



United States Government Accountability Office
Washington, DC 20548

July 28, 2006

The Honorable Jim Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
House of Representatives

Subject: *Process for Admitting Additional Countries into the Visa Waiver Program*

Dear Mr. Chairman:

The Visa Waiver Program enables citizens of 27 participating countries to travel to the United States for tourism or business for 90 days or less without first obtaining a visa.¹ The program was created to promote the effective use of government resources and to facilitate international travel without jeopardizing U.S. national security. Indeed, in fiscal year 2004, more than 15 million travelers entered the United States under this program. The United States last expanded the Visa Waiver Program's membership in 1999 with the addition of Portugal, Singapore, and Uruguay;² in recent years, other countries have expressed a desire to become members. In addition, Members of Congress have recently introduced bills calling for the expansion of the program. In February 2005, President Bush announced that the Departments of Homeland Security (DHS) and State (State) would develop a strategy, or "Road Map Initiative," to clarify to prospective candidates the statutory requirements for designation as a participating country—and work with countries to help them comply with these requirements.

In response to your request, this report describes (1) the process for gaining admission into the Visa Waiver Program and (2) the U.S. government's plans for admitting additional countries into the program.³ To examine the criteria for expanding the Visa Waiver Program, we reviewed laws establishing the program, agency protocols governing the

¹The United States also issues visas to those who intend to immigrate to the United States. In this report, we use the term "visa" to refer to nonimmigrant visas only. According to the Department of State, the Visa Waiver Program is a substitute entry mechanism for nonimmigrant, short term, business, and tourism visas only; it does not apply to students, temporary workers, and others who require visas to enter the United States.

²In 2003, the Attorney General removed Uruguay from the Visa Waiver Program, stating that Uruguay's participation in the program was inconsistent with U.S. interests. According to a 2002 *Federal Register* notice on the subject, Uruguayan nationals were, on average, two to three times more likely than all nonimmigrants to have been denied admission at the border. Uruguayan air arrivals had an apparent overstay rate more than twice that of the average apparent overstay rate for all nonimmigrant air arrivals. In addition, Argentina was removed from the program in 2002, following an economic crisis in that country and an increase in the number of Argentinean nationals attempting to use the Visa Waiver Program to live and work illegally in the United States.

³See also GAO, *Border Security: Stronger Actions Needed to Assess and Mitigate Risks of the Visa Waiver Program*, GAO-06-854 (Washington, D.C.: July 28, 2006).

program, and DHS's Office of Inspector General reports. In addition, we reviewed relevant documentation and interviewed DHS and Consular Affairs Bureau officials in Washington, D.C., to determine the status of the President's initiative. To describe U.S. plans for expanding the program, we visited the U.S. embassies in the Republic of Korea and Poland—countries that are actively seeking to become program members—and spoke with ambassadors, as well as political, law enforcement, consular, and public diplomacy officers about their role in this process. We also reviewed public statements about the program made by the President and U.S. ambassadors to aspiring countries. We conducted our work from September 2005 through June 2006 in accordance with generally accepted government auditing standards.

Results in Brief

DHS is drafting procedures to help guide the process by which additional countries are admitted into the Visa Waiver Program. Until these procedures are finalized, DHS and State have an interim process.⁴ Specifically, under this interim process, the Secretary of Homeland Security, in consultation with the Secretary of State, may designate any country as being a member of the Visa Waiver Program if that country qualifies under the program's statutory requirements. First, State advises DHS of its intent to nominate a country for inclusion in the program only after State has determined that the country meets key criteria for visa waiver designation. Then, according to DHS, the departments may agree to engage in a pre-nomination consultation process to ensure that all parties are in agreement before State submits its formal nomination. After receiving State's formal nomination, DHS, through an interagency working group, evaluates the effect that the country's designation would have on the law enforcement, security, and immigration interests of the United States. On the basis of the review, the interagency working group submits a recommendation to the Secretary of Homeland Security, who, in consultation with the Secretary of State, decides whether to admit the country into the program. Separately, on May 1 of each year, State must report, to Congress, those countries that are under consideration for inclusion in the Visa Waiver Program.

