

111TH CONGRESS
2D SESSION

S. 3544

To amend the Immigration and Nationality Act to modify the requirements of the visa waiver program and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2010

Ms. MIKULSKI introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to modify the requirements of the visa waiver program and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Visa Waiver Program
5 Updated Framework and Enhanced Security Act of
6 2010”.

7 **SEC. 2. DEFINITIONS.**

8 (a) DEFINITIONS.—Section 217(c)(1) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1187(c)(1)) is
10 amended to read as follows:

1 “(1) AUTHORITY TO DESIGNATE; DEFINI-
2 TIONS.—

3 “(A) AUTHORITY TO DESIGNATE.—The
4 Secretary of Homeland Security, in consultation
5 with the Secretary of State, may designate any
6 country as a program country if that country
7 meets the requirements under paragraph (2).

8 “(B) DEFINITIONS.—In this subsection:

9 “(i) APPROPRIATE CONGRESSIONAL
10 COMMITTEES.—The term ‘appropriate con-
11 gressional committees’ means—

12 “(I) the Committee on Foreign
13 Relations of the Senate;

14 “(II) the Committee on the Judi-
15 ciary of the Senate;

16 “(III) the Committee on Foreign
17 Affairs of the House of Representa-
18 tives; and

19 “(IV) the Committee on the Ju-
20 diciary of the House of Representa-
21 tives.

22 “(ii) PROGRAM COUNTRY.—The term
23 ‘program country’ means a country des-
24 ignated as a program country under sub-
25 paragraph (A).

1 “(iii) VISA OVERSTAY RATE.—

2 “(I) IN GENERAL.—The term
3 ‘visa overstay rate’ means, with re-
4 spect to a country, the ratio of—

5 “(aa) the total number of
6 nationals of that country who
7 were admitted to the United
8 States on the basis of a non-
9 immigrant visa whose periods of
10 authorized stay ended during a
11 fiscal year but who remained un-
12 lawfully in the United States be-
13 yond such periods; to

14 “(bb) the total number of
15 nationals of that country who
16 were admitted to the United
17 States on the basis of a non-
18 immigrant visa during that fiscal
19 year.

20 “(iv) COMPUTATION OF VISA OVER-
21 STAY RATE.—In determining the visa over-
22 stay rate for a country the Secretary of
23 Homeland Security—

1 “(I) shall utilize information
 2 from all available databases to ensure
 3 the accuracy of such rate; and

4 “(II) shall not include any visa
 5 overstay which incorporates any pro-
 6 cedures based on, or are otherwise
 7 based on, race, sex, or disability, un-
 8 less otherwise specifically authorized
 9 by law or regulation.”.

10 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
 11 Section 217(c)(2)(C) of the Immigration and Nationality
 12 Act (8 U.S.C. 1187(c)(2)(C)) is amended—

13 (1) by striking “Attorney General,” and insert-
 14 ing “Secretary of Homeland Security,”; and

15 (2) in clause (iii), by striking “Committee on
 16 the Judiciary and the Committee on International
 17 Relations of the House of Representatives and the
 18 Committee on the Judiciary and the Committee on
 19 Foreign Relations of the Senate” and inserting “ap-
 20 propriate congressional committees”.

21 **SEC. 3. DESIGNATION OF PROGRAM COUNTRIES BASED ON**
 22 **VISA OVERSTAY RATES.**

23 (a) IN GENERAL.—Section 217(c)(2)(A) of the Immi-
 24 gration and Nationality Act (8 U.S.C. 1187(c)(2)) is
 25 amended to read as follows:

1 “(A) LOW NONIMMIGRANT VISA OVERSTAY
2 RATE.—The visa overstay rate for that country
3 was not more than 3 percent during the pre-
4 vious fiscal year.”.

