

112TH CONGRESS
1ST SESSION

H. R. 959

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2011

Mr. QUIGLEY introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), 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 amend the Immigration and Nationality Act to modify the requirements of 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 “Secure Travel and
5 Counterterrorism Partnership Program Act of 2011”.

1 **SEC. 2. DEFINITIONS.**

2 (a) DEFINITIONS.—Section 217(c)(1) of the Immi-
3 gration and Nationality Act (8 U.S.C. 1187(c)(1)) is
4 amended to read as follows:

5 “(1) AUTHORITY TO DESIGNATE; DEFINI-
6 TIONS.—

7 “(A) AUTHORITY TO DESIGNATE.—The
8 Secretary of Homeland Security, in consultation
9 with the Secretary of State, may designate any
10 country as a program country if that country
11 meets the requirements under paragraph (2).

12 “(B) DEFINITIONS.—In this subsection:

13 “(i) APPROPRIATE CONGRESSIONAL
14 COMMITTEES.—The term ‘appropriate con-
15 gressional committees’ means—

16 “(I) the Committee on Foreign
17 Relations, the Committee on Home-
18 land Security and Governmental Af-
19 fairs, and the Committee on the Judi-
20 ciary of the Senate; and

21 “(II) the Committee on Foreign
22 Affairs, the Committee on Homeland
23 Security, and the Committee on the
24 Judiciary of the House of Representa-
25 tives.

1 “(ii) PROGRAM COUNTRY.—The term
2 ‘program country’ means a country des-
3 ignated as a program country under sub-
4 paragraph (A).

5 “(iii) VISA OVERSTAY RATE.—

6 “(I) IN GENERAL.—The term
7 ‘visa overstay rate’ means, with re-
8 spect to a country, the ratio of—

9 “(aa) the total number of
10 nationals of that country who
11 were admitted to the United
12 States on the basis of a non-
13 immigrant visa whose periods of
14 authorized stay ended during a
15 fiscal year but who remained un-
16 lawfully in the United States be-
17 yond such periods; to

18 “(bb) the total number of
19 nationals of that country who
20 were admitted to the United
21 States on the basis of a non-
22 immigrant visa during that fiscal
23 year.

24 “(iv) COMPUTATION OF VISA OVER-
25 STAY RATE.—In determining the visa over-

1 stay rate for a country the Secretary of
2 Homeland Security—

3 “(I) shall utilize information
4 from all available databases to ensure
5 the accuracy of such rate; and

6 “(II) shall not include any visa
7 overstay which incorporates any pro-
8 cedures based on, or are otherwise
9 based on, race, sex, or disability, un-
10 less otherwise specifically authorized
11 by law or regulation.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
13 Section 217(c) of the Immigration and Nationality Act (8
14 U.S.C. 1187(c)) is amended as follows:

15 (1) In paragraph (2)(C)—

16 (A) in the matter preceding clause (i), by
17 striking “Attorney General,” and inserting
18 “Secretary of Homeland Security,”; and

19 (B) in clause (iii), by striking “Committee
20 on the Judiciary and the Committee on Inter-
21 national Relations of the House of Representa-
22 tives and the Committee on the Judiciary and
23 the Committee on Foreign Relations of the Sen-
24 ate” and inserting “appropriate congressional
25 committees”.

1 (2) In paragraph (5)(A)(i)(III), by striking
2 “the Committee on the Judiciary, the Committee on
3 Foreign Affairs, and the Committee on Homeland
4 Security, of the House of Representatives and the
5 Committee on the Judiciary, the Committee on For-
6 eign Relations, and the Committee on Homeland Se-
7 curity and Governmental Affairs of the Senate” and
8 inserting “appropriate congressional committees”.

9 (3) In paragraph (7)—

10 (A) in subparagraph (D), by striking “At-
11 torney General” both places that term appears
12 and inserting “Secretary of Homeland Secu-
13 rity”; and

14 (B) by striking subparagraph (E).