The U.S. government has taken steps to assist countries seeking membership in the Visa Waiver Program. In February 2005, President Bush announced that the United States would develop bilateral strategies with 13 "Road Map" countries that are seeking admission into the Visa Waiver Program. In particular, DHS and State are working with these countries to make sure they understand the program's statutory requirements, and to agree on steps to help these countries meet the criteria. In 2005, State tasked U.S. embassies in aspiring countries to form working groups with the host governments to discuss the Road Map process. According to DHS, these groups met to develop plans that specify the actions that each country may need to take to be considered for program membership. For example, several countries agreed to launch public affairs campaigns to inform their citizens about the program's requirements. The plans also include actions that the embassies have agreed to take, such as providing technical assistance on statutory requirements. To further clarify

⁴Prior to 2002, Justice and State, through an interagency working group, had established a draft protocol based on the statutory criteria that detailed the procedures that the agencies must follow in nominating a country for membership in the program. According to DHS and State, the draft protocol was not finalized. However, Justice has used it to assess some countries' eligibility.

the initiative's objectives, in May 2006, DHS and State jointly issued a series of cables to posts in Road Map countries with guidance on the types of issues that should be discussed in the bilateral working groups. As of June 2006, DHS and State have approved frameworks, (or road maps) for seven countries: Poland, Czech Republic, Hungary, Estonia, Latvia, Lithuania, and South Korea. However, according to DHS and State's Consular Affairs Bureau, it is unlikely that many of the new countries will meet the statutory requirements for designation to the program in the near future. State did not submit a report to Congress on May 1, 2006, indicating that it was considering new members, and Consular Affairs Bureau officials stated that they are not actively considering expanding program membership or nominating specific countries for possible visa waiver designation.

We received written comments from State and DHS, which we have reprinted in enclosures I and II, respectively. State agreed with our conclusions, stating that the report is a balanced description of the process for admitting additional countries into the Visa Waiver Program, as well as the U.S. government's Road Map initiatives. DHS stated that the report's clear description of the Visa Waiver Program's statutory requirements and the designation process will assist the department's efforts to communicate these matters to the public and to countries seeking to participate in the program. In addition, State and DHS provided details about the interim procedures in place for admitting additional countries into the program.

Background

The Immigration Reform and Control Act of 1986⁵ created the Visa Waiver Program as a pilot program. In October 2000, it became a permanent program under the Visa Waiver Permanent Program Act.⁶ According to State's Consular Affairs Bureau, the program was enacted to facilitate the legitimate travel of visitors for business or tourism from countries whose citizens had demonstrated compliance with U.S. immigration laws. In recent years, Members of Congress have introduced legislation calling for the expansion of the program, for policy reasons, to U.S. allies such as Poland and South Korea. However, Congress did not pass any of these bills into law. More recently, in May 2006, the U.S. Senate passed an immigration reform bill that contained a provision that, among other things, allows for the expansion of the program to countries that contribute substantially to the wars in Afghanistan and Iraq.⁷

Visa-free travel to the United States boosts international business and tourism, as well as airline revenues, and creates substantial economic benefits to the United States. Moreover, the program allows State to allocate resources to visa-issuing posts in countries with higher-risk applicant pools. According to the Immigration Reform and Control Act, a country's participation in the program should not have an adverse effect on U.S. law enforcement and security interests. The program applies only to temporary visitors from participating countries traveling to the United States for business or tourism for 90 days or less, while

⁵P.L. 99-603.

⁶P.L. 106-396.

⁷As of June 16, 2006, the Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. Sec 413 (2006), will next be sent to a joint conference committee of both House and Senate conferees.

persons traveling to the United States for other purposes—for example, to study or to work—are required to have a visa.

In 2002, we reported on the legislative requirements to which countries must adhere before they may be considered for inclusion in the Visa Waiver Program.⁸ In general, they include the following:

- *A low nonimmigrant visa refusal rate.* To qualify for visa waiver status, a country must maintain a refusal rate of less than 3 percent for its citizens who apply for temporary business and tourism visas.⁹
- *A machine-readable passport program.* The country must certify that it issues machine-readable passports to its citizens. As of June 26, 2005, all travelers are required to have a machine-readable passport to enter the United States under the program.
- *Reciprocity.* The country must offer visa-free travel for U.S. citizens.