5 (b) CONFORMING AMENDMENTS.—Section 217(c) of
6 the Immigration and Nationality Act (8 U.S.C. 1187(c))
7 is amended—

8 (1) by amending paragraph (6) to read as fol-
9 lows:

10 “(6) INAPPLICABILITY OF JUDICIAL REVIEW.—
11 No court shall have jurisdiction to review the denial
12 of admission to the United States of any alien by the
13 Secretary of Homeland Security, the Secretary’s
14 computation of a visa overstay rate, or the designa-
15 tion or nondesignation of a country as a program
16 country.”; and

17 (2) in paragraph (8)—

18 (A) in subparagraph (B)—

19 (i) in clause (iii), by striking “rate of
20 refusals for nonimmigrant visas” and in-
21 serting “visa overstay rate”; and

22 (ii) by amending clause (v) to read as
23 follows:

24 “(v) the visa overstay rate for nation-
25 als of the country during the previous full

1 fiscal year was not more than 10 per-
 2 cent.”; and

3 (B) by striking subparagraph (C).

4 **SEC. 4. ANNUAL REPORT ON PROGRAM COMPLIANCE.**

5 (a) ANNUAL REPORT ON PROGRAM.—Section
 6 217(c)(3) of the Immigration and Nationality Act (8
 7 U.S.C. 1187(c)(3)) is amended to read as follows:

8 “(3) ANNUAL REPORT ON PROGRAM COMPLI-
 9 ANCE.—

10 “(A) REQUIREMENT FOR ANNUAL RE-
 11 PORT.—Not later than 180 days after the date
 12 of the enactment of the Visa Waiver Program
 13 Updated Framework and Enhanced Security
 14 Act of 2010, and not later than May 1 of each
 15 year thereafter, the Secretary of Homeland Se-
 16 curity, in consultation with the Secretary of
 17 State, shall submit an annual report on the
 18 compliance with the program to appropriate
 19 congressional committees, the Committee on
 20 Homeland Security and Governmental Affairs
 21 of the Senate, and the Committee on Homeland
 22 Security of the House of Representatives.

23 “(B) CONTENT.—

24 “(i) INFORMATION REGARDING PRO-
 25 GRAM COUNTRIES.—Each annual report

1 required under subparagraph (A) shall in-
2 clude, for each program country—

3 “(I) an evaluation, after consid-
4 eration of the independent review of
5 the program country conducted by the
6 Director of National Intelligence
7 under paragraph (7)(A), of the effect
8 of the program country’s continued
9 designation on the law enforcement
10 and security interests of the United
11 States, including—

12 “(aa) the interest in enforce-
13 ment of the immigration laws of
14 the United States;

15 “(bb) the existence and ef-
16 fectiveness of its agreements and
17 procedures for extraditing to the
18 United States, individuals, in-
19 cluding its own nationals, who
20 commit crimes that violate
21 United States law; and

22 “(cc) any other potential
23 threat to the United States from
24 the program country’s continued
25 designation;

1 “(II) an assessment of the com-
2 pliance with the program require-
3 ments by the program country during
4 the previous year;

5 “(III) the visa overstay rate for
6 the program country during the pre-
7 vious year;

8 “(IV) the total of number of na-
9 tionals from the program country who
10 entered the United States during the
11 previous year;

12 “(V) an assessment of the infor-
13 mation sharing required under this
14 section with respect to the program
15 country; and

16 “(VI) a determination as to
17 whether any such designation ought
18 to be continued or terminated under
19 subsection (d) or subsection (f) that
20 includes an explanation of such deter-
21 mination and of the effects described
22 in subclause (I).

23 “(ii) OTHER INFORMATION.—Each
24 annual report required under subpara-
25 graph (A) shall include an evaluation of—

1 “(I) the implementation of the
2 electronic travel authorization system
3 required under subsection (h)(3); and

4 “(II) the effect of participation of
5 new countries in the program pursu-
6 ant to a waiver under paragraph
7 (5)(B).”.