15 **SEC. 3. DESIGNATION OF PROGRAM COUNTRIES BASED ON**
16 **VISA OVERSTAY RATES.**

17 (a) IN GENERAL.—Section 217(c)(2)(A) of the Immi-
18 gration and Nationality Act (8 U.S.C. 1187(c)(2)(A)) is
19 amended to read as follows:

20 “(A) LOW NONIMMIGRANT VISA OVERSTAY
21 RATE.—The visa overstay rate for that country
22 was not more than 3 percent during the pre-
23 vious fiscal year.”.

1 (b) QUALIFICATION CRITERIA.—Section 217(c)(3) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1187(c)(3)) is amended to read as follows:

4 “(3) QUALIFICATION CRITERIA.—For each fis-
5 cal year after the initial period, a country may not
6 be designated as a program country unless require-
7 ments of paragraph (2)(A) are met.”.

8 (c) JUDICIAL REVIEW.—Section 217(c)(6) of the Im-
9 migration and Nationality Act (8 U.S.C. 1187(c)(6)) is
10 amended to read as follows:

11 “(6) INAPPLICABILITY OF JUDICIAL REVIEW.—
12 No court shall have jurisdiction to review the denial
13 of admission to the United States of any alien by the
14 Secretary of Homeland Security, the Secretary’s
15 computation of a visa overstay rate, or the designa-
16 tion or nondesignation of a country as a program
17 country.”.

18 (d) REPORTING REQUIREMENTS.—Section 217(c)(7)
19 of the Immigration and Nationality Act (8 U.S.C.
20 1187(c)(7)), as amended by section 2(b)(3), is further
21 amended—

22 (1) in the heading, by striking “VISA WAIVER
23 INFORMATION.—” and inserting “REPORTING RE-
24 QUIREMENT.—”;

25 (2) by striking subparagraph (A);

1 (3) by redesignating subparagraphs (B), (C),
2 and (D) as subparagraphs (A), (B), and (C), respec-
3 tively;

4 (4) in subparagraph (A), as so redesignated—

5 (A) in the heading, by striking “REPORT-
6 ING REQUIREMENT.—” and inserting “IN GEN-
7 ERAL.—”;

8 (B) in clause (iii), by striking “were re-
9 fused” and inserting “overstayed”;

10 (C) in clause (iv)—

11 (i) by striking “who were refused”
12 and inserting “who overstayed”; and

13 (ii) by striking “refused; and” and in-
14 serting “issued.”; and

15 (D) by striking clause (v);

16 (5) in subparagraph (B), as so redesignated, by
17 striking “subparagraph (B)” and inserting “sub-
18 paragraph (A)”;

19 (6) in subparagraph (C), as so redesignated, by
20 striking “subparagraph (B)” and inserting “sub-
21 paragraph (A)”.

22 (e) WAIVER AUTHORITY.—Section 217(e)(8) of the
23 Immigration and Nationality Act (8 U.S.C. 1187(e)(8))
24 is amended to read as follows:

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

5 “(A) the country meets all security re-
6 quirements of this section;

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

14 “(C) the country cooperated with the Gov-
15 ernment of the United States on counterter-
16 rorism initiatives, information sharing, and pre-
17 venting terrorist travel before the date of its
18 designation as a program country, and the Sec-
19 retary of Homeland Security and the Secretary
20 of State determine that such cooperation will
21 continue.”.

22 **SEC. 4. TERMINATION OF DESIGNATION; PROBATION.**

23 Section 217(f) of the Immigration and Nationality
24 Act (8 U.S.C. 1187(f)) is amended to read as follows:

25 “(f) TERMINATION OF DESIGNATION; PROBATION.—

1 “(1) DEFINITIONS.—In this subsection:

2 “(A) PROBATIONARY COUNTRY.—The term
3 ‘probationary country’ means a program coun-
4 try placed in probationary status under para-
5 graph (2)(B).

