

PROMOTING SECURE BORDERS AND OPEN DOORS
A National-Interest-Based Visa Policy for Students and Scholars

NAFSA: Association of International Educators

It is now recognized at the highest levels of government that America's strong interest in robust educational and scientific exchange is ill served by the visa system that is currently in place. This situation is not the result of ill will; no one is to blame. Every control instituted since 9/11 has seemed, in itself, to add a reasonable—even necessary—measure of protection. But in their totality, these controls are hindering international student and scholar access to the United States to an extent that itself threatens national security. Our current visa system maximizes neither our safety nor our long-term national interests in scientific exchange and in educating successive generations of world leaders—interests that the United States has recognized for more than half a century.

There are four problems: the absence of policy, of focus, of time guidelines, and of balance between resources and responsibilities.

In a policy vacuum, every control is a good one, and delay or denial is the safest course. The State Department's visa adjudicators require an operational policy that articulates not only our interest in control, but also our interest in openness, and that guides them in how to find this crucial balance. Responsibility for articulating such a policy lies with the Department of Homeland Security.

Far too many adjudicatory and investigative resources are wasted on routine reviews of low-risk applications. This not only frustrates and delays visa applicants unnecessarily; it also precludes the allocation of resources pursuant to risk analysis. The practice of across-the-board visa interviews has led to millions of 90-second interviews of dubious security value, which clog the system while precluding serious scrutiny where it is needed. The practice of sending virtually all visa applications in the sciences to Washington for security clearances ("Mantis" reviews) reverses the time-tested policy of requiring such clearances only when indicated by the identity of the applicant, the applicant's nationality, and the specific field of advanced science or technology in question; the number of clearances requested has increased from about 1,000 in 2000 to more than 20,000 in 2003. The requirement that every Arab and Muslim adult male undergo a Washington security check ("Condor" review) has created an additional flood of clearance requests. Low-risk frequent visitors, and those seeking re-entry after temporary travel abroad, are often required to run the same gauntlet every time they seek re-entry.

The "Mantis" and "Condor" clearance processes lack time guidelines and transparency. Bureaucrats are like the rest of us. They make decisions when forced to by a deadline. Absent a "clock," cases can languish without resolution, and the applicant has no recourse for determining the application's status.

Furthermore, these systems have been put in place without reference to whether or not resources exist to implement them. In no foreseeable circumstance will enough resources be available to effectively support visa processing as it is currently being done. Balancing resources and responsibilities is the essence of policy. Without this balance, our visa-processing system will be unable to serve the national interest in providing timely access for legitimate visitors.

We believe that our nation's leaders share our interest in fixing these problems. Following are our recommendations for doing so.

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Recommendations for a National-Interest-Based Visa Policy for Students and Scholars

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1. PROVIDE EFFECTIVE POLICY GUIDANCE.

- **Congress and the Department of Homeland Security must act to make “Secure Borders – Open Doors” the effective policy guidance for the Department of State.**

IMPLEMENTATION STATUS: There has not yet been a formal, joint statement by the Department of State (DOS) and the Department of Homeland Security (DHS) that clearly articulates visa policy—i.e., that would turn “Secure Borders, Open Doors” into operational policy.

2. FOCUS EFFORTS ON THOSE WHO REQUIRE SPECIAL SCREENING.

- **Give consulates discretion to grant waivers of personal appearance based on risk analysis, subject to State Department policy guidance and approval,** as recommended by the State Department Inspector General in December 2002.

IMPLEMENTATION STATUS: Under the terms of the 2004 Intelligence Reform Act, the Secretary of State no longer has the authority to implement this recommendation. However, DOS gives priority for personal interviews to students and scholars and has brought some measure of transparency to the interview process by posting online the wait times for individual consulates.

- **Refine controls on advanced science and technology.** In consultation with the scientific community, define the advanced science and technology to which access must be controlled, and empower consular officers to exercise discretion on non-sensitive applications where neither the applicant nor the applicant's country present concerns.

