This rule also restates explicitly the general requirement for extensions of status, to provide that an alien requesting an extension of either B–1 or B–2 status bears the burden of proving that he or she has the adequate financial resources to continue his or her temporary stay in the United States and that he or she is maintaining an unrelinquished residence abroad.

Finally, the rule proposes to establish greater control over a B visitor's eligibility to change to a student nonimmigrant status.

Why Is the Service Proposing To Eliminate the Minimum Admission Period for a B–2 Nonimmigrant Visitor for Pleasure?

As previously noted, Service regulations at 8 CFR 214.2(b)(2) currently provide that an alien seeking admission to the United States as a B–2 visitor for pleasure will be granted a minimum 6-month period of admission. The 6-month period is granted to the alien regardless of whether the alien plans to stay in the United States for a few days or for the entire 6-month period. The Service implemented this 6-month minimum admission period many years ago to reduce filings of extensions of stays from aliens who develop a need to stay in the United States longer than the initial period of admission.

The Service views the proposal to eliminate the minimum admission period for B–2 visitors for pleasure as reasonable and within the Service's authority under section 214(a) of the Act. This proposal also comports with the Act's requirements that the Service maintain control of the alien population within the United States. This is especially important in light of the attacks of September 11, 2001.

Under this proposed rule, both B–1 visitors for business and B–2 visitors for pleasure will be granted a period of admission that accurately comports with the stated purpose of the visit. Eliminating the minimum period of admission and establishing a fair and reasonable period of admission for B–2 visitors for pleasure, as modeled on the existing policy used to determine periods of admission for B–1 visitors for business, will lessen the probability that an alien visitor will establish permanent ties in the United States and remain in the country illegally.

While inspecting Service officers will make every effort to take into account language and cultural differences when eliciting the information needed to determine a reasonable period of admission, the burden still rests with the alien to adequately establish the precise nature and purpose of the visit.

Because the vast majority of B–1 and B–2 nonimmigrants do not have a stated need to remain in the United States for more than 30 days, it is reasonable to expect that most will depart within that time frame. Accordingly, in any case

where there is any ambiguity whether a shorter or longer period of admission would be fair and reasonable under the circumstances, a B–1 or B–2 nonimmigrant should be admitted for a period of 30 days. This period is neither a minimum nor a maximum, and the inspecting Service officer will be authorized to admit a B nonimmigrant for a shorter period or for a longer period (not to exceed 6 months), depending on the circumstances and the stated purpose of the alien's visit to the United States.

Why Is the Service Proposing To Reduce the Maximum Admission Period for B–1 and B–2 Visitors From 1 Year to 6 Months?

As previously noted, Service regulations at 8 CFR 214.2(b)(1) currently provide that a B–1 visitor for business or B–2 visitor for pleasure may be admitted for a period of up to 1 year. As the attacks of September 11, 2001, demonstrated, this generous period of stay is susceptible to abuse by aliens who seek to plan and execute acts of terrorism. Virtually all B visitors with legitimate business or tourism interests are able to accomplish the purposes of their visits in less than 6 months. Accordingly, it is proposed that the maximum period of admission for B–1 and B–2 visitors be reduced from 1 year to 6 months for each admission. In addition to promoting the security the United States, this change will reduce the likelihood that an alien visitor will establish permanent ties in the United States and remain in the country illegally.

Will B Visitors Be Able To File Requests for Extensions of Stays?

Under the proposed rule, all B visitors for business or pleasure will continue to be eligible to apply for extensions of stay, but only in cases that have resulted from unexpected events (such as an event that occurs that is out of the alien's control and that prevents the alien from departing the United States), compelling humanitarian reasons, such as for emergency or continuing medical treatment, or as Service policy may direct.

In addition, this proposed rule recognizes that a few B nonimmigrants enter for specific, legitimate reasons that, by their very nature, can require a stay of longer than 6 months. Those nonimmigrants, enumerated at proposed § 214.2(b)(6), who are lawfully continuing in those activities may also apply for extension of status.

All such requests, made on Form I–539, Application to Extend/Change Nonimmigrant Status, must be timely filed and non-frivolous, and the alien must document that he or she is maintaining an unrelinquished residence abroad and has adequate financial resources to continue the temporary stay. Documentary evidence showing ties to the alien's country of residence and possession of sufficient financial means to remain in the country for the requested period of time can include such items as current bank records and lease or real property ownership documents.

The Service believes that the vast majority of aliens seeking admission as B visitors will be able to complete their stays in the United States within the period of time granted by the inspecting Service officer. The burden will be on the arriving alien to adequately explain to the inspecting Service officer at the time of admission the precise nature of the visit so the Service officer can make a determination on the period of stay to be granted. Requests for extensions of stay only heighten the probability that alien visitors will establish permanent ties in the United States and thus remain in the country illegally.

Will the Proposed Rule Affect the Status of B–1 or B–2 Visitors Already Admitted to the United States?

The new admission procedures under this rule will not affect aliens who were admitted to the United States as B–1 or B–2 visitors for business or pleasure at any time prior to the effective date of a final rule, which will be published in the **Federal Register** at a later date. However, B–1 or B–2 nonimmigrants who were admitted to the United States before the effective date of the final rule, but who apply for an extension of nonimmigrant status on or after that effective date, will be subject to the heightened requirements for extension of stay and to the 6-month limit on such extensions.

What Changes Is the Service Proposing Regarding a B Visitor's Ability To Change Nonimmigrant Status to That of Student?

Current Service regulations at 8 CFR part 248 allow for the change of a B nonimmigrant to the status of a nonimmigrant F or M student. While the proposed rule does not alter the ability of a B nonimmigrant to change nonimmigrant status to that of a student, it does establish a requirement that the alien make this intent known when he or she initially applies for admission to the United States as either a B–1 or B–2 visitor. If the alien has already received any Forms I–20, Certificate of Eligibility for Nonimmigrant Student, from one or more approved schools, indicating that the alien has been accepted for enrollment, the alien must also present those forms to the inspecting Service officer at the time of the application for admission as a B visitor.

The Service has long accommodated prospective alien students by allowing them to enter the United States in B nonimmigrant status and visit the campuses where the student has been admitted, and then allowing the prospective student to file Form I–539 in order to change nonimmigrant status once the student has made a decision as to which school to attend. While the Service does not intend to discontinue this accommodation, it is reasonable to expect an intending nonimmigrant student to be honest about the ultimate purpose of his or her admission when being questioned by the inspecting Service officer. This intent must be made known to the inspecting Service officer regardless of whether the alien's B visa is annotated with the words, "Prospective Student."

Therefore, the Service proposes at 8 CFR 248.1(c)(2) to require a prospective alien student to state this purpose to the inspecting Service officer, and present any Forms I–20 that the alien has received, and to require the officer to make an annotation on the alien's Form I–94, Arrival-Departure Record, that reflects the alien's intent. Aliens who file an application for change of nonimmigrant status in order to change to student status without a Form I–94 that has been annotated by an inspecting Service officer will be denied the change of nonimmigrant status. Such aliens will be required, instead, to follow the regular process to seek an F or M nonimmigrant student visa from a consular officer abroad. By implementing this change, the Service intends to gain greater control over the process by which a B nonimmigrant can change status to that of either an F or M nonimmigrant student.

The Service notes that Canadian citizens (and certain Canadian permanent residents and other aliens described in 8 CFR 212.1(a)) generally are not required to obtain nonimmigrant visas or to be issued a Form I–94 upon entry into the United States. However, the Service proposes to amend 8 CFR 235.1(f)(1)(i) to provide that prospective Canadian students who intend to enter the United States to visit schools and who intend to remain in the United States and change nonimmigrant status to that of an F or M student will be required to make this declaration when applying for admission. The prospective Canadian student will be issued a Form I–94 inscribed with a notation that

reflects the alien's intent to change to student status.

