United States General Accounting Office

GAO

Report to Congressional Requesters

June 2003

BORDER SECURITY

New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process

GAO-03-798

June 2003

BORDER SECURITY

New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process

GAO Accountability • Integrity • Reliability

Highlights

Highlights of GAO-03-798, a report to the Subcommittee on National Security, Emerging Threats, and International Relations, House Committee on Government Reform, and the Senate Committee on Finance

Why GAO Did This Study

The National Strategy for Homeland Security calls for preventing the entry of foreign terrorists into our country and using all legal means to identify; halt; and, where appropriate, prosecute or bring immigration or other civil charges against terrorists in the United States. GAO reported in October 2002 that the Department of State had revoked visas of certain persons after it learned they might be suspected terrorists, raising concerns that some of these individuals may have entered the United States before or after State's action. Congressional requesters asked GAO to (1) identify the policies and procedures of State, the Immigration and Naturalization Service (INS), and the Federal Bureau of Investigation (FBI) that govern their respective visa revocation actions and (2) determine the effectiveness of the process.

What GAO Recommends

GAO makes recommendations to the Department of Homeland Security, in conjunction with the Departments of State and Justice, to ensure that when State revokes a visa because of terrorism concerns, the appropriate units within State, INS, and the FBI are notified immediately and that proper actions are taken. Homeland Security agreed that the visa revocation process needed to be strengthened. State and Justice did not comment on our recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-03-798.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Jess T. Ford at (202) 512-4128 or fordj@gao.gov.

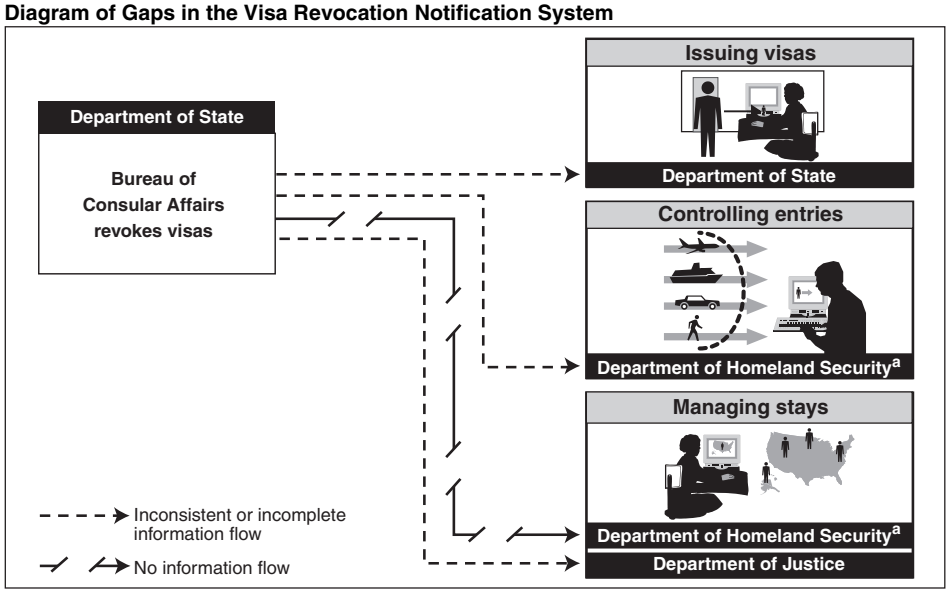
What GAO Found

The U.S. government has no specific written policy on the use of visa revocations as an antiterrorism tool and no written procedures to guide State in notifying the relevant agencies of visa revocations on terrorism grounds. Further, State, INS, and the FBI do not have written internal procedures for notifying their appropriate personnel to take specific actions on visas revoked by the State Department. State and INS officials said they use the revocation process to prevent suspected terrorists from entering the country, but none of the agencies has a policy that covers investigating, locating, and taking action when a visa holder has already entered.

This lack of formal written policies and procedures has contributed to systemic weaknesses in the visa revocation process that increase the possibility of a suspected terrorist entering or remaining in the United States. In our review of 240 visa revocations, we found that

- appropriate units within INS and the FBI did not always receive notifications of all the revocations;
- names were not consistently posted to the agencies' watch lists of suspected terrorists;
- 30 individuals whose visas were revoked on terrorism grounds had entered the United States either before or after revocation and may still remain; and
- INS and the FBI were not routinely taking actions to investigate, locate, or resolve the cases of individuals who remained in the United States after their visas were revoked.

Diagram of Gaps in the Visa Revocation Notification System



Sources: GAO and Art Explosion.

[a] On March 1, 2003, INS's various functions transferred to the Department of Homeland Security.

Contents

Letter

1

Results in Brief 3
Background 6
Visa Revocation Policies and Procedures 9
Weaknesses Existed in the Visa Revocation Process 15
Conclusions 26
Recommendations for Executive Action 27
Agency Comments and Our Evaluation 27

Appendixes

Appendix I: Scope and Methodology 30

Appendix II: Legal Process for Visa Revocations 33
Authority to Revoke Visas 33
Timing and Effect of Visa Revocations 33
The Legal Process for Removing an Alien Who Is Already in the Country 35

Appendix III: Detailed Information on Revoked Visas 37

Appendix IV: Example of a Revocation Cable the Department of State Sent to the INS and the FBI 40

Appendix V: Sample of a Revocation Certificate the Department of State Sent to the Immigration and Naturalization Service Lookout Unit 42

Appendix VI: Comments from the Department of Homeland Security 43

Appendix VII: Comments from the Department of State 44
GAO Comments 48

Tables

Table 1: Number of Individuals Whose Visas Were Revoked on Terrorism Grounds, by Region and Nationality (Sept. 11, 2001, through Dec. 31, 2002) 37
Table 2: Number of Visa Revocations, by Class and Type of Visa Revoked 39

Figures

Figure 1: Overview of the Border Security Process for Controlling Entries and Visits of Foreign Visitors 7

Figure 2: Diagram of Visa Revocation Notification System That, If Fully and Consistently Implemented, Would Provide Information to the Appropriate Units at State, Homeland Security, and the FBI 14
Figure 3: Diagram of Gaps in the Visa Revocation Notification System 17
Figure 4: INS Lookout Unit Receipt of Revocation Notification for 240 Cases 19

Abbreviations

CLASS	Consular Lookout and Support System
FBI	Federal Bureau of Investigation
IBIS	Interagency Border Inspection System
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
NIIS	Nonimmigrant Information System
VGTOF	Violent Gang and Terrorist Organization File

This is a work of the U.S. Government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. It may contain copyrighted graphics, images or other materials. Permission from the copyright holder may be necessary should you wish to reproduce copyrighted materials separately from GAO's product.

United States General Accounting Office
Washington, D.C. 20548

June 18, 2003

The Honorable Christopher Shays
Chairman, Subcommittee on National Security,
Emerging Threats, and International Relations
Committee on Government Reform
House of Representatives

The Honorable Charles E. Grassley
Chairman, Committee on Finance
United States Senate

As stated in the President's National Strategy for Homeland Security,[1] the U.S. government has no more important mission than protecting the homeland from future terrorist attacks. The strategy calls for preventing the entry of foreign terrorists into our country and using all legal means to identify; halt; and, where appropriate, prosecute or bring immigration or other civil charges against terrorists in the United States. In October 2002,[2] we reported that the visa process should be strengthened as an antiterrorism tool. We found that the Department of State had revoked the visas[3] of certain persons as a precautionary measure after it learned that they might be suspected terrorists, raising concerns that some of these individuals may have entered the United States before or after their visas were revoked.

[1]Office of Homeland Security, *National Strategy for Homeland Security* (Washington, D.C.: July 2002).

[2]U.S. General Accounting Office, *Border Security: Visa Process Should be Strengthened as an Antiterrorism Tool*, GAO-03-132NI (Washington, D.C.: Oct. 21, 2002).

[3]In this report, we use the term "visa" to refer to nonimmigrant visas only. The United States also grants visas to people who intend to immigrate to the United States. A visa is a travel document that allows a foreign visitor to present himself or herself at a port of entry for admission to the United States. Citizens of 27 countries that participate in the Visa Waiver Program, Canada, and certain other locations are not required to obtain visas for business or pleasure stays of short duration. See GAO-03-132NI for more information on the visa adjudication process and U.S. General Accounting Office, *Border Security: Implications of Eliminating the Visa Waiver Program*, GAO-03-38 (Washington, D.C.: Nov. 22, 2002), for more information on the Visa Waiver Program.

At your request, we assessed how the visa revocation process is being used as an antiterrorism tool. Specifically, we (1) determined the policies and procedures of the State Department, the Immigration and Naturalization Service (INS),[4] and the Federal Bureau of Investigation (FBI) that govern their respective actions in the visa revocation process and (2) assessed the effectiveness of the visa revocation process, specifically (a) the steps State took to notify the appropriate units within INS and the FBI of revocations; (b) the procedures used by the three agencies to post lookouts on these revocations to their terrorist watch lists;[5] (c) whether any of the individuals whose visas had been revoked were able to enter the United States before or after the revocation; and (d) the actions taken by INS and the FBI to investigate; locate; and, where appropriate, clear, remove, or prosecute the individuals who did enter the United States and may still remain in the country after their visas had been revoked. Our review covered only visas that the State Department revoked on terrorism grounds from September 11, 2001, through December 31, 2002.[6]

To identify the policies and procedures governing the visa revocation process, we interviewed officials from State, INS, and the FBI and reviewed relevant documents. To evaluate the effectiveness of the visa revocation process, we reviewed all 240 of State's visa revocations on terrorism grounds from September 11, 2001, through December 31, 2002. For each of these cases, we obtained information from the State Department to determine if, and when, State notified INS and the FBI of the revocations. We also obtained information from these agencies to determine if, and when, they posted appropriate lookouts on their terrorist watch lists. We

[4]On March 1, 2003, INS became part of three units within the Department of Homeland Security. INS inspection functions transferred to the Bureau of Customs and Border Protection; its investigative and enforcement functions transferred to the Bureau of Immigration and Customs Enforcement; and its immigration services function became part of the Bureau of Citizenship and Immigration Services. Because our work focused on visa revocation cases that took place before the March 1 reorganization, our report refers to the U.S. government's immigration agency as "INS."

[5]These watch lists are automated databases that contain information about individuals who are known or suspected terrorists so that these individuals can be prevented from entering the country, apprehended while in the country, or apprehended as they attempt to exit the country. Specific entries on watch lists are sometimes referred to as "lookouts."