8 “(C) CONSIDERATION OF COUNTRIES FOR
9 THE PROGRAM.—Upon notification by the Sec-
10 retary of Homeland Security that a country is
11 under consideration for inclusion in the pro-
12 gram, the Secretary of State shall provide all
13 appropriate information described in subpara-
14 graph (B) for such country to the Secretary of
15 Homeland Security.

16 “(D) CERTIFICATION.—Not later than
17 May 1 of each year, the United States chief of
18 mission, acting or permanent, to each country
19 under consideration for inclusion in the pro-
20 gram shall—

21 “(i) certify that the information pro-
22 vided under subparagraph (C) for such
23 country is accurate; and

24 “(ii) submit such certification to the
25 appropriate congressional committees.”.

1 (b) CONFORMING AMENDMENTS.—Section 217(c) of
 2 the Immigration and Nationality Act (8 U.S.C. 1187) is
 3 amended—

4 (1) by striking paragraphs (4), (5), and (7);

5 (2) by redesignating paragraphs (6) (as amend-
 6 ed by section 3(b)(1)), (8) (as amended by section
 7 3(b)(2)), (9), (10), and (11), as paragraphs (4), (5),
 8 (6), and (7), respectively;

9 (3) in paragraph (6), as redesignated by para-
 10 graph (2), by striking “paragraph (8),” and insert-
 11 ing “paragraph (5),”; and

12 (4) in subparagraph (A) of paragraph (7), as
 13 redesignated by paragraph (2), by striking “Prior to
 14 the admission of a new country into the program
 15 under this section, and in conjunction with the peri-
 16 odic evaluations required under subsection
 17 (c)(5)(A),” and inserting “Prior to the designation
 18 of a new country as a program country and for each
 19 annual report submitted required under paragraph
 20 (3)(A),”.

21 **SEC. 5. TERMINATION OF DESIGNATION; PROBATION.**

22 Section 217(f) of the Immigration and Nationality
 23 Act (8 U.S.C. 1187(f)) is amended to read as follows:

24 “(f) TERMINATION OF DESIGNATION; PROBATION.—

25 “(1) DEFINITIONS.—In this subsection:

1 “(A) PROBATIONARY COUNTRY.—The term
2 ‘probationary country’ means a program coun-
3 try placed in probationary status under para-
4 graph (2)(B).

5 “(B) PROBATIONARY PERIOD.—The term
6 ‘probationary period’ means the fiscal year in
7 which a probationary country is placed in pro-
8 bationary status under paragraph (2)(B).

9 “(C) PROGRAM COUNTRY.—The term ‘pro-
10 gram country’ has the meaning given that term
11 in subsection (c)(1)(B).

12 “(D) VISA OVERSTAY RATE.—The term
13 ‘visa overstay rate’ has the meaning given that
14 term in subsection (c)(1)(B).

15 “(2) DETERMINATION AND NOTICE OF DIS-
16 QUALIFICATION.—

17 “(A) DETERMINATION.—Upon a deter-
18 mination by the Secretary of Homeland Secu-
19 rity that a program country’s visa overstay rate
20 was more than 3 percent for the preceding fis-
21 cal year or that the program country is not in
22 compliance with all other program requirements
23 under subsection (c)(2), the Secretary shall no-
24 tify the Secretary of State.

1 “(B) PROBATIONARY STATUS.—If the Sec-
 2 retary of Homeland Security makes a deter-
 3 mination under subparagraph (A) for a pro-
 4 gram country, the Secretary of Homeland Secu-
 5 rity shall place the program country in proba-
 6 tionary status for the fiscal year following the
 7 fiscal year for which such determination was
 8 made.