The requirement that a B visitor must have stated his or her intention as a prospective student at the time of admission in B nonimmigrant status, in order to be eligible for change of status to an F or M nonimmigrant student, will be applied only to aliens who are admitted as B visitors on or after the effective date of a final rule. Because aliens who were admitted as B visitors prior to that effective date will not have been required to state their intention as a prospective student at the time of admission, they will not be subject to that limitation if they apply for change of status to F or M status. However, any alien who applies for and is granted an extension of B nonimmigrant status after the effective date of this final rule will not be eligible for change of status to F or M status. Allowing such aliens (who would already have been present in the United States as a B visitor for many months, even one year) to apply for change of status to F or M status would be inconsistent with the basic premise of this rule, which is to allow a limited accommodation for prospective students, who have already been admitted to one or more schools, to enter the United States briefly before deciding which school at which they will enroll.

Finally, the Service takes note of a related interim rule, (published elsewhere in this issue of the **Federal Register**), which stipulates that no person who has entered the United States as a B nonimmigrant may enroll in a course of study or otherwise take action inconsistent with his or her B status unless the Service has already approved his or her application for change of status to that of an F or M nonimmigrant student. That separate rule, which takes effect upon publication, complements the provisions of this proposed rule as it relates to a change of status from B–1 or B–2 visitor status to that of an F or M nonimmigrant.

What Continuing Obligations Do All B Nonimmigrants Have During the Time They Remain in the United States?

The Service notes that, under the existing provisions of section 261(a) of the Act, an alien who remains in the United States for a period of 30 days or more (other than an A or G nonimmigrant) is subject to the requirements for registration of aliens. Nonimmigrant aliens register initially using the Form I–94, Arrival-Departure Record. However, aliens who are subject to the registration requirements are also obligated, under section 265(a) of the Act, to notify the Service of each change of address within 10 days of such change, by submitting Form AR–11 to the Service. The obligation to notify the Service of each change of address applies to all B nonimmigrants (indeed, all nonimmigrants other than those in A or G status) who remain in the United States for more than 30 days, regardless of whether their continued stay is pursuant to their initial admission or as a result of a change or extension of status.

The change of address requirements are set forth in the existing law and regulations. Accordingly, the Service does not need to propose changes in this rule to implement them. However, the Service is restating these existing requirements here for the benefit of readers, so that aliens who apply for nonimmigrant status will be advised of them.

What Happens if a B Visitor Overstays His or Her Period of Stay?

While this proposed rule does not address the issue of nonimmigrant aliens overstaying authorized periods of stay, the Service notes that an existing law, section 222(g) of the Act, provides for the automatic voidance of a nonimmigrant visa at the conclusion of a period of stay if the alien remains in the United States longer than the period of authorized admission. All B visitors should be aware of this provision of the law and are responsible for remaining in lawful nonimmigrant status while within the United States. Under section 222(g) of the Act, a B visa (including a multiple-entry visa-a visa that is usually valid for a number of years and allows the bearer to make multiple applications for admission to the United States without having to obtain a new visa for each admission) shall be void if the alien who entered the United States as a B visitor overstays his or her authorized period of admission. Thereafter, the alien would not be able to re-apply for admission to the United States using that same visa, but would be required to seek a new B visa or other appropriate visa from a consular officer abroad.

Any nonimmigrant admitted to the United States bears the burden of maintaining legal status during the period of admission that has been granted by the inspecting Service officer. The Service cannot emphasize enough the importance of maintaining lawful status while in the United States. See section 212(a)(9)(B) of the Act for more information on the important and far-reaching implications of unlawful presence and the impact that unlawful presence may have on an alien's future ability to reapply for a nonimmigrant visa, for admission to the United States, or for adjustment of status to that of a lawful permanent resident.

Aliens should note that the statute provides an accommodation to nonimmigrants with pending applications for extension of stay or change of status if certain requirements have been met. Extension or change of status, however, will only be granted in cases where the Service deems the request to be legitimate and to meet the new criteria specified in this rule. Such requests, made on Form I–539, must be filed prior to the expiration of the alien's authorized admission, subject to a narrow exception where the delay was caused by extraordinary circumstances beyond the control of the alien. *See* 8 CFR 214.1(c)(4) and 248.1(b), respectively. Also, an alien who has filed Form I–539 to request an extension of stay is expected to depart from the United States upon the expiration of the requested extension regardless of whether the alien has received a copy of the Service's decision on the application for extension of stay.

Request for Comments

The Service is seeking public comments regarding this proposed rule. The Service notes that, in view of the national security needs of the United States, public comment on this proposed rule is being limited to 30 days. The Service requests that parties interested in commenting on the proposals contained within this rule submit comments on or before May 13, 2002, as the Service will not extend the comment period.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies only to nonimmigrant aliens visiting the United States as visitors for business or pleasure. It does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were

deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1101 note, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Public Law 106–386, 114 Stat. 1477–1480; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

2. Section 214.2 is amended by revising paragraphs (b)(1) and (b)(2) and by adding a new paragraph (b)(6), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) * * *

(1) *General.* Any B–1 visitor for business or B–2 visitor for pleasure may be admitted for not more than 6 months and may be granted extensions of temporary stay in increments of not more than 6 months each. Those B–1 and B–2 visitors admitted pursuant to the waiver provided at § 212.1(e) of this chapter may be admitted to and stay on Guam for a period not to exceed 15 days and are not eligible for extensions of stay.

(2) *Specific requirements for admission of B–1 and B–2 visitors.* (i) *Initial admission.* The burden is on the arriving alien to adequately explain to the inspecting Service officer the precise nature of the visit so the Service officer can make a determination on the period of stay to be granted. Any B–1 or B–2 visitor who is found otherwise admissible will be admitted for a period of time that is fair and reasonable for the completion of the stated purpose of the visit, provided that any required passport is valid as specified in section 212(a)(7)(B)(i) of the Act. If it is not clear whether a shorter or longer period would be fair and reasonable under the circumstances, in light of the stated purpose of the alien's visit, the alien will be admitted for a period of 30 days.

(ii) *Change of status to nonimmigrant student.* An alien may be admitted in B–1 or B–2 visitor status as a prospective student (that is, an alien who intends to remain in the United States and apply for change of nonimmigrant status as an F or M student at an approved school), but the alien must state this intent at the time he or she applies for admission to the United States as a B nonimmigrant. The burden is on the prospective student, applying for admission as a B–1 or B–2 visitor, to explain to the inspecting Service officer that the alien's ultimate purpose is to attend school in either F or M nonimmigrant status, whether or not the alien's B nonimmigrant visa has been annotated as a "prospective student" by a consular officer abroad. (This requirement also applies with respect to Canadian citizens and certain nationals, see § 235.1(f)(1)(i) of this chapter.) If an alien has already received any currently-valid Forms I–20 from one or more approved schools, indicating that the alien has been accepted for enrollment, the alien must also present those Forms to the inspecting Service officer at the time of the application for admission as a B visitor. The inspecting Service officer will make a notation to the alien's Form I–94 reflecting that he or she is a prospective student. See 8 CFR part 248 for a discussion of change of nonimmigrant status for B–1 or B–2 visitors to that of an F or M nonimmigrant student.

* * * * *

(6) *Requests for extensions.* (i) *Eligibility.* An alien admitted in B–1 or B–2 status may apply for an extension of stay using Form I–539, Application to Extend/Change Nonimmigrant Status. The alien bears the burden of proving that he or she has the adequate financial resources to continue his or her temporary stay in the United States and that he or she is maintaining an unrelinquished residence abroad. An extension, if granted, will be for a fair and reasonable period, not to exceed 6 months, as determined under the circumstances as established by the alien, and based on information available to the Service.

(ii) *General standards.* In general, except as the Service's publicly-stated policy may direct, the Service will grant an extension of status only in the following circumstances:

(A) The alien establishes that an unexpected circumstance (that is, a documented and significant situation or event that is out of the alien's control) prevents the alien from departing the United States at the conclusion of the granted period of admission (as noted

on the Form I–94, Arrival-Departure Record);

(B) An extension is appropriate for compelling humanitarian reasons, including but not limited to situations involving an alien's new or continued medical treatment, the need of an alien parent to stay with his or her minor child receiving medical treatment or specialized education in the United States, or the need of an alien adult to attend to an acutely ill immediate family member who is receiving medical treatment;

(C) The alien is a member of a religious denomination coming solely and temporarily to do missionary work in behalf of a religious denomination, provided that such work does not involve the selling of articles or the solicitation or acceptance of donations;

(D) The alien is establishing a new office, as provided at paragraph (l)(7)(i)(A)(3) of this section relating to intra-company transfers;

(E) The alien is the personal or domestic servant of an alien or United States citizen, as outlined at § 274a.12(c)(17)(i) and (ii) of this chapter;

(F) The alien is an employee of a foreign airline engaged in international transportation of passengers or freight, as outlined at § 274a.12(c)(17)(iii) of this chapter; or

(G) The alien owns a home in the United States and occupies that home on a seasonal or occasional basis only.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

3. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

4. Section 235.1 is amended by revising paragraph (f)(1)(i) to read as follows:

§ 235.1 Scope of examination.