[6]The State Department also revokes visas for reasons other than terrorism, such as alien smuggling, drug trafficking, and misrepresentation. State Department officials told us that visas revoked on terrorism grounds represent a significant portion of all revoked visas, but they did not have data available on this matter.

reviewed INS arrival and departure data to assess whether any of the individuals whose visas had been revoked had entered the United States either before or after revocation and whether they may still remain in the country. Where available, we supplemented the INS data with information from the State Department. We interviewed INS, FBI, and Department of Justice officials to discuss what actions INS and the FBI had taken to investigate; locate; and, where appropriate, clear, remove, or prosecute those individuals who may remain in the United States. Appendix I provides more information on our scope and methodology, including the limitations to INS and State data that we reviewed.

Results in Brief

Our analysis indicates that the U.S. government has no specific written policy on the use of visa revocations as an antiterrorism tool and no written procedures to guide State in notifying the relevant agencies of visa revocations on terrorism grounds. State and INS have written procedures that guide some types of visa revocations; however, neither they nor the FBI have written internal procedures for notifying their appropriate personnel to take specific actions on visas revoked by the State Department. State and INS officials could articulate their informal policies and procedures for how and for what purpose their agencies have used the process to keep terrorists out of the United States, but neither they nor FBI officials had policies or procedures that covered investigating, locating, and taking appropriate action in cases where the visa holder had already entered the country.

The lack of formal, written policies and procedures may have contributed to systemic weaknesses in the visa revocation process that increase the probability of a suspected terrorist entering or remaining in the United States. In our review of the 240 visa revocations, we found that (a) appropriate units within INS and the FBI did not always receive notification of the revocations; (b) lookouts were not consistently posted to the agencies' watch lists of suspected terrorists; (c) 30 individuals whose visas were revoked on terrorism grounds entered the United States either before or after revocation and may still remain in the country;[7] and (d) INS and the FBI were not routinely taking actions to investigate,[8] locate, or resolve the cases of individuals who remained in the United States after their visas were revoked. For instance:

- In a number of cases, notification between State and the appropriate units within INS and the FBI did not take place or was not completed in a timely manner.[9] For example, INS officials said they did not receive any notice of the revocations from State in 43 of the 240 cases. In another 47 cases, the INS Lookout Unit received the revocation notice only via a cable, State's backup method of notification. However, these cables took, on average, 12 days to reach the Lookout Unit. Although State generally sent information cables to the FBI's main communications center to notify it of the revocations, FBI officials could not provide us with evidence that the communications center sent these cables to the appropriate counterterrorism units.

[7]This number is based on our analysis of data we received from INS as of May 19, 2003. On May 20 and 21, INS and the FBI, respectively, provided additional information related to this matter. We were not able to complete anlaysis of the data prior to the release of this report due to the nature and volume of the data. The data could show that the actual number of persons is higher or lower than 30.

[8]*The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations* provide for graduated levels of investigative activity by the FBI, allowing the bureau to act well in advance of the commission of planned terrorist acts or other federal crimes. The three levels of investigative activity defined in the guidelines are (1) the prompt and extremely limited checking of initial leads, (2) preliminary inquiries, and (3) full investigations. In this report, we are not prescribing which level of investigative activity is appropriate for persons with revoked visas who may be in the United States.

[9]We found no evidence of written procedures that define timeliness, but State officials told us that they try to send notification to the Lookout Unit the same day the revocation certificate is signed.

- In cases where the INS Lookout Unit could document that it received a notification, it generally posted information on these revocations in its lookout database within 1 day of receiving the notice. When the Lookout Unit did not receive notification, it could not post information on these individuals in its lookout database, precluding INS inspectors at ports of entry from knowing that these individuals had had their visas revoked. Moreover, the State Department neglected to enter the revocation action for 64 of the 240 cases into its own watch list. As a result, these individuals could apply at an overseas post for a new visa, and consular officers would not necessarily know that their previous visas had been revoked for terrorism concerns. FBI officials in mid-May 2003 had not determined whether the agency's Terrorist Watch and Warning Unit had received any notice of visa revocations.

- Twenty-nine individuals entered the United States before their visas were revoked and may still remain in the country. INS inspectors admitted at least 4 other people after the visa revocation, 1 of whom may still remain in the country. However, INS inspectors prevented at least 14 others from entering the country because the INS watch list included information on the revocation action or had another lookout on them.

- INS and the FBI did not routinely attempt to investigate or locate any of the individuals who entered the United States either before or after their visas were revoked and who may still remain in the country. Due to congressional interest in specific cases, INS investigators located 4 individuals in the United States; however, they did not attempt to locate other revoked visa holders who may have entered the country. INS officials told us that they generally do not investigate these cases because it would be challenging to remove these individuals unless they were in violation of their immigration status even if the agency could locate them. A visa revocation by itself is not a stated grounds for removal under the Immigration and Nationality Act (INA).[10] FBI officials told us that they were not being alerted by State that persons with revoked visas could be "possible terrorists." As a result, the FBI did not

[10] 8 U.S.C. § 1101 et seq. The 1952 Immigration and Nationality Act has been amended several times, more recently by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (P.L. 107-56), the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173), and the Homeland Security Act of 2002 (P.L. 107-296).

routinely attempt to investigate and locate individuals with revoked visas who may have entered the United States.

On March 1, 2003, the Secretary of Homeland Security became responsible for issuing regulations and administering and enforcing provisions of U.S. immigration law relating to visa issuance.[11] Therefore, we are making recommendations to the Secretary of Homeland Security, in conjunction with the Secretary of State and the Attorney General, to ensure that when State revokes a visa because of terrorism concerns, the appropriate units within State, Homeland Security, and the FBI are notified immediately and that the appropriate actions are taken. We provided a draft of this report to the Departments of Homeland Security, State, and Justice for their comment. Homeland Security agreed that the visa revocation process should be strengthened as an antiterrorism tool and said that it looked forward to working with State and Justice to develop and revise current policies and procedures that affect the interagency visa revocation process. State and Justice did not comment on our recommendations.

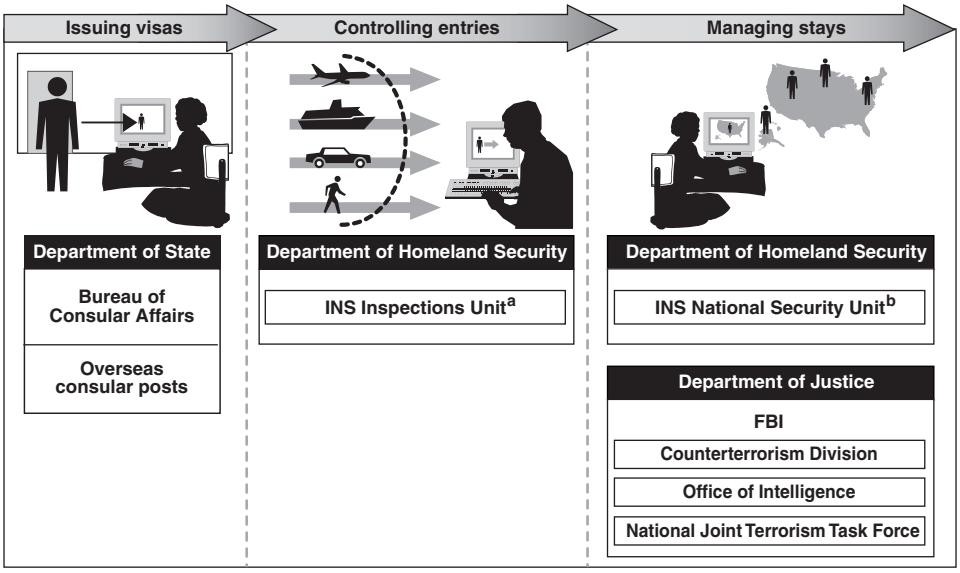
Background

Our nation's border security process for controlling the entry and visits of foreign visitors[12] consists of three primary functions: (1) issuing visas; (2) controlling entries through inspection of passports, visas, and other travel documents as well as controlling exits; and (3) managing stays of foreign visitors—that is, monitoring these individuals while they are in the country. As shown in figure 1, the Departments of State, Homeland Security, and Justice play key roles in this process.

[11]See section 428 of the Homeland Security Act of 2002.

[12]For purposes of this report, we define the term "foreign visitors" to mean nonimmigrant visa holders.

Figure 1: Overview of the Border Security Process for Controlling Entries and Visits of Foreign Visitors



Sources: GAO and Art Explosion.

[a]Now within the Bureau of Customs and Border Protection.

[b]Now within the Bureau of Immigration and Customs Enforcement.

The border security process begins at the State Department's overseas consular posts, where consular officers adjudicate visa applications for foreign nationals who wish to temporarily enter the United States for visits related to business, tourism, or other reasons. At the port of entry, an INS inspector determines whether the visa holder is admitted to the United States and, if so, how long he or she may remain in the country. Until recently, after INS successfully screened and admitted foreign visitors, these individuals were generally not monitored unless they came under the scrutiny of INS or a law enforcement agency, such as the FBI, for suspected immigration violations or other illegal activity.[13]

[13]The U.S. government has initiated a number of programs to register and monitor some categories of nonimmigrants—including foreign students and exchange visitors, as well as certain citizens of selected countries—during their visits to the United States.

On March 1, 2003, the Department of Homeland Security assumed responsibility for many elements of the border security process. For example, the new department incorporated the INS Inspections Unit into its Bureau of Customs and Border Protection, which will focus its operations on the movement of goods and people across U.S. borders. It also folded the INS National Security Unit into its Bureau of Immigration and Customs Enforcement, which is designed to enforce the full range of immigration and customs laws within the United States. According to Department of Homeland Security officials, the new department also gained broad authority over the visa process under section 428 of the Homeland Security Act, covering the development of policies, regulations, procedures, and any other guidance that may affect visa issuance or revocation.[14] The State Department remains responsible for managing the consular corps and the function of issuing visas.

The FBI's Counterterrorism Division, within the Justice Department, plays a key role in the border security process. The division includes the Foreign Terrorist Tracking Task Force, which is now part of the FBI's Office of Intelligence. The mission of the task force, an interagency group, is to (1) deny entry into the United States of aliens associated with, suspected of being engaged in, or supporting terrorist activity and (2) aid in supplying information to locate, detain, prosecute, or deport any such aliens already present in the United States. The National Joint Terrorism Task Force is comprised of 36 federal agencies co-located in the Strategic Information and Operations Center at FBI headquarters. This task force provides a central fusion point for terrorism information and intelligence to the 66 Joint Terrorism Task Forces, which include state and local law enforcement officers, federal agents, and other federal personnel who work in the field to prevent and investigate acts of terrorism.

[14]According to Department of Homeland Security officials, the Departments of State and Homeland Security are negotiating a memorandum of understanding to address the scope of this authority and the manner in which the two agencies will coordinate visa issuance.

