

110TH CONGRESS
1ST SESSION

H. R. 1543

To expand visa waiver program to countries on a probationary basis, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2007

Mr. EMANUEL (for himself, Mr. SHIMKUS, Mr. WEXLER, and Ms. BERKLEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To expand visa waiver program to countries on a
probationary basis, 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 Mod-
5 ernization Act”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

1 (1) the United States should modernize the visa
2 waiver program by simultaneously—

3 (A) enhancing program security require-
4 ments; and

5 (B) extending visa-free travel privileges to
6 nationals of foreign countries that are allies in
7 the war on terrorism; and

8 (2) the expansion described in paragraph (1)
9 will—

10 (A) enhance bilateral cooperation on crit-
11 ical counterterrorism and information sharing
12 initiatives;

13 (B) support and expand tourism and busi-
14 ness opportunities to enhance long-term eco-
15 nomic competitiveness; and

16 (C) strengthen bilateral relationships.

17 **SEC. 3. DISCRETIONARY VISA WAIVER PROGRAM EXPAN-**
18 **SION.**

19 Section 217(c) of the Immigration and Nationality
20 Act (8 U.S.C. 1187(c)) is amended by adding at the end
21 the following:

22 “(8) NONIMMIGRANT VISA REFUSAL RATE
23 FLEXIBILITY.—

24 “(A) CERTIFICATION.—On the date on
25 which an air exit system is in place that can

1 verify the departure of not less than 97 percent
2 of foreign nationals that exit through airports
3 of the United States, the Secretary of Home-
4 land Security shall certify to Congress that
5 such air exit system is in place.

6 “(B) WAIVER.—After certification by the
7 Secretary under subparagraph (A), the Sec-
8 retary of Homeland Security, in consultation
9 with the Secretary of State, may waive the ap-
10 plication of paragraph (2)(A) for a country if—

11 “(i) the country meets all existing se-
12 curity requirements and enhanced security
13 requirements described in section 4 of the
14 Secure Travel and Counterterrorism Part-
15 nership Act;

16 “(ii) the Secretary of Homeland Secu-
17 rity determines that the totality of the
18 country’s security risk mitigation measures
19 provide assurance that the country’s par-
20 ticipation in the program would not com-
21 promise the law enforcement, security in-
22 terests, or enforcement of the immigration
23 laws of the United States;

24 “(iii) there has been a sustained re-
25 duction in visa refusal rates for aliens from

1 the country and conditions exist to con-
2 tinue such reduction; and

3 “(iv) the country cooperated with the
4 Government of the United States on
5 counterterrorism initiatives and informa-
6 tion sharing before the date of its designa-
7 tion as a program country, and the Sec-
8 retary of Homeland Security and the Sec-
9 retary of State expect such cooperation will
10 continue.

11 “(9) DISCRETIONARY SECURITY-RELATED CON-
12 siderations.—

13 “(A) IN GENERAL.—In determining wheth-
14 er to waive the application of paragraph (2)(A)
15 for a country, pursuant to paragraph (8), the
16 Secretary of Homeland Security, in consultation
17 with the Secretary of State, shall take into con-
18 sideration other factors affecting the security of
19 the United States, including—

20 “(i) airport security standards in the
21 country;

22 “(ii) whether the country assists in
23 the operation of an effective air marshal
24 program;

1 “(iii) the standards of passports and
2 travel documents issued by the country;
3 and

4 “(iv) other security-related factors.

5 “(B) OVERSTAY RATES.—In determining
6 whether to permit a country to participate in
7 the program, the Secretary of Homeland Secu-
8 rity shall consider the estimated rate at which”.

9 **SEC. 4. SECURITY ENHANCEMENTS TO THE VISA WAIVER**
10 **PROGRAM.**

11 (a) IN GENERAL.—Section 217 of the Immigration
12 and Nationality Act (8 U.S.C. 1187) is amended—

13 (1) in subsection (a)—

14 (A) by striking “Operators of aircraft” and
15 inserting the following:

16 “(10) ELECTRONIC TRANSMISSION OF IDENTI-
17 FICATION INFORMATION.—Operators of aircraft”;
18 and

19 (B) by adding at the end the following:

20 “(11) ELIGIBILITY DETERMINATION UNDER
21 THE ELECTRONIC TRAVEL AUTHORIZATION SYS-
22 TEM.—Beginning on the date on which the elec-
23 tronic travel authorization system developed under
24 subsection (h)(3) is fully operational, each alien
25 traveling under the program shall, before applying

1 for admission, electronically provide basic biographi-
2 cal information to the system. Upon review of such
3 biographical information, the Secretary of Homeland
4 Security shall determine whether the alien is eligible
5 to travel to the United States under the program.”;

6 (2) in subsection (c), as amended by section 3
7 of this Act—

8 (A) in paragraph (2)—

9 (i) by amending subparagraph (D) to
10 read as follows:

11 “(D) REPORTING LOST AND STOLEN PASS-
12 PORTS.—The government of the country enters
13 into an agreement with the United States to re-
14 port, or make available through Interpol, to the
15 United States Government information about
16 the theft or loss of passports within a strict
17 time limit and in a manner specified in the
18 agreement.”; and

19 (ii) by adding at the end the fol-
20 lowing:

21 “(E) REPATRIATION OF ALIENS.—The
22 government of the country accepts for repatri-
23 ation any citizen, former citizen, or national
24 against whom a final executable order of re-
25 moval is issued not later than 3 weeks after the

1 issuance of the final order of removal. Nothing
2 in this subparagraph creates any duty for the
3 United States or any right for any alien with
4 respect to removal or release. Nothing in this
5 subparagraph gives rise to any cause of action
6 or claim under this paragraph or any other law
7 against any official of the United States or of
8 any State to compel the release, removal, or
9 consideration for release or removal of any
10 alien.