Persons seeking to travel to the United States under the Visa Waiver Program must

- have a valid passport issued by the participating country and be a national of that country;
- be seeking entry for 90 days or less for business or tourism;
- have their identity checked at the U.S. port of entry against an automated electronic database containing information about the inadmissibility of aliens;
- have been determined by DHS border inspectors at the U.S. port of entry to represent no threat to the welfare, health, safety, or security of the United States;
- have complied with conditions of any previous admission under the program (for example, stayed in the United States for 90 days or less);
- if entering by air or sea, possess a round-trip transportation ticket issued by a carrier that has signed an agreement with the U.S. government to participate in the program and must have arrived in the United States aboard such a carrier; and
- if entering by land, have proof of financial solvency and a domicile abroad to which he or she intends to return.

⁸GAO, *Border Security: Implications of Eliminating the Visa Waiver Program*, GAO-03-38 (Washington, D.C.: Nov. 22, 2002).

⁹The refusal rate refers only to the temporary business and tourism visa applications that are denied as a percentage of the total temporary business and tourism visa applications for nationals of that country.

Following the attacks of September 11, 2001, Congress passed additional laws to strengthen border security policies and procedures, and DHS, in consultation with State, instituted additional policy measures, some of which affect a country's participation in the Visa Waiver Program. For example, all passports issued after October 26, 2005, must contain a digital photograph in the document for travel to the United States under the program. Further, passports issued after October 26, 2006, must be electronic (e-passports).¹⁰ Travelers with passports that do not meet these requirements are required to obtain a visa from a U.S. embassy or consulate overseas before entering the United States. In addition, the May 2002 Enhanced Border Security and Visa Entry Reform Act¹¹ established that participation in the Visa Waiver Program was conditional on a country's timely reporting of the theft of its stolen blank passports to the United States.

On November 25, 2002, Congress passed the Homeland Security Act of 2002, which established DHS and gave it responsibility for visa policy, including the Visa Waiver Program.¹² Prior to this date, the Department of Justice (Justice) had overall responsibility for managing the program. In July 2004, DHS created the Visa Waiver Program Oversight Unit within the Office of International Enforcement and directed that unit to manage the oversight of participating Visa Waiver Program countries, as well as the process for assessing the law enforcement and security implications of expanding the program's membership. To help fulfill its responsibilities, DHS established an interagency working group comprised of representatives from State, Justice, and several DHS component agencies and offices, including Customs and Border Protection and Immigration and Customs Enforcement.

Process for Admitting Additional Countries into the Visa Waiver Program

DHS is drafting procedures to help guide the process by which additional countries are admitted into the Visa Waiver Program. Until these procedures are finalized, DHS and State have an interim process. Under this process, the Secretary of Homeland Security, in consultation with the Secretary of State, can expand the membership of the Visa Waiver Program, assuming that a country meets certain requirements. First, State advises DHS of its intent to nominate a country for inclusion in the program. According to State, it may nominate a country only after it has determined that the country meets key criteria for visa waiver designation, including a low nonimmigrant refusal rate and reciprocal visa-free travel for U.S. citizens. Subsequently, State may also provide DHS with information on the nominated country, including

- patterns of passport fraud, visa fraud, and visa abuse over the past 5 years;

¹⁰In general, e-passports will contain a chip, which will be embedded in the passport. The chip will store the same information that is printed in the data page of the passport: the name, date of birth, gender, place of birth, dates of passport issuance and expiration, place of issuance, passport number, and photo image of the bearer. In addition, it will hold the unique chip identification number and a digital signature to protect the stored data from alteration.

¹¹The Enhanced Border Security and Visa Entry Reform Act of 2002, P.L. 107-173.

¹²P.L. 107-296.

- assessments of terrorism, by the country's nationals, within or outside the country; and
- evaluations of the impact of the country's participation on U.S. national security and law enforcement.

After State notifies DHS of its intent to nominate a country for inclusion in the program, the departments, according to DHS, may then agree to engage in a pre-nomination consultation process to ensure that all parties agree that there is a likelihood that U.S. law enforcement and security interests would not be compromised by the designation of that country, and that the country otherwise meets the program's statutory requirements. If no clearly disqualifying objections are raised during this review, the Secretary of State submits a formal written nomination to the Secretary of Homeland Security. After a country's formal nomination, DHS leads an interagency team to visit the nominated country. The team reviews the country's

- political, social, and economic conditions;
- security over its passport and national identity documents;
- border controls; and
- immigration and nationality laws, law enforcement policies and practices, and other matters relevant to law enforcement, immigration, and national security.