* * * * *

(f) * * *

(1) * * *

(i) Any nonimmigrant alien described in § 212.1(a) of this chapter and 22 CFR 41.33 who is admitted as a visitor for business or pleasure or admitted to proceed in direct transit through the United States: *provided, however*, that a prospective student who is seeking admission as a B nonimmigrant and whose intent is to remain in the United States and change nonimmigrant status to that of an F or M nonimmigrant student is required to state such intent to the inspecting Service officer at the time of admission, to present any currently-valid Forms I–20 that the student has received from an approved school, and to complete a Form I–94;

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

5. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

6. Section 248.1 is amended by adding paragraph (c)(2) to read as follows:

§ 248.1 Eligibility.

* * * * *

(c) * * *

(2) A nonimmigrant who is admitted as a B–1 or B–2 visitor under section 101(a)(15)(B) of the Act on or after (the effective date of a final rule to be published in the **Federal Register**), may change nonimmigrant classification to that of an F or M nonimmigrant student only if the B–1 or B–2 visitor had stated such intent as a prospective student at the time he or she applied for admission to the United States as a B nonimmigrant, as provided in 8 CFR 214.2(b)(2)(ii). (This requirement also applies with respect to Canadian citizens and certain Canadian nationals, see 8 CFR 235.1(f)(1)(i).) A B nonimmigrant applying to change nonimmigrant status to that of an F or M nonimmigrant student under the provisions of § 248.3 must submit, with the application to change B nonimmigrant status, a copy of the Form I–94 that contains an annotation reflecting the alien's prospective student intent, or the application for change of status will be denied. An alien who has been granted an extension of B nonimmigrant status on or after (the effective date of a final rule to be published in the **Federal Register**) is not eligible to apply for change of status to that of an F or M nonimmigrant student.

Dated: April 9, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–8927 Filed 4–9–02; 1:54 pm]

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A10 WEDNESDAY, JUNE 19, 2002 S UM VA THE WASHINGTON POST

Sept. 11 Plot Likely Hatched in '98, Tenet Says

In Closed-Door Session, U.S. Intelligence Officials Describe Al Qaeda Strategies

By JULIET EILPERIN
and DANA PRIEST
Washington Post Staff Writers

CIA Director George J. Tenet told a congressional intelligence panel yesterday that the Sept. 11 plot was probably hatched shortly after al Qaeda bombed two U.S. embassies in East Africa in 1998, according to lawmakers who attended the closed-door session.

Al Qaeda takes about "three years between the time they identify a target and when the target is hit," Sen. Bob Graham (D-Fla.), chairman of the Senate intelligence committee, told reporters during a break in the daylong session. The panel also heard from FBI Director Robert S. Mueller III and Air Force Lt. Gen. Michael V. Hayden, head of the National Security Agency, which performs electronic eavesdropping.

"It started more or less, I would say, shortly after the African embassy bombings," said Graham of the plan to attack the World Trade Center and the Pentagon. "They do operations at a rate of about once every 12 to 18 months, which means they've got terrorist goals which are overlapping in planning and execution."

The Senate-House panel is investigating the performance of the nation's intelligence agencies leading up to the Sept. 11 attacks.

- Hayden was asked to respond to allegations that the agency had intercepted al Qaeda communications about the attacks before Sept. 11 but failed to translate and disseminate them until afterward, lawmakers said.
- Sen. Richard C. Shelby (Ala.), the ranking Republican on the Senate intelligence panel, said Hayden answered the questions. Shelby would say only that the NSA collects a huge volume of data, is able to translate only a fraction of it and is able to distribute only a fraction of that.
- NSA officials have denied the agency translated any significant al Qaeda conversations that would have alerted officials to an impending attack.

BY SARAH L. VOISIN—THE WASHINGTON POST

CIA Director George J. Tenet and other officials were questioned in a private meeting yesterday.

Lawmakers asked Tenet to explain why the CIA had failed to communicate effectively with the FBI about potential terrorists. "Tenet underwent a pretty thorough examination and held up pretty well," said Rep. C. Saxby Chambliss (R-Ga.). He described the session as "more details about particular facts surrounding September 11th, but nothing particularly shocking and startling."

The witnesses discussed "the original concept of this attack through the recruitment, the training, the financing, the coordination of those who were involved in its execution," Graham said.

Members of al Qaeda and other terrorist groups are still operating inside the United States, Graham said. "Whether they had anything to do with September 11th or not is another issue," he added.

While the panel is looking at broad problems confronting the intelligence agencies, members also want to eliminate the possibility of more revelations about information that could have prevented the attacks had it been analyzed and shared.

Some committee members questioned the push to reorganize the nation's intelligence-gathering agencies when their investigation was still in its initial stages. The White House sent Congress draft legislation yesterday outlining President Bush's proposal to create a Cabinet-level Department of Homeland Security.

"Rather than choosing a symbolic date, especially on the intelligence front, we should move very slowly," said Rep. Timothy J. Roemer (D-Ind.).

U.S. Department of Justice
Immigration and Naturalization Service

HQADN 70/6.2.2

Office of the Commissioner

425 I Street NW
Washington, DC 20536

JUL 5 2002

Mrs. Ellen K. White, President
Canadian Snowbird Association
180 Lesmill Road
North York, ON M3B 2T5

Dear Mrs. White,

It was a pleasure meeting you during our testimonies before the House Small Business Committee on June 19, 2002, regarding the proposed rule that would eliminate the minimum 6-month period of authorized stay for B-2 nonimmigrant visitors traveling for pleasure.

As I noted in my testimony, this rule is one of several that we are recommending in our ongoing efforts to strengthen homeland security and better manage immigration into the United States. The Immigration and Naturalization Service (INS) will issue clarifying guidance to our inspectors for dealing with Canadians crossing the border.

During the hearing, Chairman Manzullo directed my office to provide the Canadian Snowbird Association with a letter assuring Canadians, and in particular Canadian retirees that winter in the southern United States, that any new limitations on B admissions will not have a negative effect on them. Please know that any such rule issued by this Service will not hinder the ability of a Canadian citizen desiring to spend up to six months in this country from being admitted, provided, as is now the case, that the Canadian citizen is otherwise eligible for admission to the United States.

Rest assured that the INS understands its role in facilitating the entry and stay of legitimate visitors to our Nation. We will continue to welcome those who wish to come and enjoy our many natural and man-made attractions.

Sincerely,

James W. Ziglar
Commissioner

cc: Rep. D. Manzullo, Chairman, Small Business Committee

DONALD A. MANZULLO, ILLINOIS
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

Congress of the United States
House of Representatives
107th Congress
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

May 7, 2002

The Honorable James W. Ziglar
Commissioner
Immigration and Naturalization Service
U.S. Department of Justice
Washington, D.C. 20536

Dear Commissioner Ziglar:

As you know, the Immigration and Naturalization Service (INS) has proposed to cut from six months to 30 days the default period allowed for most tourist visits (B-2 visas). Although we fully support the Administration's homeland security goals, we have concerns about this proposal, especially as it affects small business. In short, since the proposal would curtail foreign travel to our country, it could seriously harm our travel and tourism industries directly, and other industries indirectly.

First, we think the proposal may endanger the confidence of foreign travelers desiring to visit the U.S. for longer than 30 days. According to an INS fact sheet, the new rule will require visitors to :

> explain to an INS Immigration Inspector the nature and purpose of their visit so the Inspector can determine the appropriate length of stay. While INS Inspectors will make every effort to determine a fair and reasonable time period, the burden of proof rests with the alien. When the time needed to accomplish the purpose of the visit cannot be determined, INS will grant a 30-day period of admission.