6 “(B) PROBATIONARY PERIOD.—The term
7 ‘probationary period’ means the fiscal year in
8 which a probationary country is placed in pro-
9 bationary status under paragraph (2)(B).

10 “(C) PROGRAM COUNTRY.—The term ‘pro-
11 gram country’ has the meaning given that term
12 in subsection (c)(1)(B).

13 “(D) VISA OVERSTAY RATE.—The term
14 ‘visa overstay rate’ has the meaning given that
15 term in subsection (c)(1)(B).

16 “(2) DETERMINATION AND NOTICE OF DIS-
17 QUALIFICATION.—

18 “(A) DETERMINATION.—Upon a deter-
19 mination by the Secretary of Homeland Secu-
20 rity that a program country’s visa overstay rate
21 was more than 3 percent for the preceding fis-
22 cal year or that the program country is not in
23 compliance with all other program requirements
24 under subsection (c)(2), the Secretary shall no-
25 tify the Secretary of State.

1 “(B) PROBATIONARY STATUS.—If the Sec-
2 retary of Homeland Security makes a deter-
3 mination under subparagraph (A) for a pro-
4 gram country, the Secretary of Homeland Secu-
5 rity shall place the program country in proba-
6 tionary status for the fiscal year following the
7 fiscal year for which such determination was
8 made.

9 “(3) ACTIONS AT TERMINATION OF THE PROBA-
10 TIONARY PERIOD.—At the end of the probationary
11 period of a probationary country, the Secretary of
12 Homeland Security shall take one of the following
13 actions:

14 “(A) COMPLIANCE DURING PROBATIONARY
15 PERIOD.—The Secretary shall redesignate the
16 probationary country as a program country if
17 the Secretary determines that during the proba-
18 tionary period the probationary country—

19 “(i) had a visa overstay rate not more
20 than 3 percent; and

21 “(ii) was in compliance with all other
22 program requirements under subsection
23 (c)(2).

24 “(B) COMPLIANCE WITH VISA OVERSTAY
25 RATE.—The Secretary may redesignate the pro-

1 probationary country as a program country if the
2 Secretary determines that during the proba-
3 tionary period the probationary country had a
4 visa overstay rate of not more than 3 percent.

5 “(C) NONCOMPLIANCE WITH VISA OVER-
6 STAY RATE.—

7 “(i) IN GENERAL.—Subject to clause
8 (ii), the Secretary shall terminate the pro-
9 bationary country’s participation in the
10 program if the Secretary determines that
11 during the probationary period the proba-
12 tionary country had a visa overstay rate of
13 more than 3 percent.

14 “(ii) ADDITIONAL PROBATIONARY PE-
15 RIOD.—The Secretary may waive the appli-
16 cation of clause (i) for the probationary
17 country if the Secretary, in consultation
18 with the Director of National Intelligence,
19 certifies that the probationary country’s
20 continued participation in the program
21 does not pose a threat to law enforcement,
22 security, or enforcement of immigration
23 laws, and place the country in probationary
24 status for one additional fiscal year.

1 “(4) ACTIONS AT THE END OF ADDITIONAL
2 PROBATIONARY PERIOD.—At the end of the addi-
3 tional 1-year period of probation granted to a proba-
4 tionary country pursuant to subparagraph (C)(ii),
5 the Secretary shall take one of the following actions:

6 “(A) COMPLIANCE DURING ADDITIONAL
7 PERIOD.—The Secretary shall redesignate the
8 probationary country as a program country if
9 the Secretary determines that during such addi-
10 tional period the probationary country had a
11 visa overstay rate not more than 3 percent.

12 “(B) NONCOMPLIANCE DURING ADDI-
13 TIONAL PERIOD.—The Secretary shall termi-
14 nate the probationary country’s participation in
15 the program if the Secretary determines that
16 during such additional period the probationary
17 country had a visa overstay rate of more than
18 3 percent.