On the basis of the review and site visit, the interagency working group submits a recommendation to the Secretary of Homeland Security, who, in consultation with the Secretary of State, decides whether to admit the country to the program.

Separate from this review process, on May 1 of each year,¹³ for each country under consideration for inclusion in the Visa Waiver Program, the Secretary of State must report to appropriate congressional committees on

- the total number of nationals of that country who applied for U.S. visas in that country during the previous calendar year;
- the total number of such nationals who received U.S. visas during the previous calendar year;
- the total number of such nationals who were refused U.S. visas during the previous calendar year, and, specifically, under which provision of the Immigration and Nationality Act they were refused; and

¹³In addition, not later than May 1 of each year, the U.S. chief of mission (acting or permanent) to each country under consideration for inclusion in the Visa Waiver Program, must certify to the appropriate congressional committees that the information described in the report is accurate, and provide a copy of the certification to the congressional committees.

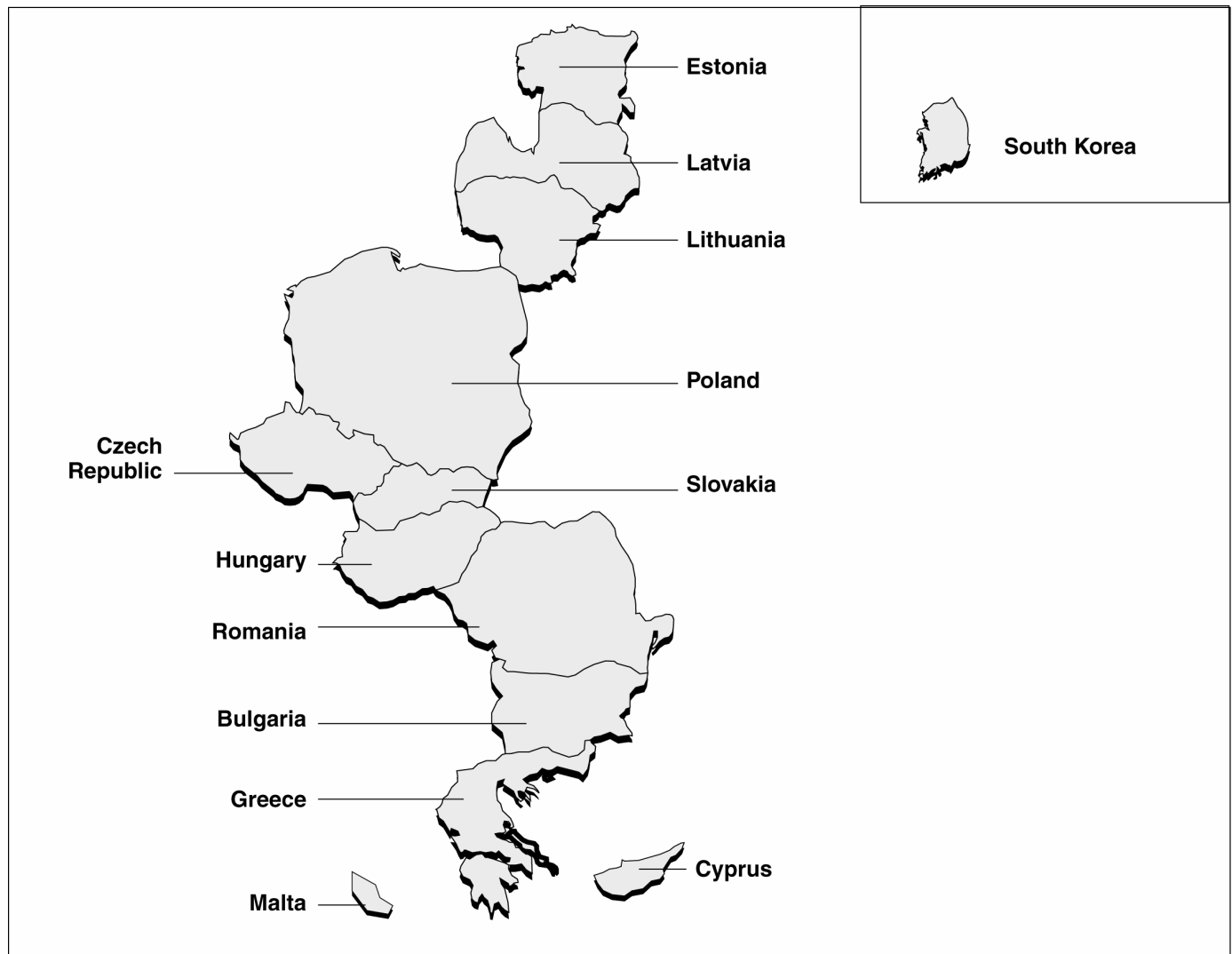
- the number of such nationals that were refused visas under section 214(b)¹⁴ of the Immigration and Nationality Act as a percentage of the visas that were issued to such nationals.