11 “(F) PASSENGER INFORMATION EX-
12 CHANGE.—The government of the country en-
13 ters into an agreement with the United States
14 to share information regarding whether nation-
15 als of that country traveling to the United
16 States represent a threat to the security or wel-
17 fare of the United States or its citizens.”;

18 (B) in paragraph (5)—

19 (i) by striking “Attorney General”
20 each place it appears and inserting “Sec-
21 retary of Homeland Security”; and

22 (ii) in subparagraph (A)(i)—

23 (I) in subclause (II), by striking
24 “and” at the end;

1 (II) in subclause (III), by strik-
2 ing the period at the end and insert-
3 ing “; and”; and

4 (III) by adding at the end the
5 following:

6 “(IV) shall submit to Congress a
7 report regarding the implementation
8 of the electronic travel authorization
9 system under subsection (h)(3) and
10 the participation of new countries in
11 the program through a waiver under
12 paragraph (8).”; and

13 (C) by adding at the end the following:

14 “(10) TECHNICAL ASSISTANCE.—The Secretary
15 of Homeland Security, in consultation with the Sec-
16 retary of State, shall provide technical assistance to
17 program countries to assist those countries in meet-
18 ing the requirements under this section.”;

19 (3) in subsection (f)(5), by striking “of blank”
20 and inserting “or loss of”; and

21 (4) in subsection (h), by adding at the end the
22 following:

23 “(3) ELECTRONIC TRAVEL AUTHORIZATION
24 SYSTEM.—

1 “(A) SYSTEM.—The Secretary of Home-
2 land Security, in consultation with the Sec-
3 retary of State, is authorized to develop and im-
4 plement a fully automated electronic travel au-
5 thorization system (referred to in this para-
6 graph as the ‘System’) to collect such basic bio-
7 graphical information as the Secretary of
8 Homeland Security determines to be necessary
9 to determine, in advance of travel, the eligibility
10 of an alien to travel to the United States under
11 the program.

12 “(B) FEES.—The Secretary of Homeland
13 Security may charge a fee for the use of the
14 System, which shall be—

15 “(i) set at a level that will ensure re-
16 covery of the full costs of providing and
17 administering the System; and

18 “(ii) available to pay the costs in-
19 curred to administer the System.

20 “(C) VALIDITY.—

21 “(i) PERIOD.—The Secretary of
22 Homeland Security, in consultation with
23 the Secretary of State shall prescribe regu-
24 lations that provide for a period, not to ex-
25 ceed 3 years, during which a determination

1 of eligibility to travel under the program
2 will be valid. Notwithstanding any other
3 provision under this section, the Secretary
4 of Homeland Security may revoke any
5 such determination at any time and for
6 any reason.

7 “(ii) LIMITATION.—A determination
8 that an alien is eligible to travel to the
9 United States under the program is not a
10 determination that the alien is admissible
11 to the United States.

12 “(iii) JUDICIAL REVIEW.—Notwith-
13 standing any other provision of law, no
14 court shall have jurisdiction to review an
15 eligibility determination under the System.

16 “(D) REPORT.—Not later than 60 days
17 before publishing notice regarding the imple-
18 mentation of the System in the Federal Reg-
19 ister, the Secretary of Homeland Security shall
20 submit a report regarding the implementation
21 of the System to—

22 “(i) the Committee on Homeland Se-
23 curity and Governmental Affairs of the
24 Senate;

1 “(ii) the Committee on the Judiciary
2 of the Senate;

3 “(iii) the Select Committee on Intel-
4 ligence of the Senate;

5 “(iv) the Committee on Appropria-
6 tions of the Senate;

7 “(v) the Committee on Homeland Se-
8 curity of the House of Representatives;

9 “(vi) the Committee on the Judiciary
10 of the House of Representatives;

11 “(vii) the Permanent Select Com-
12 mittee on Intelligence of the House of Rep-
13 resentatives; and

14 “(viii) the Committee on Appropria-
15 tions of the House of Representatives.”.

16 (b) EFFECTIVE DATE.—Section 217(a)(11) of the
17 Immigration and Nationality Act, as added by subsection
18 (a)(1)(B) shall take effect on the date which is 60 days
19 after the date on which the Secretary of Homeland Secu-
20 rity publishes notice in the Federal Register of the re-
21 quirement of such paragraph.

22 **SEC. 5. EXIT SYSTEM.**

23 (a) IN GENERAL.—Not later than 1 year after the
24 date of the enactment of this Act, the Secretary of Home-
25 land Security shall establish an exit system that records

1 the departure on a flight leaving the United States of
2 every alien participating in the visa waiver program estab-
3 lished under section 217 of the Immigration and Nation-
4 ality Act (8 U.S.C. 1187).

5 (b) SYSTEM REQUIREMENTS.—The system estab-
6 lished under subsection (a) shall—

7 (1) match biometric information of the alien
8 against relevant watch lists and immigration infor-
9 mation; and

10 (2) compare such biometric information against
11 manifest information collected by air carriers on pas-
12 sengers departing the United States to confirm such
13 individuals have departed the United States.

14 (c) REPORT.—Not later than 180 days after the date
15 of the enactment of this Act, the Secretary shall submit
16 a report to Congress that describes—

17 (1) the progress made in developing and deploy-
18 ing the exit system established under this section;
19 and

20 (2) the procedures by which the Secretary will
21 improve the manner of calculating the rates of non-
22 immigrants who violate the terms of their visas by
23 remaining in the United States after the expiration
24 of such visas.

1 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out this Act, and the amend-
4 ments made by this Act.

○