9 “(3) ACTIONS AT TERMINATION OF THE PROBA-
 10 TIONARY PERIOD.—At the end of the probationary
 11 period of a probationary country, the Secretary of
 12 Homeland Security shall take one of the following
 13 actions:

14 “(A) COMPLIANCE DURING PROBATIONARY
 15 PERIOD.—The Secretary shall redesignate the
 16 probationary country as a program country if
 17 the Secretary determines that during the proba-
 18 tionary period the probationary country—

19 “(i) had a visa overstay rate not more
 20 than 3 percent; and

21 “(ii) was in compliance with all other
 22 program requirements under subsection
 23 (c)(2).

24 “(B) COMPLIANCE WITH VISA OVERSTAY
 25 RATE.—The Secretary may redesignate the pro-

1 bationary country as a program country if the
2 Secretary determines that during the proba-
3 tionary period the probationary country had a
4 visa overstay rate of not more than 3 percent.

5 “(C) NONCOMPLIANCE WITH VISA OVER-
6 STAY RATE.—

7 “(i) IN GENERAL.—Subject to clause
8 (ii), the Secretary shall terminate the pro-
9 bationary country’s participation in the
10 program if the Secretary determines that
11 during the probationary period the proba-
12 tionary country had a visa overstay rate of
13 more than 3 percent.

14 “(ii) ADDITIONAL PROBATIONARY PE-
15 RIOD.—The Secretary may waive the appli-
16 cation of clause (i) for the probationary
17 country if the Secretary, in consultation
18 with the Director of National Intelligence,
19 certifies that the probationary country’s
20 continued participation in the program
21 does not pose a threat to law enforcement,
22 security, or enforcement of immigration
23 laws, and place the country in probationary
24 status for one additional fiscal year.

1 “(4) ACTIONS AT THE END OF ADDITIONAL
2 PROBATIONARY PERIOD.—At the end of the addi-
3 tional 1-year period of probation granted to a proba-
4 tionary country pursuant to subparagraph (C)(ii),
5 the Secretary shall take one of the following actions:

6 “(A) COMPLIANCE DURING ADDITIONAL
7 PERIOD.—The Secretary shall redesignate the
8 probationary country as a program country if
9 the Secretary determines that during such addi-
10 tional period the probationary country had a
11 visa overstay rate not more than 3 percent.

12 “(B) NONCOMPLIANCE DURING ADDI-
13 TIONAL PERIOD.—The Secretary shall termi-
14 nate the probationary country’s participation in
15 the program if the Secretary determines that
16 during such additional period the probationary
17 country had a visa overstay rate of more than
18 3 percent.

19 “(5) EFFECTIVE DATE.—The termination of a
20 country’s participation in the program under para-
21 graph (3) or (4) shall take effect on the first day of
22 the first fiscal year following the fiscal year in which
23 the Secretary determines that such participation
24 shall be terminated. Until such date, nationals of the

1 country shall remain eligible for a waiver under sub-
2 section (a).

3 “(6) NONAPPLICABILITY OF CERTAIN PROVI-
4 SIONS.—Paragraphs (3) and (4) shall not apply to
5 a program country unless the total number of na-
6 tionals of the program country that entered the
7 United States during the prior fiscal year exceeds
8 100.

9 “(7) EMERGENCY TERMINATION.—

10 “(A) IN GENERAL.—In the case of a pro-
11 gram country in which an emergency occurs
12 that the Secretary of Homeland Security, in
13 consultation with the Secretary of State, deter-
14 mines threatens the law enforcement or security
15 interests of the United States (including the in-
16 terest in enforcement of the immigration laws
17 of the United States), the Secretary of Home-
18 land Security shall immediately terminate the
19 designation of the country as a program coun-
20 try.

21 “(B) EMERGENCY DEFINED.—In this
22 paragraph, the term ‘emergency’ means—

23 “(i) the overthrow of a democratically
24 elected government in the program coun-
25 try;

1 “(ii) war (including undeclared war,
2 civil war, or other military activity) on the
3 territory of the program country;

4 “(iii) a severe breakdown in law and
5 order affecting a significant portion of the
6 program country’s territory;

7 “(iv) a severe economic collapse in the
8 program country; or

9 “(v) any other extraordinary event in
10 the program country that threatens the
11 law enforcement or security interests of the
12 United States (including the interest in en-
13 forcement of the immigration laws of the
14 United States) and where the country’s
15 participation in the program could con-
16 tribute to that threat.