U.S. Plans for Expanding Membership in the Visa Waiver Program

In February 2005, President Bush announced that the United States would work with governments in countries that are seeking admission into the Visa Waiver Program—an effort called the “Road Map Initiative”—to help them become program members (see fig. 1 for a map of the Road Map countries). DHS and State officials, as well as the President and other senior U.S. officials, have stated that this initiative aims to clarify the program’s statutory requirements to prospective candidates. Moreover, these officials have stated that the United States will work with the Road Map countries to help develop strategies to meet these requirements. In particular, in May 2006, the Assistant Secretary of State for East Asian and Pacific Affairs stated that the admission of South Korea into the program is one of his goals. According to DHS, some of the countries seeking admission to the program are U.S. partners in the war in Iraq and have high expectations that they will join the program due to their close economic, political, and military ties to the United States. Nevertheless, all aspiring countries must first meet the program’s statutory criteria for membership.

¹⁴Section 214(b) of the 1952 Immigration and Nationality Act, as amended (P.L. 82-414, 8 U.S.C. § 1101 et seq.), generally presumes that aliens are immigrants until they establish to the satisfaction of the consular officer at the time of application for a visa, and the border inspector at the time of application for admission, that they are entitled to nonimmigrant status. Pursuant to section 291, the burden of proof is on the applicant. If an alien cannot establish that he or she is entitled to nonimmigrant status, then the alien is considered to be an applicant for immigrant status and is not eligible to receive a nonimmigrant visa.

Figure 1: Road Map Countries



Source: GAO MapArt.

In April 2005, State, in coordination with DHS, tasked the U.S. embassies in each of the 13 aspiring Road Map countries to form bilateral consular working groups to help these countries understand and develop strategies to meet the program's statutory criteria. Consular officials told us that law enforcement and security officials participate in some of these meetings, depending on the agenda and their availability. DHS representatives based in-country, or with regional responsibility for a country, were asked to participate in the consular working group meetings. For example, with funding from State, an Immigration and Customs Enforcement official in Vienna, Austria, participated in the Hungarian working group. Throughout 2005, the working groups discussed the actions that the individual countries would take, with U.S. assistance, to meet the Visa Waiver Program requirements. For example, the plans cover issues related to meeting biometric and other technical and security criteria; reporting lost and stolen passport information; and public affairs campaigns regarding the implications of violating the terms of visas. According to DHS, some working groups have developed a formal document that outlines future plans, while

others have preferred a less formal approach that does not include development of a formal document. As of June 2006, DHS and State had approved the plans for seven countries: Poland, Czech Republic, Hungary, Estonia, Latvia, Lithuania, and South Korea.

To further clarify the initiative's objectives, in May 2006, DHS and State jointly issued a series of cables to posts in Road Map countries containing guidance on the types of issues that should be discussed in the bilateral working groups, and issues that should be reported back to DHS and State headquarters. Each cable focused on a particular area for discussion, including individual countries'

- passport and identification documents;
- criteria for citizenship; and
- reporting of lost and stolen passport data.