The proposed rule itself states that "where there is any ***ambiguity*** whether a shorter or longer period of admission would be fair and reasonable under the circumstances" the visa will be issued for 30 days. (Emphasis added.)

Since potential visitors must be confident in advance that they can meet this burden of proof, specific INS guidance is needed to allow for trip planning. If potential visitors lack sufficient confidence prior to booking travel, they will choose to travel elsewhere -- a very costly choice for America's small businesses and their employees. The Commerce Department estimates that in 2000, the number of visitors from non-visa waiver countries that stayed more than 30 days was 939,000.

The Honorable James W. Ziglar
May 7, 2002
Page 2 of 2

Based on average spending estimates, these visitors contributed almost $2.1 billion to the U.S. economy. How many of these visitors will cut their trips short or simply refuse to come to the U.S.?

Furthermore, while the proposed rule sets 30 days as the default, INS inspectors could still limit visitors to less than 30 days. If this caused the roughly 17 million non-visa waiver visitors who seek shorter visits to rethink their travel plans, the economic impact would be much greater.

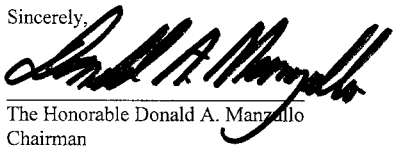
Second, we question the purpose of the proposed rule. The INS states that the proposal is designed to help the Service meet its responsibility to "maintain control of the alien population within the United States. This is especially important in light of the attacks of September 11, 2001." Such a responsibility is critically important, but we are unclear how changing the default period for tourist visas assists INS in this effort. Someone wishing to harm the U.S. would overstay a 30-day visa as readily as a six-month visa, and nothing in the proposed rule would appear to give INS more tools or resources to discover and track such people. Will INS be devoting additional resources to find those who overstay a tourist visa? If so, from what other activity will those resources be diverted?

Third, we believe more formal consideration of this proposal is needed. Whether the significant potential impact of this proposed rule triggers review under the letter and spirit of the Regulatory Flexibility Act, it certainly merits more than a 30-day comment period.

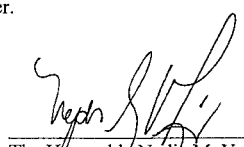
We share your desire to "strike the appropriate balance between INS' mission to ensure that our nation's immigration laws are followed and stop illegal immigration and our desire to welcome legitimate visitors to the United States." We also believe it is vital to strike that balance in a manner that does not place undue burdens on small businesses and their employees in return for questionable benefits to our anti-terrorism effort.

We appreciate your hard work in enforcing our nation's immigration laws, and would be grateful for your prompt consideration and response to this letter.

Sincerely,



The Honorable Donald A. Manzullo
Chairman



The Honorable Nydia M. Velázquez
Ranking Democratic Member

HARRY REID
NEVADA

ASSISTANT MAJORITY
LEADER

United States Senate
WASHINGTON, DC 20510–2803

April 26, 2002

The Honorable James W. Ziglar
Commissioner
Immigration and Naturalization Service
U.S. Department of Justice
Washington, D.C. 20536

Dear Commissioner Ziglar:

As you are aware, the Immigration and Naturalization Service (INS) recently proposed to cut from six months to 30 days the default time period allowed for most tourist visits (B-2 visas). Although I am fully supportive of the Administration's homeland security goals, I have several concerns about this proposal, including, but not limited to, the following:

First, the proposed rule endangers the confidence of foreign travelers desiring to visit the U.S. for longer than 30 days. According to an INS fact sheet, under the new rule, visitors "will be required to explain to an INS Immigration Inspector the nature and purpose of their visit so the Inspector can determine the appropriate length of stay. While INS Inspectors will make every effort to determine a fair and reasonable time period, the burden of proof rests with the alien. When the time needed to accomplish the purpose of the visit cannot be determined, INS will grant a 30-day period of admission." The proposed rule itself states that "where there is any ***ambiguity*** [emphasis added] whether a shorter or longer period of admission would be fair and reasonable under the circumstances" the visa will be issued for 30 days.

Will the INS give potential visitors specific guidance so that visitors will know they are able to meet that burden of proof before they arrive in the U.S.? It is perfectly reasonable to expect potential visitors to seek such assurance prior to booking travel, or to choose to travel elsewhere if they lack such confidence.

Secondly, I have questions about the purpose of the proposed rule. The INS states that the proposal is designed to help the Service meet its responsibility to "maintain control of the alien population within the United States. This is especially important in light of the attacks of September 11, 2001." Such a responsibility is indeed important, but I am unclear how changing the default period for tourist visas assists you in this effort. Someone wishing to harm the U.S. would overstay a 30-day visa as readily as a six-month visa, and nothing in the proposed rule would appear to give the INS additional tools or resources to discover and track such people. Will you be devoting additional resources to find those who overstay a tourist visa? If so, from what other activity will those resources be diverted?

Thirdly, I also am concerned that the proposed regulation will not be subject to appropriate comment and reviews mandated by law. This is a proposal with potentially far-reaching effects, and should be treated as such. According to an INS official quoted in the April 9 *New York Times*, 2.5 million visitors could be affected by this change. The Department of Commerce estimates that the average overseas traveler spent $105 per day in 2002.

Take one example of the potential impact. In 2000, 12 percent – or 507,400 – of international leisure visitors who came to New York City stayed 30 days or more in the U.S. That figure represents $337.4 million in visitor spending in New York alone.

Clearly, a 30-day public comment period is insufficient. In addition, as seen in the New York example, it is likely that this proposal could easily have an economic impact of well above $100 million per year. Therefore, the regulation is subject to review under the Small Business Regulatory Enforcement Act (SBREFA), the Regulatory Flexibility Act, and the Congressional Review Act.

Jim, I share your desire to "strike the appropriate balance between INS' mission to ensure that our nation's immigration laws are followed and stop illegal immigration and our desire to welcome legitimate visitors to the United States." However, I believe that it is vital that we strike that delicate balance in a manner that does not place undue burdens on those who wish to visit our country for purely leisure purposes.

I thank you for your consideration and would appreciate a timely response to this letter.

Sincerely,

The Honorable Harry Reid

JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

April 29, 2002

The Honorable James W. Ziglar, Commissioner
Immigration and Naturalization Service
425 Eye Street, NW, Room 7100
Washington, DC 20001

Dear Commissioner Ziglar:

I am writing to express my concern regarding the potential impact of the Immigration and Naturalization Service's (INS) proposed changes to the B-2 visitor status program from six months to 30 days. In particular, I believe clarification is necessary in regards to our state's very significant international visitor population.

Currently, international visitors are allowed an automatic six-month length of stay in the United States. This extended length of time allows many of these visitors to spend time in Florida, often well in excess of 30 days. In 2000, more than eight million international visitors came to Florida, with similar annual visitation levels extending back for more than a decade. Last year, visitors from other countries spent nearly $5.5 billion while in Florida, generating almost $500 million in state sales tax revenue. In fact, substantial portions of these visitors are considered part-time Florida residents who own property and pay property taxes. Finally, international tourists contribute to our state's vibrant culture and remain an important part of Florida's communities.

However, if the INS does not specify its intentions toward foreign visitors in its regulations, the uncertainty of their access to the United States will increase the likelihood of a substantial reduction in tourism to our state and have a profound negative effect on our economy. While I understand that the security of our nation is of paramount importance and all necessary steps must be taken to ensure the safety of our citizens, I hope that the INS will decide to publicly communicate our willingness to accommodate our valuable guests.

I strongly urge that steps toward increased security also include clear articulation and reasonable flexibility in accommodating those who are among our nation's most loyal and treasured friends.

