

114TH CONGRESS
1ST SESSION

S. 1507

To amend section 217 of the Immigration and Nationality Act to modify the visa waiver program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 4, 2015

Ms. MIKULSKI (for herself and Mr. KIRK) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend section 217 of the Immigration and Nationality Act to modify 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 Enhanced Security and Reform Act”.

6 **SEC. 2. VISA WAIVER PROGRAM ENHANCED SECURITY AND**
7 **REFORM.**

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 Home-
15 land Security and Governmental Af-
16 fairs of the Senate;

17 “(III) the Committee on the Ju-
18 diciary of the Senate;

19 “(IV) the Committee on Foreign
20 Affairs of the House of Representa-
21 tives;

22 “(V) the Committee on Home-
23 land Security of the House of Rep-
24 resentatives; and

1 “(VI) the Committee on the Ju-
2 diciary of the House of Representa-
3 tives.

4 “(ii) OVERSTAY RATE.—

5 “(I) INITIAL DESIGNATION.—The
6 term ‘overstay rate’ means, with re-
7 spect to a country being considered
8 for designation in the program, the
9 ratio between—

10 “(aa) the number of nation-
11 als of that country who were ad-
12 mitted to the United States on
13 the basis of a nonimmigrant visa
14 under section 101(a)(15)(B)
15 whose periods of authorized stay
16 ended during a fiscal year but
17 who remained unlawfully in the
18 United States beyond such peri-
19 ods; and

20 “(bb) the number of nation-
21 als of that country who were ad-
22 mitted to the United States on
23 the basis of a nonimmigrant visa
24 under section 101(a)(15)(B)

1 whose periods of authorized stay
2 ended during that fiscal year.

3 “(II) CONTINUING DESIGNA-
4 TION.—The term ‘overstay rate’
5 means, for each fiscal year after ini-
6 tial designation under this section
7 with respect to a country, the ratio
8 between—

9 “(aa) the number of nation-
10 als of that country who were ad-
11 mitted to the United States
12 under this section or on the basis
13 of a nonimmigrant visa under
14 section 101(a)(15)(B) whose pe-
15 riods of authorized stay ended
16 during a fiscal year but who re-
17 mained unlawfully in the United
18 States beyond such periods; and

19 “(bb) the number of nation-
20 als of that country who were ad-
21 mitted to the United States
22 under this section or on the basis
23 of a nonimmigrant visa under
24 section 101(a)(15)(B) whose pe-

1 riods of authorized stay ended
2 during that fiscal year.

3 “(III) COMPUTATION OF OVER-
4 STAY RATE.—In determining the over-
5 stay rate for a country, the Secretary
6 of Homeland Security may utilize in-
7 formation from any available data-
8 bases to ensure the accuracy of such
9 rate.

10 “(iii) PROGRAM COUNTRY.—The term
11 ‘program country’ means a country des-
12 ignated as a program country under sub-
13 paragraph (A).”.

14 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
15 Section 217 of the Immigration and Nationality Act (8
16 U.S.C. 1187), as amended by subsection (a), is further
17 amended—

18 (1) by striking “Attorney General” each place
19 the term appears (except in subsection (c)(11)(B))
20 and inserting “Secretary of Homeland Security”;
21 and

22 (2) in subsection (c)—

23 (A) in paragraph (2)(C)(iii), by striking
24 “Committee on the Judiciary and the Com-
25 mittee on International Relations of the House

of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate” and inserting “appropriate congressional committees”;

(B) in paragraph (5)(A)(i)(III), by striking “Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Homeland Security, of the House of Representatives and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate” and inserting “appropriate congressional committees”; and

(C) in paragraph (7), by striking subparagraph (E).

(c) DESIGNATION OF PROGRAM COUNTRIES BASED ON OVERSTAY RATES.—

(1) IN GENERAL.—Section 217(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(A)) is amended to read as follows:

“(A) GENERAL NUMERICAL LIMITATIONS.—

“(i) LOW NONIMMIGRANT VISA REFUSAL RATE.—The percentage of nationals of that country refused nonimmigrant visas

1 under section 101(a)(15)(B) during the
2 previous full fiscal year was not more than
3 3 percent of the total number of nationals
4 of that country who were granted or re-
5 fused nonimmigrant visas under such sec-
6 tion during such year.

7 “(ii) LOW NONIMMIGRANT OVERSTAY
8 RATE.—The overstay rate for that country
9 was not more than 3 percent during the
10 previous fiscal year.”.

11 (2) QUALIFICATION CRITERIA.—Section
12 217(c)(3) of such Act (8 U.S.C. 1187(c)(3)) is
13 amended to read as follows:

14 “(3) QUALIFICATION CRITERIA.—After designa-
15 tion as a program country under section 217(c)(2),
16 a country may not continue to be designated as a
17 program country unless the Secretary of Homeland
18 Security, in consultation with the Secretary of State,
19 determines, pursuant to the requirements under
20 paragraph (5), that the designation will be contin-
21 ued.”.