At each stage of the process, the responsible departments and agencies rely on terrorist or criminal watch list systems—sometimes referred to as tip-off or lookout systems—in fulfilling their respective border security missions. For example, State relies on its Consular Lookout and Support System (CLASS) as the primary basis for identifying potential terrorists among visa applicants. CLASS incorporates information on suspected terrorists from State's interagency terrorist watch list, known as TIPOFF, as well as from the FBI, INS, and many other agencies. Further, INS inspectors at ports of entry use the Interagency Border Inspection System (IBIS) to check whether foreign nationals are inadmissible and should be denied entry into the United States. When a person enters the United States by air or by sea, INS inspectors are required to check that person against watch lists before the person is allowed to enter the country. INS inspectors may check persons arriving at land borders against the watch lists, but they are not required to do so.[15] The exception is for males aged 16 or over from certain countries who are required to be checked.

Visa Revocation Policies and Procedures

Our analysis indicates that the U.S. government has no specific written policy on the use of visa revocations as an antiterrorism tool and no written procedures to guide State in notifying the relevant agencies of visa revocations on terrorism grounds. State and INS have written procedures that guide some types of visa revocations; however, neither they nor the FBI have written internal procedures for notifying their appropriate personnel to take specific actions on visas revoked by the State Department. State and INS officials could articulate their informal policies and procedures for how and what purpose their agencies have used the process as an antiterrorism tool to keep terrorists out of the United States, but neither they nor FBI officials had policies or procedures that covered investigating, locating, and taking appropriate action in cases where the visa holder had already entered the country. We summarized how information on visa revocations would ideally flow among and within these three agencies on the basis of our interviews with officials from State, Homeland Security, and the FBI and on our analysis of the current visa revocation process.

[15]For more information on the overall border security process and the associated terrorist watch lists, see U.S. General Accounting Office, *Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing*, GAO-03-322 (Washington, D.C.: Apr. 15, 2003).

Most Policies Are Informal

According to State Department officials, the U.S. government has no specific written policy on how agencies should use visa revocations as an antiterrorism tool and no written procedures to guide the interagency process for revoking visas on terrorism or other grounds. These officials explained that prior to September 11, 2001, State revoked only a small number of visas for terrorism-related reasons. This relatively small number resulted in State and INS operating in an informal manner when cooperating on denying admission to revoked visa holders at ports of entry. State officials said that State and Justice had agreed to informal notification procedures between the two agencies and had crafted language for the visa revocation certificates several years ago; however, the two agencies did not develop formal written procedures. These officials said that State did not coordinate its visa revocations with the FBI. In commenting on a draft of this report, State said that the Visa Office generally worked under the impression that, under long-standing practice, INS was passing relevant information onto the FBI as appropriate.

State and INS officials articulated their agencies' policies on how revocations help their agencies prevent suspected terrorists from entering the United States. State officials told us that they envision the revocation process as taking place before the visa holder enters the country. This would allow State and other agencies more time to investigate and determine whether a suspected terrorist is in fact ineligible for a visa on terrorism grounds before allowing the visa holder to enter the country. As these officials explained, since the September 11 attacks, State's Bureau of Consular Affairs has been receiving a large volume of information on suspected terrorists from the intelligence community, law enforcement agencies, overseas posts, and other units within State. The department reviews this information to determine if a suspected terrorist has a U.S. visa. If the identifying information is incomplete, as is often the case, State may have difficulty in determining whether a visa holder with the same or a similar name as a suspected terrorist is in fact the suspected terrorist. The department may also lack sufficient proof of a specific act that would render the suspected terrorist ineligible for a visa, as required by the INA.[16]

[16]The Departments of State and Justice hold different views on whether evidence of a specific act of terrorism is required before a visa can be denied under the INA's terrorism provision (GAO-03-132NI). In July 2002, an Associate Deputy Attorney General told us that (1) the State Department applies too high a standard of evidence to deny a visa under that provision and (2) name checks provide sufficient evidence to deny a visa to applicants. According to Homeland Security officials, this dispute between the two departments had not been resolved as of June 2003.

In these cases, State would revoke the person's visa under the Secretary of State's discretionary authority, requiring the person to reapply for a visa if he or she still intended to visit the United States. State would then use the visa issuance process to obtain additional biographic and other data on the visa applicant and make a determination on the person's eligibility.

INS officials viewed the process as a means of notifying INS inspectors to deny suspected terrorists entry into the United States. These officials did not view a visa revocation, even if based on terrorism concerns, as a reason for investigating someone who had already entered the United States. They said the INA does not specify visa revocation as a reason for removing a person from the country. (App. II provides more information on legal issues associated with visa revocations.)

According to Justice and FBI officials, the FBI does not yet have a policy on how to use the visa revocation process in its counterterrorism efforts. The FBI has not developed such a policy because the visa revocation information State sends to the bureau does not indicate that the FBI may want to take follow-up action in these cases. For instance, the notice of visa revocation does not explicitly state that the reason for revocation is terrorism-related.

State and INS had written policies that covered some aspects of visa revocations. State's policies and procedures, contained in the *Foreign Affairs Manual*, specify when and for what reason a consular officer may or may not revoke a visa, including for terrorism-related reasons. The manual instructs consular officers to obtain a security advisory opinion from the department before determining that a visa holder is ineligible for a visa on terrorism grounds. In practice, according to State officials, this means that department officials at headquarters acting under the authority of the Secretary of State—not the consular officers at overseas posts—revoke visas on the basis of terrorism concerns. State Department officials told us that they follow specific, but unwritten, operating procedures when the department revokes visas, as described in more detail later in this report. INS has some general policies related to the posting of lookouts for inadmissible aliens and for the revocation of visas by immigration officers at ports of entry. However, these policies do not call for specific actions by appropriate INS personnel with regard to visas revoked by the State Department.

How the Visa Revocation Process Should Work

Since the September 11, 2001, terrorist attacks, State has constantly received new information on suspected terrorists from the intelligence community, law enforcement agencies, and overseas posts. In some cases, State received this information after it had already issued visas to the individuals in question; the department would then revoke these visas. Under the INA, the Secretary of State has discretionary authority to revoke any visa that a consular officer has issued, including cases in which the Secretary believes that the visa holder may be ineligible for a visa under the INA's terrorism provision.[17] According to State Department officials and documents, State revoked visas held by 240 individuals from September 11, 2001, through December 31, 2002, on terrorism grounds.[18] All of these visas were revoked as a prudent measure under the Secretary of State's discretionary authority because, as discussed earlier, State believed more research on the individuals was necessary before they should be allowed to enter the United States. Appendix III provides more information on these visas and the persons who held them.

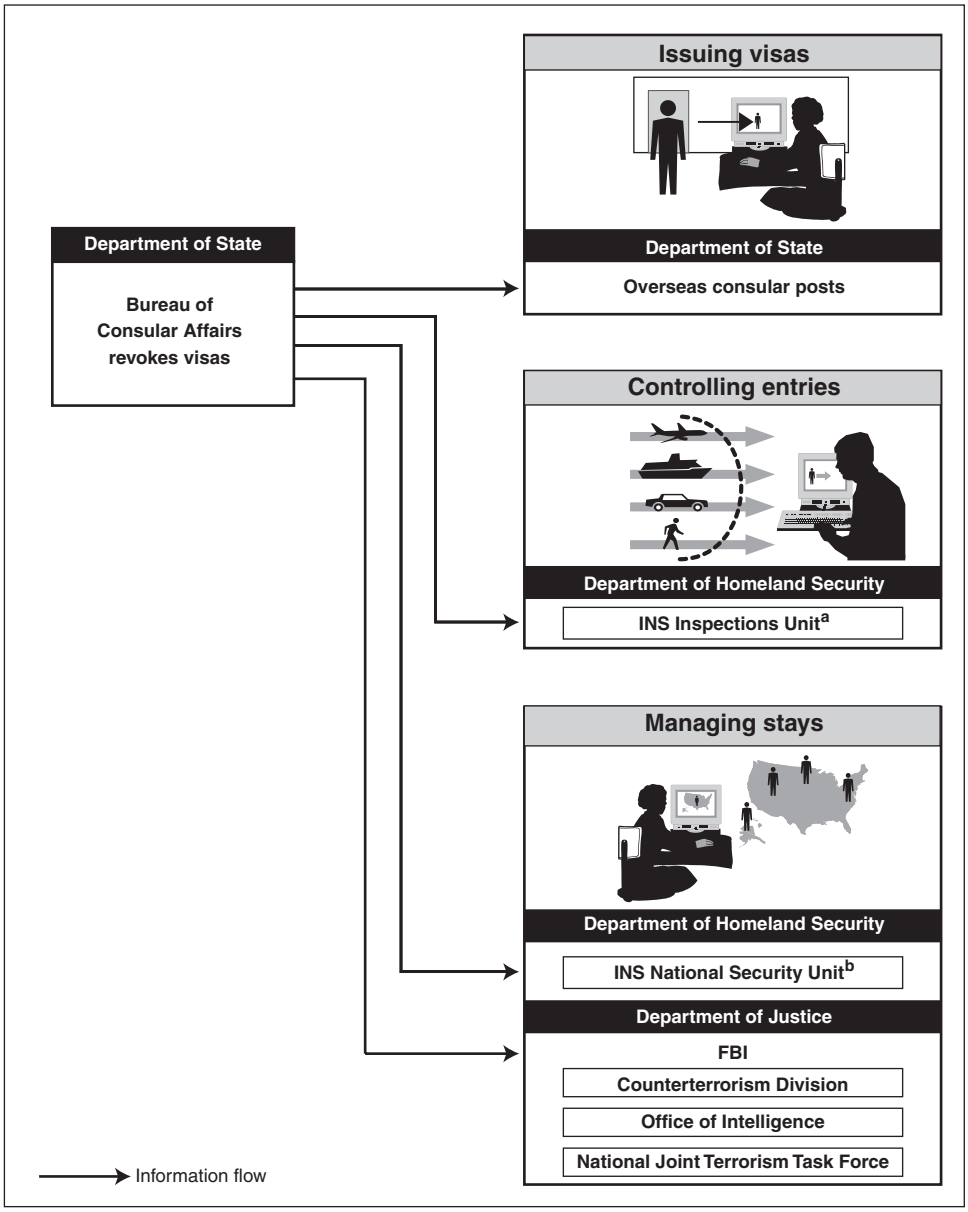
Figure 2 shows how information should flow if State were to notify the appropriate homeland security agencies, that is, those agencies charged with controlling entry into the United States and investigating potentially dangerous terrorists, that the individual with the revoked visa may attempt to enter, or may have already entered, the United States. The diagram is

[17]Section 221(i) of the INA gives the Secretary of State and consular officers discretionary authority to revoke a visa. INA section 212(a)(3)(B) contains the grounds that an alien can be deemed inadmissible to the United States for terrorist-related activities. Consular officers may revoke a visa in instances prescribed by regulation (22 CFR § 41.122). Such instances include if (1) the consular officer finds that the alien is no longer entitled to nonimmigrant status specified in the visa; (2) the alien has, since the time that the visa was issued, become ineligible to receive a visa under the INA; or (3) the visa has been physically removed from the passport in which it was issued. Moreover, regulations also allow immigration officers to revoke visas under certain circumstances (22 CFR § 41.122).