Sincerely,

Jeb Bush

JB/pan

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

THERESA C. BROWN
MANAGER
LABOR & IMMIGRATION POLICY

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
(202) 463-5944
(202) 463-5901 FAX

May 13, 2002

Director
Regulations and Forms Services Division
Immigration and Naturalization Service
425 I Street, NW, Room 4034
Washington, DC 20536

Re: Proposed Rule: Limiting the Period of Admission for B Nonimmigrant Aliens, 67 Fed. Reg. 10865 (April 12, 2002), RIN 1115-AG43, INS No. 2176-01

Dear Sir or Madam:

On behalf of the more than three million businesses and organizations that are members of the U.S. Chamber of Commerce, I am pleased to offer our comments on the captioned proposed rule, "Limiting the Period of Admission for B Nonimmigrant Aliens."[1] We understand and fully support the goals of the Immigration and Naturalization Service to enhance our immigration system to protect against those who would do us harm. However, we have many questions about the impact of this proposed regulation on potentially hundreds of thousands of legitimate business travelers and tourists, and the millions of businesses they support.

The U.S. Chamber of Commerce

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. The Chamber also represents a wide spectrum of industry sectors and locations. Each major business classification -- manufacturing, retailing, services, construction, wholesaling and finance -- have more than 10,000 chamber members. The Chamber has membership in all 50 states and 83 American Chambers of Commerce abroad.

Summary of Concerns

Responding to concerns raised by Chamber members, and issues identified by our staff affecting business concerns generally, the Chamber offers comments in five principal areas:

[1] The Chamber also supports the comments filed separately on this rulemaking by the Travel Industry Association of America, the American Immigration Lawyers Association and the joint comments filed by the American Council on International Personnel, the National Association of Manufacturers and the AeA, American Electronics Association.

May 13, 2002
Page Two

1. *New scope of authority given to inspectors at Ports of Entry.*
2. *Potentially large adverse impact on international travel and tourism to the United States through deterrence.*
3. *Potential to greatly increase existing case backlogs at INS processing centers.*
4. *Adverse impact on adult children, parents and partners of H, L, E and other nonimmigrant employees.*
5. *Adverse impact on foreign national retirees and seasonal residents of the United States.*

New scope of authority given to inspectors at Ports of Entry

Problem:

The proposed rule gives INS inspection offers at ports of entry broad discretion to determine the period of stay to be granted to a foreign visitor, but does not provide adequate substantive guidance to assure consistent and fair implementation of the rule.

The preamble to the rule states "while inspecting Service officers will make every effort to take into account language and cultural differences when eliciting the information needed to determine a reasonable period of admission, the burden still rests with the alien to adequately establish the precise nature and purpose of the visit." However, the rule does not offer any guidance as to how the individual could "adequately establish" the purpose of the visit, nor how INS inspectors are to determine the appropriate "reasonable period of admission." How is one to determine for example how long a "reasonable" family visit should take, or how long a "walking tour of American parks" or a "professional training program" might require? Furthermore, these determinations are to take place in a pressured time frame, when inspectors must clear large groups of arriving passengers in very little time. While the "45 minute" inspection requirement has now been repealed by the Enhanced Border Security and Visa Entry Reform Act (H.R. 3525, awaiting presidential signature), given the pace of international travel and arriving flights, we do not expect a large increase in the time available to inspectors for questioning.

Given these circumstances, we fully expect that when an inspector is pressed for time, and the visitor does not speak English well, either the default of 30 days or a shorter period of time will routinely be given. Furthermore, because of the lack of clear direction, we expect a great deal of variation in how similar cases are addressed at various Ports of Entry, or even by different inspectors.

The problem is exacerbated for Canadian visitors and others for whom the documentary requirements for entry are waived under Section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. §1182(d)(4)(B)). For these individuals, no entry document evidencing status or period of admission is issued. INS policy currently deems these visitors to be admitted in B-2 status for six months. However, many individuals admitted via land borders under these provisions are unaware of this "deeming" because they do not receive any entry document (Form I-94). It is unclear how this new regulation will affect these visitors, nor what impact the additional questioning required to determine a "reasonable period of admission" for these visitors will have on already congested ports of entry, particularly at land borders.

The problematic nature of this provision is compounded by the fact that the proposed rule would limit the ability of a traveler to "appeal" a decision or error made by an INS inspector with regard to the length of stay. The proposed rule states that extensions may only be filed in cases when "unexpected events" require an additional period of stay.[2] Thus, if an inspector denies a request for a longer period of stay, due to miscommunication or misunderstanding of the purpose of the visit no extension may be filed. There is no discussion in the rule at all as to how such a decision may be appealed. Local INS District offices routinely *will not* accept for consideration such requests for correction of even patently erroneous I-94 forms, instead insisting an application for extension of stay be filed with the service center.

Proposed change:

We would recommend that the Service consider once again enacting a "minimum" admission period for B-1 or B-2 visitors, at a longer period than 30 days, perhaps 90 days, consistent with the admission period for Visa Waiver Program visitors. In the alternative, the service could enact a longer "default" period of stay, and provide more specific guidance both to the traveling public and to the inspectors as to the criteria for establishing the necessary length of stay. Canadians and others who do not normally receive I-94 cards upon entry should receive clear instructions on entry as to their authorized period of stay to avoid unintentional overstays. Finally, the rule should clearly state the avenues for a visitor who believes they were erroneously granted a shorter period of stay to appeal that decision in a rapid and timely fashion.

Potentially large adverse impact on international travel and tourism to the United States through deterrence

This issue is of serious concern to those engaged in the travel and tourism industry. Because of the uncertainty generated by the scope of authority now given to individual inspectors, there is grave concern that foreign visitors, particularly those used to longer visits to the U.S., will choose not to come. Or, once here, will receive shorter stays than they might otherwise make. We have heard from those representing the tourist sector that foreign visitors will be less willing to book longer packages (for example a standard 6-week tour) when their admission for any period of stay longer than 30 days is in doubt. Furthermore, even tourists visiting for shorter periods may not have a set itinerary and may not be given the flexibility to adjust their plans to stay longer (and spend more money here). This has the potential to result in *billions* of lost revenue to the United States economy.

According to statistics from the Travel and Tourism Office of the International Trade Administration, U.S. Department of Commerce ("ITA"), almost one million international visitors could potentially be affected by this rule. Approximately 939,000 visitors came in 2000 on B-1 or B-2 visas and stayed beyond 30 days (based on INS data from the last year available). The average length of stay for these visitors was 78 days and they spent an average of $46 per day in the U.S. during their stay. If these visitors were to be restricted to 30 days, the lost revenue from those lost

[2] There are specific exceptions to this general rule to include "humanitarian" needs, religious missionaries, persons establishing a "new office" for future L-1 filing, servants of U.S. citizens or nonimmigrants, airline employees and seasonal residents who "own a home" in the U.S. For more comment on the last exception see below.

days would approximately $2.1 billion. Of course, some portion of those travelers could receive stays even shorter than 30 days and, because of the uncertainty, some would choose not to come at all, thus, resulting in even larger potential losses to our economy.

Of course we understand that the paramount concern pressing for this rule change is national security, not economic interests. However, it is unclear exactly how this rule change would assist in our goal to prevent either *mala fide* entrants or the perennial problem of "overstays." With regard to the first issue, the rule does not provide any new or additional screening of applicants for entry. While additional questioning of visitors may result from this proposed rule, this mandate could be required without changing the admission period. Furthermore, without any credible mechanism to enforce the period of stay (such as the mandated entry-exit data system), there is not reason why a terrorist would keep to the authorized period. Even for those who do not intend ill during their visit, the inflexibility of the rule is like to result in more persons inadvertently overstaying or doing so because they were simply not granted enough time for the purpose of their visit.[3] Again, this would only increase the number of "overstays" without providing any appreciable gain in the ability of the Service to enforce the period of stay.

Proposed Solutions:

As stated above, any change to the rule that would give international travelers greater assurance of their ability to obtain a period of stay adequate to complete the purpose of their visit would be helpful. The Service should engage in wide outreach to the traveling community to advise them of the number and types of documents that should be presented on entry to corroborate the purpose of entry and proposed length of stay. The INS should also publish a clear list of the criteria to be used by inspectors for determining the period of admission. These changes could improve the functioning of the proposed rule; however enacting a longer "default" period of stay that would accommodate a larger percentage of travelers without extension would be preferable.

However, we reiterate that national security concerns could be addressed more meaningfully by adopting different changes to the inspection and enforcement process.