According to State and DHS, discussion on these subjects will be a valuable tool for identifying and acting on areas of possible concern. Moreover, DHS stated that the working groups will be critical in developing serious and meaningful activities for each country, which are based on the statutory requirements that must be met.

Despite the President's and other officials' stated desire to help Road Map countries gain program membership, and despite ongoing efforts to provide such assistance, according to State and DHS, it is unlikely that many of the new countries will meet the statutory requirements for designation to the Visa Waiver Program in the near future. For example, the visa refusal rates in many of the Road Map countries are more than 20 percent, according to consular officials. In addition, State and DHS have cited law enforcement and security concerns regarding some of these countries, including immigration and border control issues, alien smuggling, and a high degree of passport fraud. Consular officials stated that they are working actively with the governments in the Road Map countries to clarify the program's statutory requirements. However, State did not submit a report to Congress on May 1, 2006, indicating that it was considering new members, and Consular Affairs Bureau officials stated that they are not actively considering expanding program membership before next year's May 1, 2007, report deadline.

Conclusions

Many countries are actively seeking admission into the Visa Waiver Program, and the President has announced his support for the program's expansion. Moreover, the President and other senior U.S. officials have stated publicly their goal to add countries to the program. However, legislation requires that aspiring countries meet certain criteria before the Secretaries of State and Homeland Security may consider them for membership. Several countries have already committed to improving in areas that are vital to attaining this status, and which would also benefit all countries worldwide, such as border security and passport issuance processes, and DHS and State are assisting these countries in meeting these requirements through the consular working groups. However, it does not appear there will

be any expansion of the Visa Waiver Program in the short term, because despite ongoing progress, these countries will still fall short of the program's statutory requirements.

Agency Comments and Our Evaluation

State and DHS provided written comments on a draft of this report (see enclosures I and II).

State agreed with our conclusions, stating that the report is a balanced description of the process for admitting additional countries into the Visa Waiver Program, as well as the U.S. government's Road Map initiatives. In addition, State provided further detail about the department's role in the nomination process for countries seeking admission into the program. In particular, State noted that it notifies DHS of its intent to nominate a country only after consideration of key criteria—visa refusal rate, status of biometric passport implementation, lost and stolen passport reporting, and reciprocal visa-free travel for U.S. citizens—while DHS is responsible for evaluating the impact a country's participation would have on U.S. law enforcement and security interests. We have reflected this point in the report. State also said that the department has not ruled out the possibility of nominating new countries into the Visa Waiver Program in a May 1, 2007 report to Congress. Lastly, State noted that the consular working groups' discussions with Road Map countries provide a useful basis for continuing to encourage countries to pursue immigration, law enforcement, and security policies, which, apart from the Visa Waiver Program, are in their own and U.S. interests. State also provided technical comments, which we incorporated into the report, as appropriate.

DHS stated that the report's clear description of the Visa Waiver Program's statutory requirements and the designation process will assist the department's efforts to communicate these matters to the public and to countries seeking to participate in the program. DHS also provided details about the interim procedures in place for admitting additional countries into the program, which we have reflected in the report. In addition, DHS noted that while an interagency working group was convened in the past to evaluate the effect that a country's designation would have on the law enforcement, security, and immigration interests of the United States, such a group may or may not be utilized in future evaluations of prospective countries. DHS also provided technical comments on a draft of this report, which we have incorporated, as appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will provide copies of this report to the Secretaries of Homeland Security and State, and will make copies available to others upon request. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4128 or fordj@gao.gov. The key contributors to this report were John Brummet, Assistant Director; Kathryn Bernet, Joseph Brown, Joseph Carney, Jane Kim, and Mary Moutsos.

A handwritten signature in black ink, reading "Jess T. Ford". The signature is written in a cursive style with a large, looping "J" and "F".

Jess T. Ford
Director, International Affairs and Trade

Enclosures - 2



United States Department of State

*Assistant Secretary for Resource Management
and Chief Financial Officer*

Washington, D.C. 20520

JUL - 7 2006

**Ms. Jacquelyn Williams-Bridgers
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001**

Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "BORDER SECURITY: Process for Admitting Additional Countries into the Visa Waiver Program," GAO Job Code 320435.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Diane Bean, Senior Advisor, Bureau of Consular Affairs, at (202) 663-1155.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad R. Higgins".