19 “(5) EFFECTIVE DATE.—The termination of a
20 country’s participation in the program under para-
21 graph (3) or (4) shall take effect on the first day of
22 the first fiscal year following the fiscal year in which
23 the Secretary determines that such participation
24 shall be terminated. Until such date, nationals of the

1 country shall remain eligible for a waiver under sub-
2 section (a).

3 “(6) NONAPPLICABILITY OF CERTAIN PROVI-
4 SIONS.—Paragraphs (3) and (4) shall not apply to
5 a program country unless the total number of na-
6 tionals of the program country that entered the
7 United States during the prior fiscal year exceeds
8 100.

9 “(7) EMERGENCY TERMINATION.—

10 “(A) IN GENERAL.—In the case of a pro-
11 gram country in which an emergency occurs
12 that the Secretary of Homeland Security, in
13 consultation with the Secretary of State, deter-
14 mines threatens the law enforcement or security
15 interests of the United States (including the in-
16 terest in enforcement of the immigration laws
17 of the United States), the Secretary of Home-
18 land Security shall immediately terminate the
19 designation of the country as a program coun-
20 try.

21 “(B) EMERGENCY DEFINED.—In this
22 paragraph, the term ‘emergency’ means—

23 “(i) the overthrow of a democratically
24 elected government in the program coun-
25 try;

1 “(ii) war (including undeclared war,
2 civil war, or other military activity) on the
3 territory of the program country;

4 “(iii) a severe breakdown in law and
5 order affecting a significant portion of the
6 program country’s territory;

7 “(iv) a severe economic collapse in the
8 program country; or

9 “(v) any other extraordinary event in
10 the program country that threatens the
11 law enforcement or security interests of the
12 United States (including the interest in en-
13 forcement of the immigration laws of the
14 United States) and where the country’s
15 participation in the program could con-
16 tribute to that threat.

17 “(C) REDESIGNATION.—The Secretary of
18 Homeland Security may redesignate the coun-
19 try as a program country, without regard to
20 paragraph (3) or (4) or subsection (c)(2), if the
21 Secretary, in consultation with the Secretary of
22 State, determines that—

23 “(i) at least 6 months have elapsed
24 since the effective date of the emergency
25 termination under subparagraph (A);

1 “(ii) the emergency that caused the
2 termination has ended; and

3 “(iii) the average visa overstay rate
4 for that country during the period of ter-
5 mination under this subparagraph was not
6 more than 3 percent.

7 “(D) PROGRAM SUSPENSION AUTHOR-
8 ITY.—The Director of National Intelligence
9 shall immediately inform the Secretary of
10 Homeland Security of any current and credible
11 threat which poses an imminent danger to the
12 United States or its citizens and originates
13 from a country participating in the visa waiver
14 program. Upon receiving such notification, the
15 Secretary, in consultation with the Secretary of
16 State—

17 “(i) may suspend a program country
18 from the visa waiver program without prior
19 notice;

20 “(ii) shall notify any country sus-
21 pended under clause (i) and, to the extent
22 practicable without disclosing sensitive in-
23 telligence sources and methods, provide
24 justification for the suspension; and

1 “(iii) shall restore the suspended
2 country’s participation in the visa waiver
3 program upon a determination that the
4 threat no longer poses an imminent danger
5 to the United States or its citizens.

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

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

14 “(B) a waiver under this section that is
15 provided to such a national for a period de-
16 scribed in subsection (a)(1) shall not, by such
17 termination, be deemed to have been rescinded
18 or otherwise rendered invalid, if the waiver is
19 granted prior to such termination.”.

20 **SEC. 5. REVIEW OF OVERSTAY TRACKING METHODOLOGY.**

21 Not later than 180 days after the date of the enact-
22 ment of this Act, the Comptroller General of the United
23 States shall conduct a review of the methods used by the
24 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.

○