17 “(C) REDESIGNATION.—The Secretary of
18 Homeland Security may redesignate the coun-
19 try as a program country, without regard to
20 paragraph (3) or (4) or subsection (c)(2), if the
21 Secretary, in consultation with the Secretary of
22 State, determines that—

23 “(i) at least 6 months have elapsed
24 since the effective date of the emergency
25 termination under subparagraph (A);

1 “(ii) the emergency that caused the
2 termination has ended; and

3 “(iii) the average visa overstay rate
4 for that country during the period of ter-
5 mination under this subparagraph was not
6 more than 3 percent.

7 “(D) PROGRAM SUSPENSION AUTHOR-
8 ITY.—The Director of National Intelligence
9 shall immediately inform the Secretary of
10 Homeland Security of any current and credible
11 threat which poses an imminent danger to the
12 United States or its citizens and originates
13 from a country participating in the visa waiver
14 program. Upon receiving such notification, the
15 Secretary, in consultation with the Secretary of
16 State—

17 “(i) may suspend a program country
18 from the visa waiver program without prior
19 notice;

20 “(ii) shall notify any country sus-
21 pended under clause (i) and, to the extent
22 practicable without disclosing sensitive in-
23 telligence sources and methods, provide
24 justification for the suspension; and

1 “(iii) shall restore the suspended
 2 country’s participation in the visa waiver
 3 program upon a determination that the
 4 threat no longer poses an imminent danger
 5 to the United States or its citizens.

6 “(8) TREATMENT OF NATIONALS AFTER TERMI-
 7 NATION.—For purposes of this subsection and sub-
 8 section (d)—

9 “(A) nationals of a country whose designa-
 10 tion is terminated under paragraph (3), (4), or
 11 (7) shall remain eligible for a waiver under sub-
 12 section (a) until the effective date of such ter-
 13 mination; and

14 “(B) a waiver under this section that is
 15 provided to such a national for a period de-
 16 scribed in subsection (a)(1) shall not, by such
 17 termination, be deemed to have been rescinded
 18 or otherwise rendered invalid, if the waiver is
 19 granted prior to such termination.”.

20 **SEC. 6. REVIEW OF OVERSTAY TRACKING METHODOLOGY.**

21 Not later than 180 days after the date of the enact-
 22 ment of this Act, the Comptroller General of the United
 23 States shall conduct a review of the methods used by the
 24 Secretary of Homeland Security—

1 (1) to track aliens entering and exiting the
2 United States; and

3 (2) to detect any such alien who stays longer
4 than such alien's period of authorized admission.

5 **SEC. 7. REPORTING OF LOST OR STOLEN PASSPORTS.**

6 (a) ENFORCEMENT OF REQUIREMENT FOR AGREE-
7 MENTS TO REPORT LOST OR STOLEN PASSPORTS.—Not
8 later than 180 days after the date of the enactment of
9 this Act, each country designated as a program country
10 under section 217(c) of the Immigration and Nationality
11 Act (8 U.S.C. 1187(c)) shall have in effect an agreement
12 with the United States as required under paragraph
13 (2)(D) of such section 217(c).

14 (b) INTEGRATION OF DATABASES.—The Secretary of
15 Homeland Security shall integrate all Department of
16 Homeland Security databases that contain information on
17 lost or stolen passports into the Electronic System on
18 Travel Authorization.

19 **SEC. 8. INFORMATION SHARING WITH LAW ENFORCEMENT.**

20 The Secretary of Homeland Security shall make in-
21 formation regarding any alien who stays in the United
22 States longer than such alien's authorized period of admis-
23 sion available to State and local law enforcement agencies.

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