[18]In 105 of these 240 cases, the FBI did not complete a new special clearance procedure for certain visa applicants in a timely manner. The U.S. government instituted this new clearance procedure, known as the Visas Condor name check, in late January 2002 as a means of identifying and denying visas to suspected terrorists. In the 105 cases, State had to revoke the visas because the consular officers had already issued the visas before the FBI had indicated any interest in the cases. In July 2002, the State Department and the FBI changed the Visas Condor procedures to ensure that consular officers do not issue visas to the Visas Condor applicants until the FBI clears them. See GAO-03-132NI for more information on delays in, and changes to, the Visas Condor name check procedures. In the remaining 135 cases, State revoked the visas based on potentially derogatory intelligence information that might eventually lead to a finding of inadmissibility under the INA, if that information was found to pertain to the individual in question.

based on what officials from State, Homeland Security, and the FBI described as the way the process should work, if all of the agencies involved were fulfilling their roles.

Figure 2: Diagram of Visa Revocation Notification System That, If Fully and Consistently Implemented, Would Provide Information to the Appropriate Units at State, Homeland Security, and the FBI



Sources: GAO and Art Explosion.

[a]Now within the Bureau of Customs and Border Protection.

[b]Now within the Bureau of Immigration and Customs Enforcement.

As the diagram in figure 2 illustrates, State should notify its consular officers at overseas posts, the Department of Homeland Security, and the FBI at the time of visa revocation. State should notify its consular officers so that they would ask for a security advisory opinion before issuing a new visa to the person whose visa had been revoked. In addition, State would have to provide notice of the revocation, along with supporting evidence, to Homeland Security and the FBI. This would allow Homeland Security to notify its inspectors at ports of entry so that they could prevent the individuals from entering the United States.[19] It also would allow Homeland Security and the FBI to determine whether the person had already entered the country and, if so, to investigate, locate, and take appropriate action in each case. Depending on the results of the investigations, appropriate actions could include clearing persons who were wrongly suspected of terrorism, removing suspected terrorists from the country, or prosecuting suspected terrorists on criminal charges.

Weaknesses Existed in the Visa Revocation Process

We identified systemic weaknesses in the visa revocation process, many of which resulted from the informal policies and procedures governing actions that State, INS, and the FBI take during the process. In our review of the 240 visa revocations, we found that (a) notification of revocations did not always reach the appropriate unit within INS and the FBI; (b) State did not consistently post lookouts on the individuals; (c) 30 individuals whose visas were revoked on terrorism grounds entered the United States either before or after the revocation and may still remain in the country; and (d) INS and the FBI were not consistently taking action to investigate; locate; or, where appropriate, clear, prosecute, or remove any of the people who had entered the country before or after their visas were revoked.

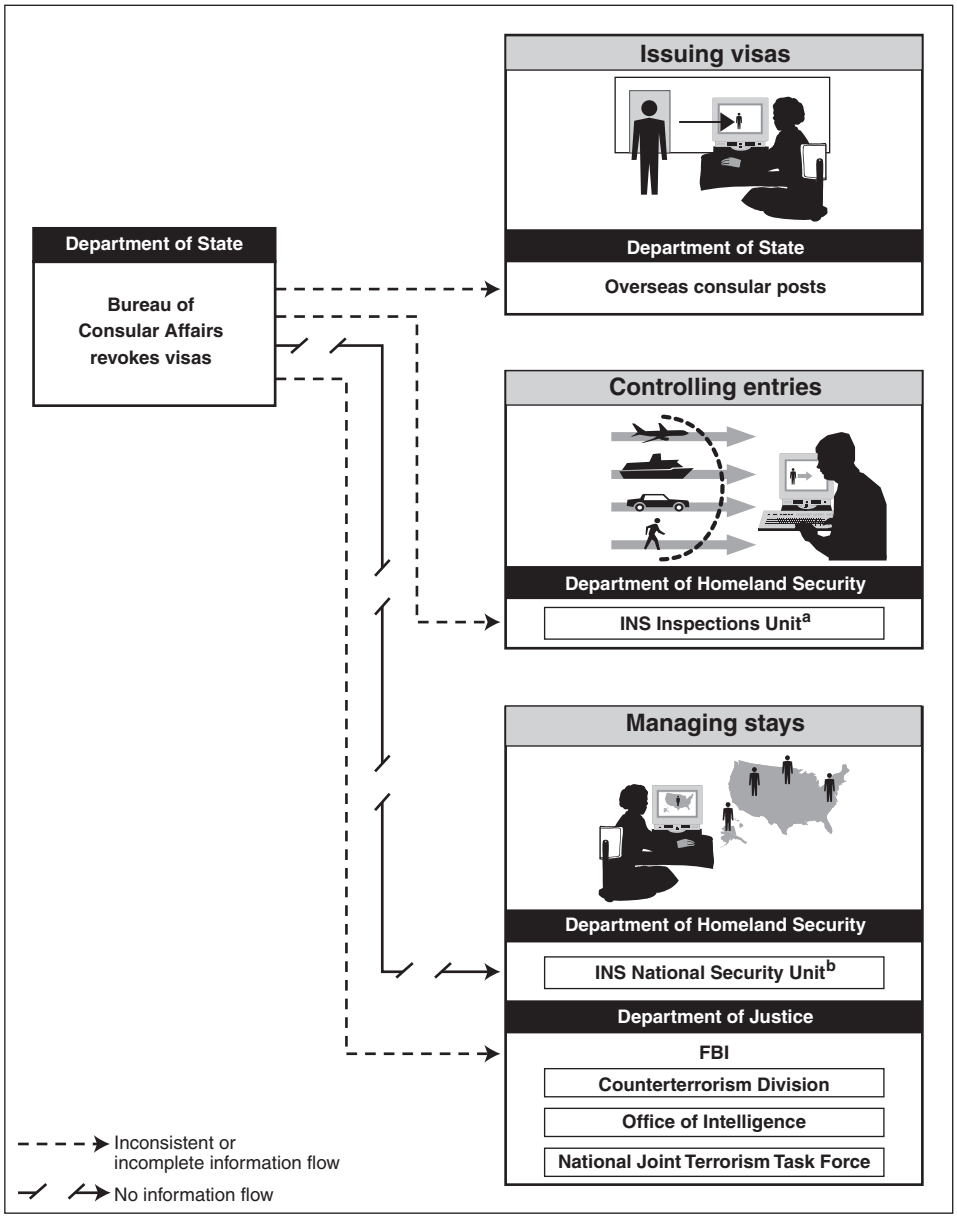
Inconsistencies in Notification Procedures

There were weaknesses at several junctures of the notification process that caused information on many visa revocations not to be shared among units that needed the information at State, INS, and the FBI. Some of these weaknesses were due to a breakdown in the notification process from State to INS and the FBI, and some were due to problems in the distribution of notifications within these agencies to the appropriate unit.

[19]It is possible for an individual to present to an immigration inspector a revoked visa that appears to be valid, if the visa had not been physically cancelled by writing or stamping across the face of the visa to indicate that it had been revoked.

For 43 of the 240 revocations we reviewed, INS Lookout Unit officials said that they did not receive any notification. In cases where they did receive notification, some of them were not received at the Lookout Unit in a timely manner because of slow intraagency distribution of the notifications. FBI officials said that the agency's main communications center received the notifications, but the officials could not confirm if the notifications were then distributed internally to the appropriate investigative units at the FBI (see fig. 3).

Figure 3: Diagram of Gaps in the Visa Revocation Notification System



Sources: GAO and Art Explosion.

[a]Now within the Bureau of Customs and Border Protection.

[b]Now within the Bureau of Immigration and Customs Enforcement.

State's Procedures for Notifying INS, the FBI, and Overseas Posts of Revocations

State Department officials from the Visa Office described the procedures they use to notify INS, the FBI, and State's overseas posts of visas that are revoked by the department in Washington. According to State officials, once the Deputy Assistant Secretary signs a revocation certificate, the department is supposed to take the following actions, as soon as possible after the visa is revoked: (1) notify the INS Lookout Unit via a faxed copy of the revocation certificate so that the unit can enter the individual into the National Automated Immigration Lookout System, which is uploaded into IBIS; (2) notify consular officers at all overseas post that the individual may be a suspected terrorist by entering a lookout on the person into State's watch list, CLASS; and (3) notify the issuing post via cable so that the post can attempt to contact the individual to physically cancel his visa. Information-only copies of these cables, which do not explicitly state that the reason for the revocation is terrorism-related, are also sent to INS's and FBI's main communications centers. State officials told us they rely on INS and FBI internal distribution mechanisms to ensure that these cables are routed to the appropriate units within the agencies. According to these officials, they considered faxing the revocation certificate to be the primary notification method for the INS Lookout Unit, but the cable was an additional backup method. The cables were the only notification method used to inform the FBI of the revocation.

The State Visa Office did not keep a central log of visas it revoked on the basis of terrorism concerns, nor did it monitor whether notifications were sent to other agencies. When we asked for a list of all revoked visas between September 11, 2001, and December 31, 2002, Visa Office officials had to search through the office's cable database to create such a list. State Department officials said they did not have fax transmission receipts to confirm that they sent revocation certificates for each of the 240 cases we reviewed. They were able to provide us with 238 revocation cables, almost all of which addressed informational copies to INS and the FBI. In commenting on a draft of our report, State said that the Visa Office now keeps a log of revocation cases and maintains all signed certificates in a central file.

INS Lookout Unit Said It Did Not Consistently Receive Notification

Officials from the INS Lookout Unit provided us with documentation indicating that they received notification from the State Department in 197 of the 240 cases but did not receive notification in the other 43 cases (see fig. 4).

Figure 4: INS Lookout Unit Receipt of Revocation Notification for 240 Cases

Cases in which the Lookout Unit received notification	**197**
via faxed revocation certificate	*150*
via revocation cable only	*47*
Cases in which the Lookout Unit did not receive notification	**43**

Source: GAO analysis of INS Lookout Unit documents.