IMPLEMENTATION STATUS: NAFSA is unaware of any progress in returning the Technology Alert List (TAL) to its original intent of controlling access only to advanced technology (although it is difficult to know, given that the list is now classified). There is an inter-agency process, headed by the Department of Homeland Security, which will discuss, among other issues, the application of the TAL. DOS is also spending more time training incoming consular officers about the TAL, and is also providing additional training to officers in the field.

- **Avoid repetitive processing of those who temporarily leave the United States.** Institute a presumption that a security clearance is valid for duration of status or program, assuming no status violations. Any necessary reviews within this period should be fast-tracked.

IMPLEMENTATION STATUS: On February 11, 2005, DOS announced that Mantis clearance validity for international students (F visa) has been extended for up to the length of the approved academic program, to a maximum of four years, and for exchange visitors (J visa), temporary workers (H visa), and intracompany transferees (L visa), the clearance has been extended for the duration of their approved activity, to a maximum of two years.

- **Avoid repetitive processing of frequent visitors.** Establish a presumption of approval for those who have previously been granted U.S. visas and who have no status violations.

IMPLEMENTATION STATUS: No system has been put in place to avoid the repetitive processing of frequent, well known visitors. On June 15, 2005, DOS announced they had successfully negotiated with China to increase visa validity for Chinese students and exchange visitors coming to the United States. Effective June 20, 2005, visa validity will go from six months, multiple entries to 12 months, multiple entries.

- **Expedite processing and save consular resources by incorporating pre-screening or pre-certification of students and scholars.** This could be accomplished in many ways. Options include: (1) sending countries agreeing to pre-screen applicants in order to facilitate their citizens' entry into the U.S.; (2) sending universities providing identity verification under agreements executed with consulates; and (3) the State Department utilizing its own overseas advising centers to ensure that all necessary documents are in order prior to applications being sent on to the consulates.

IMPLEMENTATION STATUS: NAFSA has seen no movement on this recommendation.

3. CREATE A TIMELY, TRANSPARENT AND PREDICTABLE VISA PROCESS

- **The White House should institute standard guidelines for inter-agency reviews of visa applications:**
 - Establish a 15-day standard for responses to the State Department from other agencies in the inter-agency clearance process.
 - Implement a 30-day standard for the completion of the entire inter-agency review process, including the response to the consulate's security clearance request.
 - Flag for expedited processing any application not completed within 30 days, and advise the consulate of the delay and the estimated processing time remaining.
 - In the case of applications not completed within 30 days, the applicant, or the program to which the applicant seeks access, should be able to inquire about the application's status, and the estimated processing time remaining, via a call-in number or email inbox.
 - Establish a special review process to resolve any cases not decided within 60 days.

IMPLEMENTATION STATUS: DOS has streamlined this process by moving from a paper-based system to electronic transmission of clearance requests – meaning that clearance requests no longer get “lost” as they did in the previous system. DOS has also worked with the other agencies involved to speed up the time in which the overwhelming majority of these requests are processed. While there is still little transparency in the process for individuals whose clearances aren't processed within 30 days, DOS reports that the average processing time for Mantis cases is 14 days. DOS also reports that as of January 13, 2005, only 30 cases out of 18,000 are more than 30 days old.

- **Make ground rules predictable by imposing them prospectively,** not on those already in the application pipeline.

4. PROVIDE THE NECESSARY RESOURCES, AND MANAGE WITHIN THEM.

- Congress must act to bring the resources appropriated for the consular affairs function into line with the increased scrutiny of visa applications that Congress demands, and the State Department must manage within the available resources.
- Adequate resources must be provided to ensure the interoperability of data systems necessary for the efficient functioning of the inter-agency review process.

IMPLEMENTATION STATUS: Since 9/11, Congress has increased funding for consular officers. The Department of State advises NAFSA that they now have sufficient staff resources in place for current needs, noting that the Department has added 350 new consular Foreign Service positions since 2002. However, data systems remain inadequate.

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