Bradford R. Higgins

**cc: GAO – Jess Ford
CA – Maura Harty
State/OIG – Mark Duda**

Department of State Comments on GAO Draft Report
BORDER SECURITY: Process for Admitting Additional
Countries into the Visa Waiver Program
(GAO-06-835R, Job Code 320435)

Thank you for the opportunity to respond to GAO's draft correspondence to the House of Representatives Judiciary Committee regarding the report *Process for Admitting Additional Countries into the Visa Waiver Program*. The Department appreciates the report's balanced description of the roadmap initiatives and the process for considering designation of additional countries to the Visa Waiver Program (VWP).

The Department agrees with the report's conclusion that "*visa-free travel to the United States boosts international business and tourism, as well as airline revenues, and creates substantial economic benefits to the United States.*" Moreover, because of the requirement of reciprocal treatment of U.S. citizen travelers by VWP countries, the VWP benefits American tourists and businesspeople as well. The Department recognizes that a major reason for the Program's success lies in the strict standards for participation. We support Congress' design of the VWP to be politically neutral and based upon measurable objective criteria -- generally, that the nationals of the country in question have demonstrated their willingness to comply with U.S. immigration and other laws, that the countries have secure travel documents and exercise a high standard of border and other security and that Americans are treated fairly and reciprocally. We welcome the GAO's examination of the admission process as a vehicle to strengthen the VWP even more. We have the following few comments to add to this comprehensive report:

In addition to the report's identification of the purposes of the roadmap process (clarifying statutory requirements and helping countries to comply with them), the consular working group discussions with roadmap countries also provide a useful basis for continuing to encourage countries to pursue policies which, apart from VWP designation, are in their own and U.S. interests. Development of secure, biometric travel documents, reporting on lost and stolen passports and working together to address the global threats of terrorism, crime, alien smuggling and document fraud are worthy goals independent of, but reinforced by, discussions on VWP criteria.

With regard to the report's description of the process for nomination of additional countries, it is important to clarify that State's notification to DHS of its intent to nominate a country is only made after consideration of key criteria, as opposed to a "*determination that the VWP statutory requirements have been met.*" By law, DHS has the lead role in one of the key VWP criteria, the evaluation of the impact on U.S. law enforcement and security interests; State does not make that determination and certainly would not be in a position to provide its final views on such a determination prior to the review process initiated by DHS.

The State Department's understanding of the interim nomination process is slightly more involved than described in the report. It is our understanding that the process begins with State's identification of countries that have met the clearly identified VWP statutory criteria (refusal rate, biometric passport, lost and stolen passport reporting, and reciprocal visa-free travel), which is then followed by informal DHS/State discussions on other possible issues requiring careful review before any formal nomination decision. Only after these issues are understood would State take the next step of notification of intent to nominate a country for inclusion in the program.

The State Department would then provide a full spectrum of country-specific information to DHS, consisting of more items, based on our understanding, than included in the list in the report. For example, State would also provide preliminary information on the country's passports and the integrity of its documents and production/distribution systems; naturalization, citizenship, residency and visa laws and policies; border security and immigration-related situation; existence of terrorism, crime and other global threats and the country's efforts to address such concerns; and cooperation with the U.S. and other international partners on such issues.

Next, as part of DHS' evaluation of the nomination, the interagency working group would conduct a site visit and solicit additional materials on the country's policies and procedures with regard to the factors noted above and any other areas that appeared relevant at the time of the review. Finally, as stated in the report, the interagency working group would submit a recommendation to the Secretary of Homeland Security, who, in consultation with the Secretary of State, would decide whether to admit the country to the program.

Finally, while it is true that the State Department did not submit a report to Congress on May 1, 2006, indicating that the Department is considering nominating new members, and we are not at this time preparing such a report for 2007, the Department would emphasize that we are working diligently with the roadmap countries and are committed to assisting them to meet the VWP criteria as soon as possible. We do not rule out the possibility that a roadmap country could be ready for nomination by May 1, 2007.

Thank you for the opportunity to contribute our views to this report.