Potential to greatly increase existing case backlogs at INS processing centers, and extension

Problem:

The proposed limitation on stay, regardless of the new restrictions on those who can file extensions, will likely result in additional extension requests being filed with the INS. Indeed, the initial default 6-month admission period was instituted to reduce the number of extension requests the INS was routinely processing, since frequently the cases were not decided until well after the end of the requested extension period. (This is still the case.) We believe that in light of the confusion over the new rules, and the likelihood that visitors will frequently not get their requested period of stay will result in *more* filings for the INS to adjudicate.

[3] As stated above, this problem is particularly acute for Canadians and others who do not receive I-94 forms upon entry to clearly detail their status and period of entry.

B visa extensions currently have the lowest priority of any type of case filed. Combined with the statement of the INS in the student regulation that it will process change of status requests for students in 30 days, we expect the backlog for these cases (and many other types of filings) to grow as resources are redirected to the student filings. This would have the inadvertent result of having individuals in the United States for possibly months that the INS is not even aware have filed for extension. Furthermore, Section 222(g) of the INS automatically renders the visa invalid of any individual who overstays the period of stay on their I-94 and there could be serious impacts to individuals who file for extension under these new rules but are ultimately denied the extension, possibly long after they have departed the U.S. Their visas could be invalidated without their knowledge.

Proposed Solutions:

A longer initial period of stay will reduce the need for extension filings and this potential problem. However, the issue of the length of time it takes to process not only these cases but also all others is a separate issue that impacts all other immigration issues. The existence of a backlog of cases that is months or years long in itself can be a national security concern. The Service should take any and all steps necessary to bring processing times down to a short time frame.

Adverse impact on adult children, parents and partners of H, L, E and other nonimmigrant employees

Family members of nonimmigrant workers on H, L, E, O, P and other visas that do not qualify for dependent status (usually elderly parents, adult sons and daughters as well as unmarried partners) use the B-2 category to enter the United States under policy guidance included in the State Department's *Foreign Affairs Manual* and supported by INS policy memoranda. These visitors are usually granted periods of stay commensurate with that of the principal nonimmigrant. The reduction of the maximum period of stay to 6 months and the elimination of extension except in cases of "unexpected events" will severely impact the ability of international employees to bring their partners and family members with them on their assignments to the United States. Furthermore the requirement that intending students changing to F-1 status indicate their intention to do so at the time of admission may impact sons and daughters who later decide to attend school during their stay, by requiring them to return abroad and obtain a visa.

Proposed Solution:

The Service should include specific recognition in the regulation of this permissible use of the B-2 visa and provide for exceptions from the period of admission and extension rules for family members and partners of nonimmigrant workers.

Adverse impact on foreign national retirees and seasonal residents of the United States

Problem:

While the proposed regulation allows persons who own seasonal homes in the United States to apply to extend their status beyond 6 months, it does not address anyone who does not own property. Many seasonal residents in states such as Florida do not own property but may rent, or, in the case of many Canadians, will trailer mobile homes. These "snow birds" represent a significant source of annual revenue for states and localities where they live for months at a time. Again, this traditional seasonal migration could be significantly impacted by the uncertainty of this rule.

Proposed Solution:

The Service should provide specific exceptions for seasonal residents of all types, whether property is owned or not. And we reiterate the need for those that do not currently receive I-94 cards to receive clear notification of their authorized length of stay.

Conclusion

As stated above, the Chamber is extremely concerned about the potential negative impact this proposed regulation could have on significant sectors of our economy, and key employees of U.S. businesses. We strongly urge the Service to reconsider this proposed regulation and evaluate its true ability to achieve any realistic security objective, in light of its potential costs to our economy.

If you have any questions or require additional information, please contact me at (202) 463-5944.

Sincerely,

Theresa Cardinal Brown
Manager, Labor & Immigration Policy
Chamber of Commerce of the United States

From: FtnYouth@aol.com
Sent: Monday, June 17, 2002 4:43 PM

Subject: INS Ruling, CAN Snowbird Impact..

Dear Small Business Committee,

Please consider:

I am the managing partner in a family business that operates a large snowbird resort in the desert of Southern California (about 1 hour from Palm Springs). We have 1,000 sites, including 835 full service sites. We estimate that a full third of our winter customers are Canadian citizens who stay between 1 and 6 months, and spend between $400 -$1500 USD each, just to stay in our resort. There are also another 40 to 50 Canadian "families" who rent a space by the year in our resort for an average of $1900 USD + utilities, (local water, electric and propane). We see $400k - $500k in revenue each year from Canadians visiting our resort, mostly for stays of more than 30 days.

These snowbirds are a very important part of our success as a business, and make a significant contribution to our local economy through travel, shopping, entertainment and consumer expenditures. I must tell you they are also some of the most positive, realistic, caring and hard working people we meet. Their presence in our communities is a welcome and appreciated asset. In fact sadly, the Canadian Snowbirds I have met are less a threat to our society than many of the Americans I've come across.

Most Canadian Snowbirds are presently limited in their length of stay out of Canada by their health insurance, and/or the value of their dollar. Further limiting their ability to travel and stay in the US would likely cause them to find other areas to winter (i.e., Mexico, South America, Australia?...) In which case we may lose their business (and friendship) forever.

I don't have to tell you or the INS how obvious most "Snowbirds" are and I'm sure that leaving the decision to extend stays to individual border agents makes sense, in theory. **The problem is the snowbird at home has no assurance that he/she will be granted an extension when they are planning, preparing and packing for their trip, and most aren' t interested in "gambling."** Perhaps some reasonable requirements could be documented and publicized so that our customers arrive at the check point prepared and knowing what their length of stay will be. Perhaps copies of picture IDs, license plate numbers, and itineraries with addresses and phone numbers of destinations could be required to be left with the INS...?

PLEASE Consider Carefully and Realistically the Impact and Potential Cost of including Canadian Snowbirds in a generalized Visa policy change. Thank you for your consideration.

Jolene Wade
Fountain of Youth Spa RV Resort
www.foyspa.com

Canada — United States
The World's Largest Trading Relationship

Illinois

In 1989, the Canada-U.S. Free Trade Agreement went into effect, phasing out all tariffs and eliminating many other barriers to trade. In 1994 the North American Free Trade Agreement (NAFTA) opened the Mexican market to Canada and the United States. Two-way trade in goods, services and income between Canada and the United States totalled $489 billion in 2000, the largest bilateral exchange in the world.

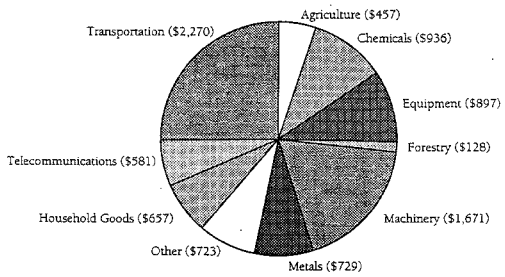
Canada is the Prairie State's largest foreign export market. In 2000 they traded $21 billion worth of goods. Illinois sold Canada $9.05 billion worth of goods and purchased $11.93 billion. Canada bought 38% of the state's foreign exports, supporting tens of thousands of jobs on both sides of the border.

Trains, boats and automobiles are the heart of Illinois-Canada trade. Illinois sold more transportation equipment to Canada than any other category of products — $2.27 billion worth — including $697 million in automobiles, $813 million in motor vehicle parts and engines, and $285 million in railway cars. It bought about the same amount of transportation equipment, $2.17 billion worth, from Canada. This included a billion dollars' worth of trucks, $442 million in motor vehicle parts and engines, $171 million in railway cars and $170 million in ships, boats and parts.

Canada supplies Illinois' increasing energy demands... Illinois imported $3.52 billion worth of crude petroleum, an increase of 92% in its leading import from Canada. It also purchased $218 million worth of natural gas.

Illinois' Merchandise Exports to Canada

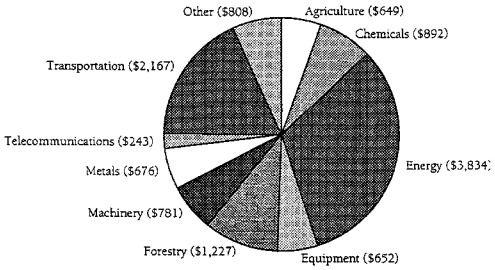
2000, in millions of U.S. dollars



Total Illinois exports to Canada: $9.05 billion

Illinois' Merchandise Imports from Canada

2000, in millions of U.S. dollars



Total Illinois imports from Canada: $11.93 billion

And forest products. The state bought over a billion dollars' worth of forest products, led by $459 million in newsprint and $336 million worth of softwood lumber. In return, Illinois exported $135 million in newspapers and magazines to Canada.