Lookout Unit officials had documentation to show that 150 faxed revocation certificates were received in the unit. These faxed certificates reached the unit, on average, within 1 to 2 days of State enacting the revocation. For 90 cases, however, the documentation provided to us did not indicate that the Lookout Unit had received a fax. This was mitigated in 47 of these cases by the receipt of a revocation cable, although this backup method of notification was less timely than the fax. In cases where the cable was the only notification received at the Lookout Unit, it took, on average, 12 days for the Lookout Unit to receive the cable, although in 1 case it took 29 days. According to an official from the INS communications center, because the cables were marked "information only," they were routed through the Inspections Division first, which then was supposed to forward them to the Lookout Unit. He told us that if the cables had been marked as "action" or "urgent," they would have been sent immediately to the Lookout Unit. See appendix IV for an example of a revocation cable.

The Assistant Chief Inspector at the Lookout Unit stressed the importance of timeliness in receiving notification, noting that delays of even a few days could increase the possibility that an individual with a revoked visa would travel to the United States before INS inspectors were aware of the revocation.

The FBI Received Revocation Cables but May Not Have Distributed Them Internally to the Appropriate Investigative Units

The State Department generally included the FBI as an addressee on the visa revocation cables. FBI officials with whom we spoke were able to verify that State's revocation cables[20] were received electronically in the FBI communications center, but they were not able to tell us whether this information was distributed to appropriate coordinating and investigative

[20]In 228 cases, the State Department included the FBI as an addressee on the revocation cable.

units. An FBI official said that after the cables arrived in the communications center, they became part of the FBI's Automated Case Support database and a hard copy of the cable was sent to analysts in relevant country desk units. The Assistant Director for the Office of Intelligence told us that for the FBI to take action on the cables, they would have to be directed to the bureau's Counterterrorism Division. FBI officials could not provide evidence that the revocation information reached the Counterterrorism Division. Again, the cables did not specify that the reason for the revocation was related to terrorism. The cables were described by State as information only and did not request or specify any action from the FBI.

Weaknesses Existed in Visa Revocation Watch List Procedures

In our review of 240 revocations, we identified weaknesses in the steps that State, INS, and the FBI took to place these individuals on watch lists as a result of the revocation. The State Department did not consistently post lookouts on individuals in CLASS after revoking their visas. Moreover, State had not started to use a new revocation code created in August 2002 that was designed to allow revocation lookouts to be shared between State's and INS's watch lists. The INS Lookout Unit consistently posted lookouts on its watch list but was only able to do so in cases where it received notification of the revocation. Some of the lookouts posted by the Lookout Unit did not contain accurate information due to misinterpretation of State's revocation certificates.

As of mid-May 2003, FBI officials could not determine which FBI unit, if any, added lookouts to their watch lists on individuals with revoked visas as a result of receiving the revocation notification from State.

State Did Not Consistently Post Lookouts on Individuals with Revoked Visas

We reviewed CLASS records on all 240 individuals whose visas were revoked and found that the State Department did not post lookouts within a 2-week period of the revocation on 64 of these individuals. Many of the 64 individuals had other lookouts posted on them on earlier or later dates, but the department had not followed its informal policy of entering a lookout at the time of the revocation. State officials said that they post lookouts on individuals with revoked visas in CLASS so that, if the individual attempts to get a new visa, consular officers at overseas posts will know that they must request a security advisory opinion on the individual before issuing a visa. Without a lookout, it is possible that a new visa could be issued without additional security screening.

According to State Department officials, State and INS agreed to create a specific code for visa revocation lookouts, the VRVK code, which would be picked up automatically by INS's system, IBIS, in its real-time interface with CLASS.[21] This new code would allow INS inspectors at ports of entry to see revocation lookouts that State had posted. According to Department of Homeland Security officials, this code should be State's primary method of notifying immigration inspectors at ports of entry that an individual's visa had been revoked, rather than the faxed revocation certificate. State said that this code was required for all revocation lookouts as of August 15, 2002, yet in our review of CLASS records for the 240 visa revocations, we saw no evidence that the department was using the VRVK code. The department did not enter a lookout using the VRVK code for any of the 27 visas it revoked between August 15, 2002, and December 31, 2002.[22]

INS Consistently Posted Lookouts but Misread Some Information on Revocation Certificates

When the INS Lookout Unit received notification from State, it consistently posted lookouts in IBIS[23] to indicate that State had revoked the visa. The Lookout Unit had a policy to post lookouts in IBIS the same day that it received the notification. In the 43 cases for which Lookout Unit officials said they did not receive notification, they did not post a revocation lookout in IBIS because the lookout unit did not have an independent basis for posting a revocation absent a notification from State.

In 21 of the 240 cases, Lookout Unit officials misread information on State's revocation certificate and, as a result, entered incorrect information in IBIS on individuals who were born in one country but hold citizenship in another. In 16 of these cases, the revocation certificates clearly listed the individual's date and place of birth or nationality, but the lookout unit entered place of birth or other erroneous information into IBIS's nationality field. In the remaining 5 cases where the individuals' place of birth data

[21]Revocation lookouts posted by State officials in CLASS prior to August 15, 2002, were coded with either a "00" (indicating that a security advisory opinion is required before a visa can be granted) or a "P3B" (indicating that the individual might be refused a visa for terrorist activities); IBIS did not pick up lookouts with either of these codes in its interface with CLASS. State Department officials said that INS elected not to receive P3B lookouts from CLASS. In commenting on this report, Homeland Security officials told us that INS had not asked for the P3B code to be uploaded into IBIS because State had never told INS that it would be using the code to indicate that a visa had been revoked on terrorism grounds.

[22]The consular post in Jeddah made VRVK entries in cases where it was notified by the department that a visa issued at the post had been revoked.

[23]The Lookout Unit posts lookouts on its own watch list, the National Automated Immigration Lookout System. These lookouts are then uploaded into IBIS every evening.

were entered into the nationality field, the revocation certificate did not clearly state that the country listed was the individuals' place of birth. A Lookout Unit official confirmed that this error in the lookout could hinder an inspector at the port of entry from detecting the person since the individual's passport would indicate a nationality different from his place of birth. Lookout Unit officials said it would be helpful if the State Department included more information on the revocation certificates, including country of citizenship, passport numbers, visa foil numbers, and intended itineraries and addresses in the United States if they were listed in the visa application. See appendix V for a sample revocation certificate. In commenting on a draft of this report, State said that additional information is available to Homeland Security officers at ports of entry through State's shared Consular Consolidated Database.

The FBI Did Not Know If Lookouts Were Posted on Individuals with Revoked Visas

FBI officials could not determine which unit, if any, received the revocation cables or whether any unit posted lookouts on these individuals as a result of receiving notification of the revocation from State. In technical comments on a draft of this report, the Department of Justice said that the FBI maintains only one watch list, the Violent Gang and Terrorist Organization File (VGTOF) that is accessed by local and state law enforcement officials via the National Crime Information Center. To add a person to that list, according to the comments, the following information must be provided to the FBI: the person's full name, complete date of birth, physical descriptors, at least one numeric identifier, a contact person with a telephone number, and VGTOF-specific classification information.

Many Individuals with Revoked Visas Entered the United States before or after Revocation; Some Still Remain

In our review of the 240 visa revocations, we found that 30 individuals whose visas were revoked on terrorism grounds entered the United States either before or after the revocation and may still remain in the country.[24] Our analysis of INS arrival and departure information shows that many individuals had traveled to the United States before their visas were revoked and had remained after the revocation. Several have subsequently departed the country, but we determined that 29 of the individuals who entered before the revocation may still remain in the country.

INS data also show that INS inspectors admitted at least 4 people after their visas were revoked; 3 of these individuals have since departed but 1 may still remain in the country. In 1 of these 4 cases, the INS Lookout Unit did not receive any revocation notice from State; thus, it did not post a lookout in IBIS that could have alerted an inspector at a port of entry to deny admission to the individual. In another case, the unit received a notification cable 4 days after State had signed the revocation certificate, but the individual had already entered the country 2 days earlier. In the third case, the unit had posted a lookout the day after the revocation but had incorrectly entered the individual's place of birth, which differed from his nationality, in the nationality field. In the last case, INS had received a notification from State and had posted lookouts on the INS watch list right after the revocation, but an INS inspector allowed the individual to enter the United States 1 month later. INS officials could not explain how an inspector could miss the lookout and allow this person into the country.

Despite these problems, we noted cases where the visa revocation process prevented possible terrorists from entering the country or cleared individuals whose visas had been revoked. For example, INS inspectors successfully prevented at least 14 of the 240 individuals from entering the country because the INS watch list included information on the revocation action or had other lookouts on them. In addition, State records showed

[24]We determined this number on the basis of INS data in the Nonimmigrant Information System (NIIS), which does not have complete arrival and departure records for all non-U.S. citizens. NIIS records arrivals and departures of foreign citizens through the collection of I-94 forms. Some aliens are required to fill out and turn in these forms to inspectors at air and seaports of entries as well as at land borders. (Canadians and U.S. permanent residents are not required to fill out I-94 forms when they enter the United States). NIIS does not have departure data for aliens if they fail to turn in the bottom portion of their I-94 when they depart. In late May 2003, we received additional data from INS and the FBI. We have not been able to fully analyze these data due to the nature and volume of the information; however, the data may indicate that the number is higher or lower than 30.

that a small number of people reapplied for a new visa after the revocation. State used the visa issuance process to fully screen these individuals and determined that they did not pose a security threat. In one case, for example, the post took a set of fingerprints from an individual whose name matched a record in an FBI database. The individual's fingerprints did not match those of the individual in the database, so he was cleared and issued a new visa.

INS and the FBI Did Not Routinely Take Action on Individuals with Revoked Visas Who Had Entered the United States

The appropriate units in INS and the FBI did not routinely investigate, locate, or take any action on individuals who might have remained in the United States after their visas were revoked. INS and FBI officials cited a variety of legal and procedural challenges to their taking action in these cases.

INS Did Not Routinely Attempt to Locate Individuals with Revoked Visas

In cases where they received the revocation notification from State, INS Lookout Unit officials said that they did not routinely check to see whether these individuals had already entered the United States, nor did they pass information on visa revocations to investigators in the National Security Unit.[25] The National Security Unit, unlike the Lookout Unit, did not receive copies of the faxed revocation certificates or cables from the State Department. Investigators in this unit said that the Lookout Unit occasionally notified them about a revocation for an individual with a hit in TIPOFF, State's interagency terrorist watch list, but that they were not typically notified of other visa revocations.