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

July 12, 2006

Mr. Jess T. Ford
Director, International Affairs
and Trade
Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Ford:

Thank you for the opportunity to comment on GAO-06-835R Process for Admitting Additional Countries into the Visa Waiver Program. The Department of Homeland Security (DHS) welcomes this evaluation of the important process for designating countries that meet the statutory requirements to participate in the Visa Waiver Program (VWP). The clear description of the statutory requirements and the designation process in the draft report itself will assist our efforts to communicate these to the public domestically and overseas and to countries seeking designation. Our following brief comments will improve the description of the interim procedures in place at this time so that the draft report provides a more accurate picture of the process.

1. The pre-nomination process needs clarification. GAO correctly states on page 2 in the forth sentence under **Results in Brief**, that "First, State advises DHS of its intent to nominate a country for inclusion in the program only after State has determined that the country meets the statutory requirements for visa waiver program designation." After that sentence, the draft report should explain that after this notice of intent is delivered, the Departments may agree to engage in a pre-nomination process, including consultations, to ensure there is agreement by DHS and others that the country at issue is qualified. After this pre-nomination consultation process is concluded, State will deliver a formal nomination which will trigger the statutory evaluation.
2. While an interagency working group conducted the 2004 periodic country evaluations, it was put in place before OIE was created in July 2004 to institutionalize coordination and oversight of VWP compliance activities. Such an interagency working group may or may not be utilized in future evaluations of prospective countries since it is not required and its use will depend on the issues and information to be evaluated. On page 2, in the fifth sentence in the first paragraph under **Results in Brief**, however, the draft report presumes that an

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interagency working group will be convened after DHS receives State's notification of its intent to nominate a country to the VWP and that the interagency working group will perform the evaluation. Again, use of an interagency working group is not a given in the formal evaluation of US security, law enforcement and immigration interests and it would certainly not be utilized during initial, pre-nomination consultations with State unless such a tool was deemed necessary to resolve the evaluation of specific complex issues. That sentence should be deleted and replaced by the following two sentences to read: "After pre-nomination consultations, State may forward a formal nomination if there is agreement by DHS that there is a likelihood that US security, law enforcement and immigration interests will not be compromised by the country's designation and that the country otherwise meets the statutory requirements. After receiving a formal nomination from State, DHS evaluates the effect that a country's VWP designation would have on US security, law enforcement and immigration interest, an evaluation that includes consultations with State."

3. At page 3, second paragraph under **Background**, to be consistent, the third sentence should read "...adverse effect on U.S. security, law enforcement and immigration interests."
4. The last sentence of the final paragraph under **Background** should be revised as follows to reflect the information contained in the other GAO draft report on the VWP, "Stronger Actions Needed to Assess and Mitigate Risks of the Visa Waiver Program." "The 2004 country review process had been initiated in April 2004 by the former Border and Transportation Security (BTS) Office of Policy which had convened an interagency working group comprised of representatives from the Department of State (State), Justice, and several DHS components and offices, including Customs and Border Protection and Immigration and Customs Enforcement, to participate in the country review process that year." Again, an interagency working group is not required and may or may not be utilized in future evaluations of prospective countries depending on the issues and information to be evaluated and the need for more expertise and/or extensive consultations.
5. The first full paragraph on page 5 (second full paragraph under **Process for Admitting Additional Countries into the Visa Waiver Program**) is confusing as written and needs clarification. There is no pre-nomination evaluation of US security, law enforcement and immigration interests. This paragraph should be revised as follows: "After receiving a notification of intent to nominate from State, DHS and State may agree to engage in a pre-nomination consultation process to ensure there is agreement by DHS that there is a likelihood that US security, law enforcement and immigration interests will not be compromised by the country's designation and that the country otherwise meets the statutory requirements. If no clearly disqualifying objections are raised during these consultations, the Secretary of State submits a formal written nomination to the Secretary of Homeland Security. After a country's nomination, DHS will conduct

a formal comprehensive country review of US security, law enforcement and immigration interests which will include leading an interagency site visit team to visit the nominated country.”

Thank you again for the opportunity to review and provide comments to the draft report. We look forward to working collaboratively with you to improve this important program.

Sincerely,

A handwritten signature in black ink, reading "Steven J. Pecinovsky". The signature is written in a cursive, flowing style.

Steven J. Pecinovsky
Director Departmental GAO/IG Liaison Office

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