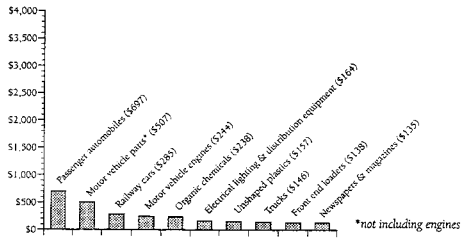
They supply each other's industries with machinery... Illinois' fastest growing export sector, accounting for $1.67 billion in 2000, was up 13% over last year. This included $138 million worth of front end loaders, $113 million in tractor engines and parts and $100 million in diesel engines and turbines. The state bought $781 million worth of Canadian machinery, including $73 million worth of engines and turbines.

And equipment and materials needed for production. Illinois sold Canada $897 million worth of equipment and tools; $729 million in metals and basic metal products; and $936 million in chemicals, including $238 million in organic chemicals and $157 million in unshaped plastics. In the opposite direction, Illinois bought $781 million worth of machinery and $892 million worth of chemicals, including $217 million in fertilizers, from Canada.

There are more visits to Illinois by Canadians than ever before. In 2000, Canadians made 398,200 visits to Illinois for one night or more and spent $162 million, a spending increase of 16% over last year. Meanwhile Illinois residents made 536,900 visits to Canada and spent $232 million.

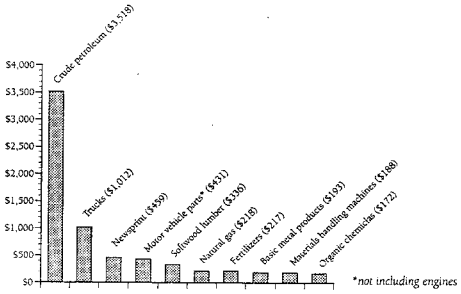
Illinois' Leading Exports to Canada

2000, in millions of U.S. dollars



Illinois' Leading Imports from Canada

2000, in millions of U.S. dollars



For more information on Canada's trade with Illinois, please contact:

Consulate General of Canada
Two Prudential Plaza
180 N. Stetson Avenue, Suite 2400
Chicago, IL 60601 - 6714
Tel: (312) 616-1860
Fax: (312) 616-1877

All figures are in U.S. dollars. Merchandise trade and tourism figures are from Statistics Canada, converted at the rate of US$1.00=C$1.485222. Canada's export ranking is from the Massachusetts Institute for Social and Economic Research (MISER).

Canada

Canadian Embassy / Ambassade du Canada
501 Pennsylvania Avenue, N.W.
Washington, D.C. 20001
www.canadianembassy.org

August 2001

Canada — United States
The World's Largest Trading Relationship

New York

In 1989 the Canada-U.S. Free Trade Agreement went into effect, phasing out all tariffs and eliminating many other barriers to trade. In 1994 the North American Free Trade Agreement (NAFTA) opened the Mexican market to Canada and the United States. Two-way trade in goods, services and income between Canada and the United States totalled $489 billion in 2000, the largest bilateral exchange in the world.

Canada continues to be New York's leading export market. In 2000, New York sold $10.81 billion worth of goods to Canada, accounting for over a quarter of its export market. In turn it bought $23.87 billion worth from Canada, for an exchange totalling $34.68 billion.

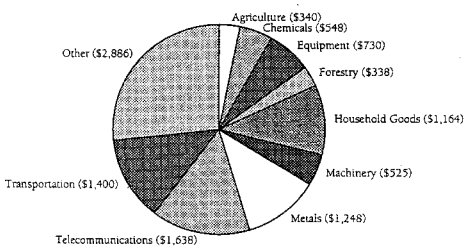
The Empire State sells high-tech electronics... With sales worth $1.64 billion, a 29% increase over 1999, telecommunications and computer equipment become New York's leading export to Canada. This includes $558 million worth in telephone equipment and $389 million worth in computers — sales which supported thousands of high-tech jobs in the state.

Transportation equipment... Canada bought $1.40 billion worth of transportation equipment from New York, including $1.21 billion in motor vehicle engines and other parts.

And industrial and household materials. New York's exports to Canada included $1.25 billion worth of metals and basic metal products, including $561 million in Aluminum and alloys; $1.16 billion worth of personal and household goods, including $233 million in photo film and $160 million in books; $730 million worth of equipment and tools, including $130 million in air conditioning and refrigeration equipment.

New York's Merchandise Exports to Canada

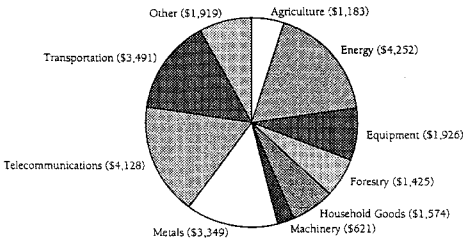
2000, in millions of U.S. dollars



Total New York exports to Canada: $10.81 billion

New York's Merchandise Imports from Canada

2000, in millions of U.S. dollars



Total New York imports from Canada: $23.87 billion

Canada supplies New York with energy... Imports increased 84% over last year to $4.25 billion, making energy New York's leading import sector. Energy product imports included $3.61 billion worth in natural gas and $426 million worth in petroleum and coal.

With telecommunication equipment and transportation. New Yorkers bought $4.13 billion worth of telecommunication equipment, a 53% increase over last year. They also bought $3.49 billion worth of transportation equipment from Canada, led by $1.86 billion worth in automobiles.

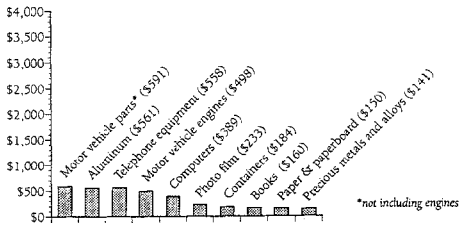
New York buys Canadian metal products and equipment... Purchases of metals and basic metal products amounted to $3.35 billion, including $1.27 billion worth of precious metals and alloys. The state also bought $1.93 billion worth of Canadian equipment and tools, including $677 million worth of office machines and equipment.

The exchange of services accounts for billions more. In addition to merchandise, Canada and New York trade services in many important fields including finance, travel and software development.

Tourism adds almost a billion to the exchange. In 2000, Canadians made 2.3 million visits to New York for one night or more and spent $434 million, while residents of New York made 1.9 million visits to Canada and spent $442 million.

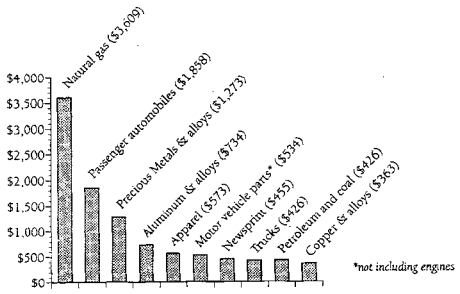
New York's Leading Exports to Canada

2000, in millions of U.S. dollars



New York's Leading Imports from Canada

2000, in millions of U.S. dollars



For more information on Canada's trade with New York, please contact:

Consulate General of Canada
1251 Avenue of the Americas
New York, NY 10020-1175
Tel: (212) 596-1628
Fax: (212) 596-1790

All figures are in U.S. dollars. Merchandise trade and tourism figures are from Statistics Canada, converted at the rate of US$1.00=C$1.485222. Canada's export ranking is from the Massachusetts Institute for Social and Economic Research (MISER).

Canada

Canadian Embassy / Ambassade du Canada
501 Pennsylvania Avenue, N.W.
Washington, D.C. 20001
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Nation

Terrorists recruited from U.S. seen as a rising threat

By Jerry Seper
THE WASHINGTON TIMES

The detention of Abdullah al Muhajir, a U.S. citizen, has highlighted what law enforcement authorities and terrorism analysts believe is a growing threat: the recruitment of home-grown terrorists who can move freely throughout the country.