National Security Unit investigators said that they generally did not investigate or locate individuals whose visas were revoked for terrorism concerns but who may still be in the United States. These investigators said that even if they were to receive a revocation notice, the revocation itself does not make it illegal for individuals with revoked visas to remain in the United States. They said they could investigate the individuals to determine if they were violating the terms of their admission, for example, by overstaying the amount of time they were granted to remain in the United

[25]In May 2003, an official from the Lookout Unit said that her unit recently established a procedure in which, upon receiving notification of a revocation, she will query INS databases to determine if the individual recently entered the country. She will then give this information to investigators in the Bureau of Immigration and Customs Enforcement.

States, but the investigators believed that under the INA, the visa revocation itself does not affect the alien's legal status in the United States.

This issue of whether a visa revocation, after an alien is admitted on that visa, has the effect of rendering the individual out-of-status is unresolved legally, according to officials in the Department of Homeland Security's Office of the Principal Legal Advisor to the Bureau of Immigration and Customs Enforcement and Bureau of Citizenship and Immigration Services. These officials said that the language that the State Department has been using on visa revocation certificates effectively forecloses the U.S. government from litigating the issue. The revocation certificates state that the revocation shall become effective immediately on the date the certificate is signed unless the alien is present in the United States at that time, in which case it will become effective immediately upon the alien's departure from the United States (see app. V). Homeland Security officials said that if State were to cease using the current language on the revocation certificates, the government would no longer be effectively barred from litigating the issue and, if a policy decision were made to pursue an aggressive litigation strategy, could seek to remove aliens who have been admitted but have subsequently had their visas revoked.

Attempting to remove these aliens on the underlying reason for the revocation may not be possible for various reasons, according to INS officials. First, INS officials stated that the State Department provides very little information or evidence relating to the terrorist activities when it sends the revocation notice to INS. Without sufficient evidence linking the alien to any terrorist-related activities, INS cannot institute removal proceedings on the basis of that charge. Second, even if there is evidence, INS officials said, sometimes the agency that is the source of the information will not authorize the release of that information because it could jeopardize ongoing investigations or reveal sources and methods. Third, INS officials state that sometimes the evidence that is used to support a discretionary revocation from the Secretary of State is not sufficient to support a charge of removing an alien in immigration proceedings before an immigration judge. (See app. II.) In commenting on a draft of our report, State said that most of the time, the information on which these revocations is based is classified. If an interested agency seeks to review the information for immigration purposes, it is available from State's Bureau of Intelligence and Research or the source agency.

National Security Unit investigators told us that, because of congressional interest, they had investigated and attempted to locate 7 individuals whose

visas were revoked as a result of delayed security checks and who had entered the country. They found that 4 of the 7 individuals were in the United States and in compliance with the terms of their admission. One individual had departed to Canada; the remaining 2 individuals were not located.

The FBI Did Not Routinely Investigate Individuals with Revoked Visas

Although the FBI's Foreign Terrorist Tracking Task Force followed up on many cases in response to congressional interest, FBI officials told us that the bureau was not routinely opening investigations as the result of visa revocations on terrorism grounds. They said that State's method of notifying the FBI did not clearly indicate that visas had been revoked because the visa holder was a possible terrorist. Further, the cables were sent as "information only" and did not request specific follow-up action from the FBI. State did not attempt to make other contact with the FBI that would indicate any urgency in the matter. Moreover, the Department of Homeland Security has not yet requested that the FBI take any action with regards to visa revocations on terrorism grounds.

In response to congressional interest, the Foreign Terrorist Tracking Task Force in late 2002 and early 2003 followed up on the 105 cases of visas that were revoked as a result of the Visas Condor name check procedures. In February 2003, we asked the task force for information on these 105 cases. The task force provided us with some information in a written response on May 21, 2003. We did not have time to fully evaluate the response before publication of this report because of the nature and volume of additional information needed to do so.

Conclusions

The visa process can be an important tool to keep potential terrorists from entering the United States. Ideally, information on suspected terrorists would reach the State Department before it decides to issue a visa. However, there will always be some cases when the information arrives too late and State has already issued a visa. Revoking a visa can mitigate this problem, but only if State promptly notifies the appropriate border control and law enforcement agencies and if these agencies act quickly to (1) notify border patrol agents and immigration inspectors to deny entry to persons with a revoked visa and (2) investigate persons with revoked visas who have entered the country. Currently there are major gaps in the notification and investigation processes. One reason for this is that there are no comprehensive written policies and procedures on how notification of a visa revocation should take place and what agencies should do when they

are notified. As a result, there is heightened risk that suspected terrorists could enter the country with revoked visas or be allowed to remain after their visas are revoked without undergoing investigation or monitoring.

Recommendations for Executive Action

To strengthen the visa revocation process as an antiterrorism tool, we recommend that the Secretary of Homeland Security, in conjunction with the Secretary of State and the Attorney General:

- develop specific policies and procedures for the interagency visa revocation process to ensure that notification of visa revocations for suspected terrorists and relevant supporting information is transmitted from State to immigration and law enforcement agencies, and their respective inspection and investigation units, in a timely manner;
- develop a specific policy on actions that immigration and law enforcement agencies should take to investigate and locate individuals whose visas have been revoked for terrorism concerns and who remain in the United States after revocation; and
- determine if persons with visas revoked on terrorism grounds are in the United States and, if so, whether they pose a security threat.

Agency Comments and Our Evaluation

We provided a draft of this report to the Departments of Homeland Security, State, and Justice for their comment.

The Department of Homeland Security agreed that the visa revocation process should be strengthened as an antiterrorism tool. It indicated that it looked forward to working with State and Justice to develop and revise current policies and procedures that affect the interagency visa revocation process. Their written comments are in appendix VI. In addition, Homeland Security provided technical comments which we have incorporated in the report where appropriate.

The Department of State did not comment on our recommendations. Instead, State said that the persons who hold visas that the department revoked on terrorism grounds were not necessarily terrorists or suspected terrorists. State noted that it had revoked the visas because some information had surfaced that may disqualify the individual from a visa or from admission to the United States, or that in any event warrants

reconsideration of the individual's visa status. State cited the uncertain nature of the information it receives from the intelligence and law enforcement communities on which it must base its decision to revoke an individual's visa. State said that it revoked these visas as a precautionary measure to preclude a person from gaining admission to this country until his or her entitlement to a visa can be reestablished.

Our report recognizes that the visas were revoked as a precautionary measure and that the persons whose visas were revoked may not be terrorists. Although we have not reviewed the intelligence or law enforcement data provided to State or reviewed by various agencies as part of the security check process, there was enough concern that these 240 persons could pose a terrorism threat to cause State to revoke their visas. Our recommendations are designed to ensure that persons whose visas have been revoked because of potential terrorism concerns be denied entry to the United States and those who may already be in the United States be investigated to determine if they pose a security threat. State's comments are reprinted in appendix VII. The State Department also provided technical comments that we have incorporated in the report where appropriate.

The Department of Justice did not provide official comments on the report. However, it did make technical comments that we incorporated in the report where appropriate.

We are sending copies of this report to other interested Members of Congress. We are also sending copies to the Secretary of Homeland Security, the Secretary of State, and the Attorney General. We will make copies available to others upon request. In addition, the 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. Key contributors to this report were John Brummet, Judy McCloskey, Kate Brentzel, Mary Moutsos, and Janey Cohen.

Jess T. Ford
Director, International Affairs and Trade

Scope and Methodology

The scope of our work covered the interagency process in place for visas revoked by the Department of State headquarters and overseas consular officers on the basis of terrorism concerns between September 11, 2001, and December 31, 2002. To assess the policies and procedures governing the visa revocation process, we interviewed officials from State, the Immigration and Naturalization Service (INS), and the Federal Bureau of Investigation (FBI) and reviewed relevant documents.

To evaluate the effectiveness of the actual visa revocation process, we relied on data provided by State's Visa Office to determine the total number of visa revocations from September 11, 2001, through December 31, 2002. Visa Office officials provided us with the names of 240 individuals whose visas were revoked during that time. These officials were able to provide documentation on the revocation for 238 of the 240 individuals. They gave us database sheets from the Consular Consolidated Database, which provided us with the individuals' names, biographic data such as dates and places of birth, passport numbers, and visa information such as issuing posts and types of visa. In 5 cases, the database sheets did not indicate that the person held a valid visa at the time of revocation. We kept these cases in our scope because State provided us with revocation cables for these individuals, indicating that it had revoked at least one visa for them. State's Visa Office also provided us with 238 revocation cables. We also compared information in the revocation cable with information contained in revocation certificates.

To determine if, and when, State notified INS of the revocations, we asked the Visa Office to provide us with documentation to show that either the visa revocation was faxed to the INS Lookout Unit or that the revocation cables were sent to INS. State did not have documentation that it had faxed any of the certificates. Through examining the cables, we determined which ones were addressed to INS and when they were sent. To determine if, and when, INS received these notifications, we asked the INS Lookout Unit for copies of the revocation certificates and cables it received for each of the 240 cases. In cases where the Lookout Unit had received a faxed copy of the revocation certificate, we collected copies of the certificates and examined the time/date stamp on these documents to determine when State faxed it to INS. In cases where the Lookout Unit had received a copy of the revocation cable, we collected copies of these cables and examined handwritten notations on the cables that reflected when they were received at the unit.

To determine if, and when, State notified the FBI of the revocations, we examined copies of the revocation cables we received from State to determine (1) if the FBI was included as an addressee on the cable and (2) the date that the cable was sent. To determine whether the FBI had received these cables, we interviewed FBI officials from the Office of Intelligence, the National Namecheck Program, and the Counterterrorism Division.

We obtained information from State, INS, and the FBI to determine if, and when, they posted lookouts on the individuals with revoked visas on their agencies' terrorist watch lists. We asked State to provide us with the lookouts they posted for each individual in the Consular Lookout and Support System (CLASS). A CLASS operator entered the individual's name, date and place of birth, and nationality in the same way that these data were listed on the revocation cable or certificate and gave us the printouts reflecting all of the CLASS records for that entry. We examined the records to ascertain whether, and when, the department entered the individual into CLASS and what refusal code was used.

To determine what steps INS took to post lookouts on the individuals with revocations, we provided the Lookout Unit with the list of 240 individuals and requested copies of the revocation lookouts from the Interagency Border Inspection System (IBIS). We examined these records to assess whether, and when, the INS Lookout Unit posted a lookout on the individuals.

To assess the FBI's action to post lookouts on these individuals, we interviewed officials from the Office of Intelligence to determine whether any units posted lookouts as a result of receiving notification of the revocations.

