

S 203 IS

111th CONGRESS

1st Session

**S. 203**

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

**IN THE SENATE OF THE UNITED STATES****January 12, 2009**

Mrs. FEINSTEIN (for herself and Mr. KYL) 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 for participation in the visa waiver program and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the `Strengthening the Visa Waiver Program to Secure America Act'.

**SEC. 2. DEFINITIONS.**

In this Act:

- (1) PROGRAM COUNTRY- The term `program country' means a country designated as a program country under section 217(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(1)).
- (2) SECRETARY- Except as otherwise provided, the term `Secretary' means the Secretary of Homeland Security.
- (3) VISA WAIVER PROGRAM- The term `visa waiver program' means the visa waiver program carried out under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187).

[+]  
FEEDBACK

**SEC. 3. ENFORCEMENT OF REQUIREMENT TO REPORT LOST OR STOLEN PASSPORTS.**

- (a) Enforcement of Existing Requirement- Not later than 180 days after the date of the enactment of this Act, each program country shall have in effect an agreement with the United States as required by section 217(c)(2)(D) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(D)).
- (b) Failure To Agree To Report-
  - (1) SUSPENSION FROM THE PROGRAM- If a program country does not meet the requirements of subsection (a), the Secretary, in consultation with the Secretary of State, shall immediately suspend the program country's participation in the visa waiver program.
  - (2) RESTORATION TO THE PROGRAM- With respect to a country that is suspended from participation in the visa waiver program under paragraph (1), the Secretary shall restore the country's participation on the date that the Secretary determines that the country meets the requirements of paragraph (1).
- (c) Limitation on New Program Countries- Notwithstanding any other provision of law, the Secretary may not

designate a country as a program country until after the date that the Secretary certifies to Congress that the requirements of subsection (a) have been met.

#### **SEC. 4. ENFORCEMENT OF REQUIREMENT FOR PERIODIC EVALUATIONS OF PROGRAM COUNTRIES.**

(a) Enforcement of Existing Requirement- Not later than 1 year after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of State, shall evaluate under section 217(c)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(5)(A)) each program country that was designated as a program country prior to January 1, 2009. Such evaluation shall include the visa overstay rate for each program country for the 1-year period ending on the date of the enactment of this Act.

(b) Visa Overstay Rate Defined- In this section, the term `visa overstay rate' has the meaning given that term in section 217(c)(8)(C) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(8)(C)), as amended by section 6.

(c) Failure To Comply With Program Requirements-

(1) SUSPENSION FROM THE PROGRAM- If the periodic evaluation prepared under subsection (a) shows that a program country has a visa overstay rate that exceeds 2 percent, the Secretary, in consultation with the Secretary of State, shall immediately suspend the program country's participation in the visa waiver program.

(2) RESTORATION TO THE PROGRAM- With respect to a country that is suspended from participation in the visa waiver program under paragraph (1), the Secretary shall restore the country's participation on the date that the Secretary determines that the country's visa overstay rate does not exceed 2 percent.

(d) Limitation on New Program Countries- Notwithstanding any other provision of law, the Secretary may not designate a country as a program country until after the date that the Secretary certifies to Congress that the requirements of subsection (a) have been met.

#### **SEC. 5. ARRIVAL AND DEPARTURE VERIFICATION.**

(a) Requirement for Verification-

(1) IN GENERAL- Subparagraph (A) of section 217(c)(8) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(8)) is amended--

(A) in clause (i)--

(i) by striking `can verify' and inserting `verifies';

(ii) by inserting `arrival and' before `departure'; and

(iii) by inserting `entry and' before `exit'; and

(B) in clause (ii) by inserting `entry and' before `exit'.

(2) CONFORMING AMENDMENT- Subparagraph (C) of such section 217(c)(8) is amended by inserting `entry and' before `exit'.

(b) Limitation on New Program Countries- Notwithstanding any other provision of law, the Secretary may not designate a country as a program country until after the date that the Secretary certifies to Congress that the requirements of clause (i) of subsection (c)(8)(A) of section 217 of the Immigration and Nationality Act, as amended by subsection (a)(1), are met.

(c) Audit-

(1) REQUIREMENT TO CONDUCT- Not later than 180 days after the date that the certification described in clause (i) of subsection (c)(8)(A) of section 217 the Immigration and Nationality Act (8 U.S.C. 1187), as amended by subsection (a)(1), is submitted to Congress, the Comptroller of the United States shall conduct an audit of the travel authorization system described in subsection (h)(3) of that section and

submit a report on such audit to Congress.

(2) ELEMENTS- The report by paragraph (1) shall include--

(A) a description of the data collected by such system;

(B) the number of individuals who were identified by such system as being in violation of the immigration laws, disaggregated by country; and

(C) an explanation of any problems in implementing such system encountered during the early stages of implementation to better identify high-risk travelers and countries of origin of such travelers.

## **SEC. 6. VISA OVERSTAY RATES.**

Subparagraph (C) of section 217(c)(8) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(8)), as amended by section 5(a)(2), is further amended--

(1) in clause (i), by striking the period at the end of the first sentence and inserting ` , except that in no case may a maximum visa overstay rate exceed 2 percent.';

(2) by redesignating clause (iii) as clause (iv);

(3) by inserting after clause (ii) the following:

` (iii) DATA COMPILATION- The Secretary of Homeland Security shall compile data from all appropriate databases to determine the visa overstay rate for each country. Such databases shall include--

` (I) the Advanced Passenger Information System (APIS);

` (II) the Automated Fingerprint Identification System (IDENT);

` (III) the Central Index System (CIS);

` (IV) the Computer Linked Application Information Management Systems (CLAIMS);

` (V) the Deportable Alien Control System (DACS);

` (VI) the Integrated Automated Fingerprint Identification System (IAFIS);

` (VII) the Nonimmigrant Information System (NIIS);

` (VIII) the Reengineered Naturalization Applications Casework Systems (RNACS); and

` (IX) the Refugees, Asylum, and Parole System (RAPS).'; and

(4) by adding at the end the following:

` (v) ANNUAL REPORT- Not less frequently than once each fiscal year, the Secretary of Homeland Security shall submit to the Committee on Foreign Relations and the Committee on the Judiciary of the Senate and the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives a report describing the visa overstay rate for the previous fiscal year of each country designated as a program country under paragraph (1).'

END