22 (3) INITIAL PERIOD.—Section 217(c) of such
23 Act (8 U.S.C. 1187(c)), as amended by this section,
24 is further amended by striking paragraph (4).

1 (4) CONTINUING DESIGNATION.—Section
 2 217(c)(5)(A)(i)(II) of such Act (8 U.S.C.
 3 1187(c)(5)(A)(i)(II)) is amended to read as follows:

4 “(II) shall determine,
 5 based upon the results of an
 6 evaluation under subclause
 7 (I), whether any such des-
 8 ignation under subsection
 9 (d) or (f), or probation
 10 under subsection (f), ought
 11 to be continued or termi-
 12 nated;”.

13 (5) COMPUTATION OF VISA REFUSAL RATES;
 14 JUDICIAL REVIEW.—Section 217(c)(6) of such Act
 15 (8 U.S.C. 1187(c)(6)) is amended to read as follows:

16 “(6) COMPUTATION OF VISA REFUSAL RATES
 17 AND JUDICIAL REVIEW.—

18 “(A) COMPUTATION OF VISA REFUSAL
 19 RATES.—For purposes of determining the eligi-
 20 bility of a country to be designated as a pro-
 21 gram country, the calculation of visa refusal
 22 rates shall not include any visa refusals which
 23 incorporate any procedures based on, or are
 24 otherwise based on, race, sex, or disability, un-

1 less otherwise specifically authorized by law or
2 regulation.

3 “(B) JUDICIAL REVIEW.—No court shall
4 have jurisdiction under this section to review
5 any visa refusal, the Secretary of State’s com-
6 putation of a visa refusal rate, the Secretary of
7 Homeland Security’s computation of an over-
8 stay rate, or the designation or nondesignation
9 of a country as a program country.”.

10 (6) VISA WAIVER INFORMATION.—Section
11 217(c)(7) of such Act (8 U.S.C. 1187(c)(7)) is
12 amended—

13 (A) by striking subparagraphs (B), (C),
14 and (D); and

15 (B) by striking “WAIVER INFORMATION.—
16 ” and all that follows through “In refusing”
17 and inserting “WAIVER INFORMATION.—In re-
18 fusing”.

19 (7) WAIVER AUTHORITY.—Section 217(c)(8) of
20 such Act (8 U.S.C. 1187(c)(8)) is amended to read
21 as follows:

22 “(8) WAIVER AUTHORITY.—The Secretary of
23 Homeland Security, in consultation with the Sec-
24 retary of State, may waive the application of para-
25 graph (2)(A)(i) for a country if—

1 “(A) the country meets all other require-
2 ments of paragraph (2);

3 “(B) the Secretary of Homeland Security
4 determines that the totality of the country’s se-
5 curity risk mitigation measures provide assur-
6 ance that the country’s participation in the pro-
7 gram would not compromise the law enforce-
8 ment, security interests, or enforcement of the
9 immigration laws of the United States;

10 “(C) there has been a general downward
11 trend in the percentage of nationals of the
12 country refused nonimmigrant visas under sec-
13 tion 101(a)(15)(B);

14 “(D) the country consistently cooperated
15 with the Government of the United States on
16 counterterrorism initiatives, information shar-
17 ing, preventing terrorist travel, and extradition
18 to the United States of individuals (including
19 the country’s own nationals) who commit
20 crimes that violate United States law before the
21 date of its designation as a program country,
22 and the Secretary of Homeland Security and
23 the Secretary of State assess that such coopera-
24 tion is likely to continue; and

“(E) the percentage of nationals of the country refused a nonimmigrant visa under section 101(a)(15)(B) during the previous full fiscal year was not more than 10 percent of the total number of nationals of that country who were granted or refused such nonimmigrant visas.”.

(d) TERMINATION OF DESIGNATION; PROBATION.—
Section 217(f) of the Immigration and Nationality Act (8 U.S.C. 1187(f)) is amended to read as follows:

“(f) TERMINATION OF DESIGNATION; PROBATION.—

“(1) DEFINITIONS.—In this subsection:

“(A) PROBATIONARY PERIOD.—The term ‘probationary period’ means the fiscal year in which a probationary country is placed in probationary status under this subsection.

“(B) PROGRAM COUNTRY.—The term ‘program country’ has the meaning given that term in subsection (c)(1)(B).

“(2) DETERMINATION, NOTICE, AND INITIAL
PROBATIONARY PERIOD.—

“(A) DETERMINATION OF PROBATIONARY
STATUS AND NOTICE OF NONCOMPLIANCE.—As
part of each program country’s periodic evaluation required by subsection (c)(5)(A), the Sec-

retary of Homeland Security shall determine whether a program country is in compliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2).