To assess INS's and the FBI's actions to investigate; locate; and, where appropriate, clear, remove, or prosecute the individuals who may have entered the United States, we first reviewed INS entry/exit data to determine how many individuals entered the country, either before or after revocation, and how many may still remain in the country. The INS Lookout Unit provided us with all records available from the Nonimmigrant Information System (NIIS) on each of the 240 individuals. This system records arrivals of foreign citizens through the collection of an I-94 form. Some aliens are required to fill out and turn in these forms to inspectors at air and sea ports of entries, as well as at land borders. Canadians and U.S. permanent residents are not required to fill out I-94 forms when they enter

the United States. Aliens keep one section of the I-94 with them during their stay in the United States and are required to turn this in when they depart the country. If aliens fail to turn in the bottom portion of their I-94s when they depart, NIIS will not have departure information for them. Where available, we supplemented NIIS data with information regarding certain cases from INS's National Security Unit and from the State Department's CLASS records. We received additional arrival data on the individuals in late May 2003 but have not been able to fully evaluate them for this report. We also interviewed INS and FBI officials to discuss what actions they had taken to investigate; locate; and, where appropriate, clear, remove, or prosecute those individuals who may remain in the United States.

We attempted to review the evidence on which State based the revocations for a subset of the 240 visa revocations. We could not do so, however, because the sources of the information—the Central Intelligence Agency and the FBI—did not grant us access to this information.

We conducted our work from December 2002 through May 2003, in accordance with generally accepted government auditing standards.

Legal Process for Visa Revocations

Authority to Revoke Visas

The legal process for revocations can begin either with the Secretary of State, the consular officer, or an immigration officer. Under the Immigration and Nationality Act (INA), the Secretary of State has the discretionary authority to revoke a visa previously issued to an alien.[1] The Secretary of State has delegated this discretionary authority to the Deputy Assistant Secretary for Visa Services. According to State officials, the department's discretionary revocation authority is an important and useful tool for State to use to send questionable aliens back to the consulates to undergo more scrutiny as they reapply for new visas.

Consular officers may revoke a visa in instances prescribed by regulation (22 CFR § 41.122). Such instances include if (1) the consular officer finds that the alien is no longer entitled to nonimmigrant status specified in the visa; (2) the alien has, since the time that the visa was issued, become ineligible to receive a visa under the INA; or (3) the visa has been physically removed from the passport in which it was issued. Moreover, regulations also allow immigration officers to revoke visas under certain circumstances (22 CFR § 41.122). For example, an immigration officer at a port of entry may revoke a visa if the officer notifies the alien that he or she appears to be inadmissible to the United States and the alien requests and is granted permission to withdraw the application for admission.

Timing and Effect of Visa Revocations

If an alien arrives at a port of entry in the United States and learns that his visa has already been revoked, as was the case with some of the revocations that we reviewed, then the alien is deemed inadmissible and the INS agent can deny the alien admission into the United States. The authority to refuse admission to such aliens is done under the expedited removal process allowed under section 235 of the INA. Under section 212(a)(7)(B) of the INA, an alien is inadmissible if he does not have a valid passport, nonimmigrant visa, or border crossing identification card at the time of application for admission. Under the INA's expedited removal process, if an alien is inadmissible under section 212(a)(7), the inspection officer may order the alien removed from the United States, without further hearing or review, unless the alien can demonstrate a credible fear of returning to his home country.

[1]See INA § 221(i) (8 U.S.C. § 1201(i)).

If, however, the alien is already in the country when his visa is revoked, then INS is not authorized to simply send the alien home, as it could have done had the alien arrived at the port of entry with the revoked visa. Rather, if INS determines that the alien falls within the class of aliens who are removable on the grounds specified in the INA,[2] INS may institute removal proceedings against the alien. Such proceedings could be based either on an immigration violation after admission[3] or on the evidence relating to the reason for the visa revocation, such as terrorist-related activities. However, INS officials said that in many of these cases, INS does not receive much evidence in support of the terrorist charge when they receive a revocation from State. Without sufficient evidence, INS cannot institute removal proceedings against these aliens.

Revocation of a visa is not a stated grounds for removal under the INA. However, the issue of whether a visa revocation, after an alien is admitted on that visa, has the effect of rendering the alien out-of-status is unresolved legally, according to officials in the Department of Homeland Security's Office of the Principal Legal Advisor to the Bureau of Immigration and Customs Enforcement and the Bureau of Citizenship and Immigration Services. These officials said that the language that the State Department has been using on visa revocation certificates effectively forecloses the U.S. government from litigating the issue. The revocation certificates state that the revocation shall become effective immediately on the date the certificate is signed. However, if the alien is present in the United States at that time, it will become effective immediately upon the alien's departure from the United States. Homeland Security officials said that if State were to cease using this language on the revocation certificates, the government would no longer be effectively barred from litigating the issue, and, if a policy decision were made to pursue an aggressive litigation strategy, the government could seek to remove aliens who have been admitted but have subsequently had their visas revoked.

[2]See INA § 237 (8 U.S.C. 1227).

[3]One example of such an immigration violation would be if an alien obtains a nonimmigrant visa and subsequently engages in unauthorized work. Such activities would violate the alien's immigration status and render the alien removable under section 237(a)(1)(C) of the INA.

The Legal Process for Removing an Alien Who Is Already in the Country

If INS does receive sufficient evidence to support a removal charge against an alien and chooses to initiate removal proceedings, then the alien is afforded certain due process rights under the INA. For example, section 240 of the INA states that an immigration judge shall conduct proceedings to determine if an alien is removable. During such proceedings, the alien is afforded rights that include being apprised of the charges against him and the basis for them, having a reasonable opportunity to examine the evidence against him, presenting evidence on his behalf, having the opportunity to cross-examine witnesses presented by the government, and filing administrative and judicial appeals. Moreover, during such removal proceedings, once an alien establishes that he was admitted to the United States as a nonimmigrant, the government has the burden of proof to establish by clear and convincing evidence that the alien is removable.[4]

Initiating such proceedings against an alien whose visa has been revoked on the basis of terrorist-related activities can be challenging, according to INS attorneys. At some point in the proceedings, either in establishing that the alien is removable or at the time the alien requests to be released on bond, the government could be called on to disclose any classified or law enforcement sensitive information that serves as the basis of the charges against the alien. According to INS attorneys, this can be challenging since many times the law enforcement or intelligence agencies that are the source of the information may not authorize the release of that information because it could jeopardize ongoing investigations or reveal sources and methods.

In addition to the general removal proceedings, the INA also contains special removal proceedings for alien terrorists.[5] These proceedings are reserved for alien terrorists as described in section 237 (a)(4)(B) of the INA and take place before a special removal court comprised of federal court judges. Such proceedings are triggered when the Attorney General certifies to the removal court that the alien is a terrorist, that he is physically present in the United States, and that using the normal removal procedures of the INA would pose a risk to the national security of the United States. If

[4]This standard is different from the standard applied to aliens seeking admission to the United States. Such aliens bear the burden of proof to establish that they are clearly and beyond a doubt entitled to be admitted to the United States and that they are not inadmissible under section 212 of the INA. See section 240 of the INA (8 U.S.C. 1229a).

[5]See the INA, §§ 501-507 (8 U.S.C. §§ 1531-1537).

the court agrees to invoke the special removal procedures, then a hearing is held before the removal court. Special provisions are made for the use of classified information in such proceedings to minimize the risk of its disclosure. However, similar to the removal proceedings under section 240, the alien has the right to appeal a decision by the removal court. According to INS officials, this court has never been used since its inception in 1996.

Detailed Information on Revoked Visas

This appendix provides information on nonimmigrant visas that the State Department revoked on terrorism grounds from September 11, 2001, through December 31, 2002—specifically, the nationality of the individuals whose visas were revoked and the types of visas that were revoked.

As shown in table 1, the individuals holding visas that the State Department revoked on terrorism grounds came from at least 39 countries. Five countries—Saudi Arabia, Iran, Egypt, Pakistan, and Lebanon—accounted for 53 percent of these individuals. Overall, most of the 240 people were citizens of countries in the Near East and North Africa region.

Table 1: Number of Individuals Whose Visas Were Revoked on Terrorism Grounds, by Region and Nationality (Sept. 11, 2001, through Dec. 31, 2002)

Region/Nationality	Number of individuals
Africa	
Kenya	1
Sudan	2
Subtotal	**3**
East Asia and Pacific	
Indonesia	8
Malaysia	3
Subtotal	**11**
Europe and Eurasia	
Armenia	2
Austria	1
Bosnia and Herzegovina	1
Croatia	1
Greece	1
Netherlands	3
Romania	2
United Kingdom	
Subtotal	**12**

(Continued From Previous Page)

Region/Nationality	Number of individuals
Near East and North Africa	
Algeria	3
Bahrain	2
Egypt	21
Iran	22
Jordan	9
Kuwait	4
Lebanon	17
Morocco	6
Oman	2
Qatar	2
Saudi Arabia	50
Syria	7
Tunisia	1
United Arab Emirates	12
Yemen	2
Subtotal	**160**
South Asia	
Afghanistan	2
Bangladesh	3
India	3
Pakistan	18
Subtotal	**26**
Western Hemisphere	
Brazil	2
Colombia	7
Cuba	2
El Salvador	1
Mexico	4
Panama	1
Paraguay	5
Uruguay	1
Subtotal	**23**
Unknown	**5**
Total	**240**

Table 2 provides information on the types of visas that the State Department revoked on terrorism grounds. About 70 percent of the visas were for temporary visits for business, pleasure, or both. Seven of these visas were in the form of border crossing cards for Canada and Mexico.

Table 2: Number of Visa Revocations, by Class and Type of Visa Revoked

Visa class	Type of visa	Number of revocations
Business/Pleasure		
B1	Temporary visitor for business	5
B1/B2	Temporary visitor for business and pleasure	135
B1/B2/BBBCC	Border crossing card (Mexico)	3
B2	Temporary visitor for pleasure	19
BCC	Border crossing card (Canada)	4
Subtotal		**166**
Other		
A1	Ambassador, public minister, or career diplomat or consular officer, immediate family	1
2	Other foreign government official or employee, or immediate family	2
C1/D	Combined transit and crewman visa	7
D	Crewmember (sea or air)	7
E2	Treaty investor, spouse or child	3
F1	Student	26
H1B	Alien in a specialty occupation (profession)	9
H3	Trainee	1
J-1	Exchange visitor	5
L1	Intracompany transferee	1
L2	Spouse or child of intracompany transferee	1
M1	Vocational or other nonacademic student	6
M2	Spouse or child of M-1	1
P1	Internationally recognized athlete or member of internationally recognized entertainment group	2
Subtotal		**72**
Unknown		**2**
Total		**240**

Example of a Revocation Cable the Department of State Sent to the INS and the FBI

UNCLASSIFIED

Cable Text:

UTE7045
ORIGIN VO-03

INFO LOG-00 NP-00 CIAE-00 COME-00 FBIE-00 UTED-00 TEDE-00
INR-00 INSE-00 NEA-00 NSAE-00 IRM-00 TEST-00 SAS-00
/003R

140439
SOURCE:
DRAFTED BY: CA/VO/L/A: -- 07/18/02
APPROVED BY: CA/VO:
CA/VO/L: CA/VO/L/C: CA/VO:
INR/IC: (INFO)
----------CEBB02 222329Z /38
P 222324Z JUL 02
FM SECSTATE WASHDC
TO AMEMBASSY ABU DHABI PRIORITY

UNCLAS STATE

E.O. 12958: N/A
TAGS: CVIS ( )
SUBJECT: N0089322; CERTIFICATE OF REVOCATION

REF: (A) VISTA N0089322, (B) ABU DHABI 630

1. THIS IS AN ACTION MESSAGE. PLEASE SEE PARAGRAPH 5.

2. ON JULY 18, THE DEPARTMENT REVOKED ANY AND ALL VISAS HELD BY , DPOB: , UNITED ARAB EMIRATES, ON THE GROUNDS THAT HE MIGHT BE INELIGIBLE FOR A VISA UNDER INA 212(A)(3).