Al Muhajir, who is accused of conspiring to build and detonate a radioactive "dirty bomb," probably in the nation's capital, converted to Islam in Florida after his release from prison in the early 1990s. He later headed to Afghanistan and Pakistan to meet with leaders of the al Qaeda terrorist organization.

The 31-year-old Brooklyn, N.Y., native, formerly known as Jose Padilla, falls into a growing cadre of convicted criminals and other disenchanted citizens now being recruited by al Qaeda and other terrorist organizations, according to sources.

As U.S. citizens, targeted recruits such as al Muhajir are viewed as potential operatives who can easily blend into the American culture to carry out attacks as part of a jihad, or holy war, against the United States, the sources said.

"We have been very fortunate that the recruiting effort to date has seen limited success," said Peter J. Brown, veteran domestic and international terrorism consultant "The trend is very difficult to track, with estimates ranging as high as 1,500 to 2,000 American passport-carrying recruits who have shown up in the ranks of al Qaeda in the past decade.

"Whether we can get an accurate total is another thing, but it should be seen as a reason to devote more resources to understanding recruitment as a unique phenomenon unto itself," Mr. Brown said. "Terrorists are becoming as sophisticated as we are, and we have provided them with a vast amount of material to study.

"The bottom line? Terrorism is an evolutionary process, and they are evolving right along with us," he said.

Recruiting new operatives takes up several pages of the al Qaeda training manual, which describes recruiting as "the most dangerous task that an enlisted brother can perform."

The manual lists as "candidates" for recruitment those persons "disenchanted with their country's policies"; convicted criminals, especially smugglers; adventurers; workers at coffee shops, restaurants and hotels; security personnel at borders, airports and seaports; and "people in need."

A key area of recruitment, the sources said, are U.S. prisons and jails, where al Qaeda and other organizations have found men who have already been convicted of violent crimes and have little or no loyalty to the United States.

"It's literally a captive audience, and many inmates are anxious to hear how they can attack the institutions of America," said one federal corrections official.

Under federal law, prisons must allow inmates access to religious leaders and texts. But prison conversions to Islam, including radical groups loyal to Osama bin Laden and other terrorists, often take place behind closed doors. Prison officials sometimes have little idea of what is being said by or to the inmates, as well as whether the meetings are religious conversions or recruiting sessions.

Earlier this year, The Washington Times reported that a radical Muslim sect with ties to international terrorism — many of whose members had been converted to Islam in prison — had created a patchwork of sanctuaries in rural southern Virginia.

Those sanctuaries were established to follow the teachings of Sheik Mubarak Ali Shah Gilani, a Pakistani cleric who founded the Muslims of America sect in 1980. The sect has been linked to Jamaat al-Fuqra, a terrorist group committed to bringing jihad against the United States.

Sheik Gilani's followers, many of them prison converts, have set up rural encampments throughout the United States and Canada that federal authorities have linked to murder, bombings and other felonies.

U.S. intelligence officials have estimated that al Qaeda has placed thousands of operatives in 34 countries, including the United States, and that a number of other terrorist groups, including the Islamic Jihad, have aligned with the bin Laden organization.

Prisons in this country are not the only targeted institutions worldwide. Richard C. Reid, a petty thief, found Islam in a British prison and now is being held in Boston on charges of attempting to bring down a jetliner by detonating explosives hidden in his tennis shoes.

While studying Islam at a London mosque, Reid met Zacarias Moussaoui, the French citizen charged with conspiring with al Qaeda and the 19 hijackers who attacked the World Trade Center and the Pentagon.

Table 1. Summary Information on Foreign-born Terrorists Included in This Study (Grouped by Immigration Status)

Terrorist	Immigration Status[a]	Evidence of Immigr. Violation[b]	Terrorist Plot
Nidal Ayyad	Naturalized U.S. Citizen	No	1st WTC Attack
El Sayyid Nosair	Naturalized U.S. Citizen	No	NY Landmarks
Ali Mohammed	Naturalized U.S. Citizen	No[c]	African Embassy Bombing[d]
Khalid Abu al Dahab	Naturalized U.S. Citizen	Yes	African Embassy Bombing[d]
Wadih el Hage	Naturalized U.S. Citizen	No	African Embassy Bombing[d]
Essam al Ridi	Naturalized U.S. Citizen	No	African Embassy Bombing[d]
Mahmud Abouhalima	Permanent Res.	Yes	1st WTC Attack
Mohammed Abouhalima	Permanent Res.	Yes	1st WTC Attack
Ibrahim el Gabrowny	Permanent Res.	No	NY Landmarks
Mohammed Saleh	Permanent Res.	No	NY Landmarks
Amir Abdelg(h)ani	Permanent Res.	Yes	NY Landmarks
Fadil Abdelg(h)ani	Permanent Res.	Yes	NY Landmarks
Tarig Elhassan	Permanent Res.	No	NY Landmarks
Fares Khallafalla	Permanent Res.	No	NY Landmarks
Siddig Ibrahim Siddig Ali	Permanent Res.	No	NY Landmarks
Matarawy Mohammed Said Saleh	Permanent Res.	No	NY Landmarks
Abdo Mohammed Haggag	Permanent Res.	No	NY Landmarks
Ahmad Ajaj	Illegal Alien	Yes	1st WTC Attack
Mohammed Salameh	Illegal Alien	Yes[e]	1st WTC Attack
Eyad Ismoil	Illegal Alien	Yes	1st WTC Attack
Gazi Ibrahim Abu Mezer	Illegal Alien	Yes	NY Subway
Lafi Khalil	Illegal Alien	Yes	NY Subway
Ahmed Ressam	Illegal Alien	Yes	Millennium
Abdelghani Meskini	Illegal Alien	Yes	Millennium
Abdel Hakim Tizegha	Illegal Alien	Yes	Millennium
Zacarias Moussaoui	Illegal Alien	Yes	9/11 Attacks
Satam al Suqami	Illegal Alien	Yes	9/11 Attacks
Nawaf al Hamzi	Illegal Alien	Yes	9/11 Attacks
Hani Hanjour	Illegal Alien	Yes	9/11 Attacks
Mir Aimal Kansi	Asylum App.	Yes	Murder of CIA Employees
Ramzi Yousef	Asylum App.	Yes	1st Attack on Trade Center
Sheik Omar Abdel Rahman	Asylum App.	Yes	Plot to bomb NY Landmarks
Waleed al Shehri	Tourist	No	9/11 Attacks
Wail al Shehri	Tourist	No	9/11 Attacks
Mohammed Atta	Tourist/Student	Yes[e]	9/11 Attacks
Abdulaziz Alomari	Tourist	No	9/11 Attacks
Marwan al Shehhi	Tourist/Student	No	9/11 Attacks
Fayez Ahmed	Tourist	No	9/11 Attacks
Mohand al Shehri	Tourist	No[c]	9/11 Attacks
Hamza al Ghamdi	Tourist	No	9/11 Attacks
Ahmed al Ghamdi	Tourist	No	9/11 Attacks
Khalid al Midhar	Business	No	9/11 Attacks
Majed Moqed	Tourist	No[c]	9/11 Attacks
Salem al Hamzi	Tourist	No	9/11 Attacks
Ahmed al Haznawi	Tourist	No[c]	9/11 Attacks
Ahmed al Nami	Tourist	No	9/11 Attacks
Ziad Samir Jarrah	Tourist	No	9/11 Attacks
Saaed al Ghamdi	Tourist	No	9/11 Attacks

[a] Immigration status at the time they committed their crimes.
[b] A "yes" means that the public record indicates that the individual violated immigration law at some point. A "No" means that there is no evidence in public sources of a violation. Of course, technically, all persons issued visas who came to America with the intent of engaging in terrorism violated immigration law because they assured the State Department they were coming for legal reasons.
[c] Individual probably should not have been issued temporary visa because he either had characteristics of an intending immigrant, someone who is likely to overstay their temporary visa and live in the U.S. illegally, or because he was on the "watch list" of suspected terrorists at the time he received his visa.
[d] The individuals who took part in the African embassy bombing also took part in a wide range of activities in support of al Qaeda.