“(B) INITIAL PROBATIONARY PERIOD.—If the Secretary of Homeland Security determines that a program country is not in compliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2), the Secretary of Homeland Security shall place the program country in probationary status for the fiscal year following the fiscal year in which the periodic evaluation is completed.

“(3) ACTIONS AT THE END OF THE INITIAL PROBATIONARY PERIOD.—At the end of the initial probationary period of a country under paragraph (2)(B), the Secretary of Homeland Security shall take one of the following actions:

“(A) COMPLIANCE DURING INITIAL PROBATIONARY PERIOD.—If the Secretary determines that all instances of noncompliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2) that were identified in the latest periodic evaluation have been remedied by the end of the initial

1 probationary period, the Secretary shall end the
2 country's probationary period.

3 “(B) NONCOMPLIANCE DURING INITIAL
4 PROBATIONARY PERIOD.—If the Secretary de-
5 termines that any instance of noncompliance
6 with the program requirements under subpara-
7 graphs (A)(ii) through (F) of subsection (c)(2)
8 that were identified in the latest periodic eval-
9 uation has not been remedied by the end of the
10 initial probationary period—

11 “(i) the Secretary may terminate the
12 country's participation in the program; or

13 “(ii) on an annual basis, the Secretary
14 may continue the country's probationary
15 status if the Secretary, in consultation
16 with the Secretary of State, determines
17 that the country's continued participation
18 in the program is in the national interest
19 of the United States.

20 “(4) ACTIONS AT THE END OF ADDITIONAL
21 PROBATIONARY PERIODS.—At the end of all proba-
22 tionary periods granted to a country pursuant to
23 paragraph (3)(B)(ii), the Secretary shall take one of
24 the following actions:

1 “(A) COMPLIANCE DURING ADDITIONAL
2 PERIOD.—The Secretary shall end the country’s
3 probationary status if the Secretary determines
4 during the latest periodic evaluation required by
5 subsection (c)(5)(A) that the country is in com-
6 pliance with the program requirements under
7 subparagraphs (A)(ii) through (F) of subsection
8 (c)(2).

9 “(B) NONCOMPLIANCE DURING ADDI-
10 TIONAL PERIODS.—The Secretary shall termi-
11 nate the country’s participation in the program
12 if the Secretary determines during the latest
13 periodic evaluation required by subsection
14 (c)(5)(A) that the program country continues to
15 be in noncompliance with the program require-
16 ments under subparagraphs (A)(ii) through (F)
17 of subsection (c)(2).

18 “(5) EFFECTIVE DATE.—The termination of a
19 country’s participation in the program under para-
20 graph (3)(B) or (4)(B) shall take effect on the first
21 day of the first fiscal year following the fiscal year
22 in which the Secretary determines that such partici-
23 pation shall be terminated. Until such date, nation-
24 als of the country shall remain eligible for a waiver
25 under subsection (a).

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

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

9 “(B) a waiver under this section that is
10 provided to such a national for a period de-
11 scribed in subsection (a)(1) shall not, by such
12 termination, be deemed to have been rescinded
13 or otherwise rendered invalid, if the waiver is
14 granted prior to such termination.

15 “(7) CONSULTATIVE ROLE OF THE SECRETARY
16 OF STATE.—In this subsection, references to sub-
17 paragraphs (A)(ii) through (F) of subsection (c)(2)
18 and subsection (c)(5)(A) carry with them the con-
19 sultative role of the Secretary of State as provided
20 in those provisions.”.

21 (e) REVIEW OF OVERSTAY TRACKING METHOD-
22 OLOGY.—Not later than 180 days after the date of the
23 enactment of this Act, the Comptroller General of the
24 United States shall conduct a review of the methods used
25 by the 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 (f) EVALUATION OF ELECTRONIC SYSTEM FOR
6 TRAVEL AUTHORIZATION.—Not later than 90 days after
7 the date of the enactment of this Act, the Secretary of
8 Homeland Security shall submit to Congress—

9 (1) an evaluation of the security risks of aliens
10 who enter the United States without an approved
11 Electronic System for Travel Authorization
12 verification; and

13 (2) a description of any improvements needed
14 to minimize the number of aliens who enter the
15 United States without the verification described in
16 paragraph (1).

17 (g) SENSE OF CONGRESS ON PRIORITY FOR REVIEW
18 OF PROGRAM COUNTRIES.—It is the sense of Congress
19 that the Secretary of Homeland Security, in conducting
20 evaluations of countries participating in the visa waiver
21 program under section 217 of the Immigration and Na-
22 tionality Act (8 U.S.C. 1187), as amended by this Act,
23 should prioritize the reviews of countries in which cir-

- 1 cumstances indicate that such a review is necessary or de-
- 2 sirable.