3. FOLLOWING IS THE TEXT OF THE CERTIFICATE OF REVOCATION SIGNED BY DEPUTY ASSISTANT SECRETARY OF STATE FOR VISA SERVICES ON 18 JULY 2002 AND SENT TO THE IMMIGRATION AND NATURALIZATION SERVICE ON 18 JULY 2002.

4. QUOTE THIS IS TO CERTIFY THAT I, THE UNDERSIGNED DEPUTY ASSISTANT SECRETARY OF STATE FOR VISA SERVICES, ACTING IN PURSUANCE OF THE AUTHORITY CONFERRED BY SECTION 221(I) OF THE IMMIGRATION AND NATIONALITY ACT (8 U.S.C. 1201(I)), AND BY DELEGATION OF AUTHORITY NO. 74 AND BY REDELEGATION OF AUTHORITY NO. 74-3-A, HEREBY REVOKE ANY AND ALL NONIMMIGRANT VISAS THAT MAY BE HELD BY , DPOB: , UNITED ARAB EMIRATES.

THIS ACTION IS BASED ON THE FACT THAT SUBSEQUENT TO VISA ISSUANCE, IT WAS DETERMINED THAT THE ALIEN MAY BE

UNCLASSIFIED
207

UNCLASSIFIED

INELIGIBLE FOR A VISA UNDER SECTION 212 (A)(3) OF THE INA (8 U.S.C. 1182(A)(3)), SUCH THAT THE ALIEN SHOULD BE REQUIRED TO REAPPLY FOR A VISA TO ESTABLISH HIS ELIGIBILITY BEFORE A U.S. CONSULAR OFFICER.

THIS REVOCATION SHALL BECOME EFFECTIVE IMMEDIATELY, UNLESS THE ALIEN IS CURRENTLY IN THE UNITED STATES, IN WHICH CASE IT SHALL BECOME EFFECTIVE ON THE DATE ON WHICH THE ALIEN NEXT DEPARTS THE UNITED STATES. UNQUOTE.

5. PER THE INSTRUCTIONS IN REF C, POST IS REQUESTED TO NOTIFY THE APPLICANT, IF POSSIBLE, THAT HIS VISA HAS BEEN REVOKED. POST SHOULD TRY TO PHYSICALLY CANCEL THE VISA. POST MUST THEN REPORT THE RESULTS OF ITS EFFORTS TO THE DEPARTMENT VIA CABLE, AND ALSO VIA E-MAIL, TO [redacted].

6. BECAUSE THIS IS A PRUDENTIAL REVOCATION, APPLICANT MAY REAPPLY IF HE DESIRES. POST SHOULD THEN SUBMIT A SECURITY ADVISORY OPINION TO THE DEPARTMENT BEFORE TAKING ANY ACTION ON THE APPLICATION. ASSISTANCE APPRECIATED.
POWELL

NNNN

End Cable Text

UNCLASSIFIED
208

Sample of a Revocation Certificate the Department of State Sent to the Immigration and Naturalization Service Lookout Unit

United States Department of State

Washington, D.C. 20520

CERTIFICATE OF REVOCATION

This is to certify that I, the undersigned Deputy Assistant Secretary of State for Visa Services, acting pursuant to the authority conferred on the Secretary of State by Section 221(I) of the Immigration and Nationality Act (8 U.S.C. 1201 (I)), which has been delegated to the Assistant Secretary of State for Consular Affairs and to me by delegation of Authority No. 74 and redelegation of Authority No. 74-3-A, hereby revoke any and all non-immigrant visas that may be held by [name, date and place of birth].

This revocation is based on the fact that, subsequent to visa issuance information has been discovered indicating that the alien may be inadmissible to the United States and ineligible to receive a visa under Section 212(a)(3) of the Immigration and Nationality Act, such that the alien should be required to re-appear before a U.S. Consular Officer to establish his eligibility for a visa before being permitted to apply for entry to the United States.

This revocation shall become effective immediately on the date on which this certificate is signed unless the alien is present in the United States at that time, in which case it will become effective immediately upon the alien's departure from the United States.

_____ Date

_____ [name of Deputy Assistant Secretary]

Comments from the Department of Homeland Security

U.S. Department of Homeland Security

June 11, 2003

Jess T. Ford
Director, International Affairs and Trade
U.S. General Accounting Office
441 G St., NW
Washington, DC 20548

Dear Mr. Ford:

Thank you for the opportunity to review your draft report, "BORDER SECURITY: New Policies and Procedures Needed to Fill Gaps in the Visa Revocation Process," GAO-03-798.

I appreciate the efforts of the GAO to work with and accept many of the informal comments from my staff. I also understand that the GAO has considered the technical comments we provided and incorporated many of them into the final report. I agree that the visa revocation process needs to be strengthened as an antiterrorism tool. I look forward to working with the Departments of State and Justice to develop and revise current policies and procedures that affect the interagency visa revocation process.

If you have any questions concerning this response, please contact C. Stewart Verdery, Jr., Senior Advisor, as (202) 282-8471.

Sincerely,

Asa Hutchinson
Undersecretary
Border and Transportation Security Directorate

Washington, D. C. 20528

Comments from the Department of State

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

United States Department of State

Washington, D.C. 20520

June 10, 2003

Dear Ms. Westin:

We appreciate the opportunity to review your draft report, "BORDER SECURITY: New Policies and Procedures Needed to Fill Gaps in the Visa Revocation Process," GAO-03-798, GAO Job Code 320172.

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 Hale Vankoughnett, Bureau of Consular Affairs, at (202) 663-1152.

Sincerely,

Christopher B. Burnham
Assistant Secretary and
Chief Financial Officer

Enclosure:

As stated.

cc: GAO/IAT - John Brummet
State/OIG - Luther Atkins
State/CA - Maura Harty

Ms. Susan S. Westin,
Managing Director,
International Affairs and Trade,
U.S. General Accounting Office.

Department of State Comments on the Draft Report
Border Security: New Policies and Procedures Needed to Fill Gaps
in the Visa Revocation Process
(GAO Code 320172)

State appreciates the opportunity to offer some clarification of the visa revocation process and the issues touched on in the draft report "Border Security: New Policies and Procedures Needed to Fill Gaps in the Visa Revocation Process" (Job Code 320172).

See comment 1.

The report focuses on 240 visas that were prudentially revoked by the Department of State pursuant to the Secretary of State's authority under Section 221(i) of the Immigration and Nationality Act. We believe it is very important that all concerned parties understand the character of these visa revocations. It is not accurate, nor fair to the persons who held these visas to suggest that all of the persons whose visas were revoked were terrorists or suspected terrorists. Unlike consular officers, the Secretary of State or the Deputy Assistant Secretary for Visa Services as his designee may revoke a visa on a prudential basis, without a finding of inadmissibility. (In contrast, Department of State regulations permit consular officers to revoke a visa only if they find an alien to be inadmissible, and therefore ineligible for a visa, under the INA or other relevant law.) Such revocations often are undertaken because some information has surfaced that may disqualify the individual from a visa or from admission to the U.S., or that in any event warrants reconsideration of the individual's visa status. The information available at the time of a prudential revocation is often insufficient by itself to support a formal finding of inadmissibility. In some cases, for example, it may not be clear whether the available intelligence relates to the visa holder.

See comment 2.

A prudential visa revocation thus constitutes a precautionary measure to preclude an alien from gaining admission to this country until his or her entitlement to a visa can be reestablished. It precludes admission to the United States unless the alien reapplies for a visa. At the time of any such subsequent visa application, there is an opportunity to explore fully the alien's qualifications for a visa. Identity issues can often be resolved, and in addition the new visa application triggers a more thorough analysis of the intelligence reporting on the individual, which is assessed along with the information obtained in connection with the new application and any interview. Often at the time of the subsequent visa application, the information that initiated a revocation is found not to relate to the individual whose visa was revoked.

See comment 2.

The 240 revocations that are focused on in this report involved two broad classes of cases: 1) cases involving individuals about whom the State Department (through its Bureau of Intelligence and Research) received potentially derogatory information from the intelligence or law enforcement community, and 2) 105 visa cases in which the FBI did not respond to the Department in a timely fashion regarding security clearances. In the first class of cases, the Department decided, after analysis of intelligence reporting, that the available information was sufficient to warrant precautionary revocation of the visas. As explained above, however, it cannot be assumed that the individual visa holder

in fact is ineligible for a visa. The second class differs greatly from the first. A new interagency clearance program, known as Visas Condor, was established in January 2002 for counter-terrorism purposes. The participating agencies agreed to review visa cases on a "clock" basis, meaning that the consular officer would be free to issue the visa absent a "hold" request from another agency (relayed through the Department) within 30 days. A "hold" request did not necessarily imply that the applicant was ineligible, but rather indicated a desire for more time in light of possible agency interest. Given a "hold" request, the Department would then instruct the post to hold the visa application in abeyance pending resolution. Subsequent to institution of these procedures, the number of the visa condor cases overwhelmed resources and the clearing agencies did not possess the capacity to review all cases within the 30-day period. Once we became aware of this problem, we eliminated the 30-day clock. We also revoked all visas that had been issued pursuant to standard procedures but in which a clearing agency had in effect requested a "hold" after the 30-day period. The revocation of these 105 visas was precautionary and simply restored the cases to their "pending clearance" status. Thus, it does these visa applicants a disservice to suggest that they were terrorists or even suspected terrorists. In fact, a number of these cases were later cleared by the Foreign Terrorist Tracking Task Force of the FBI.

See comment 3.

See comment 4.

We believe it is also important that the GAO understand the reasons for the language used in the certificate of revocation. As the study pointed out, the certificate indicates that the revocation is effective immediately unless the person is in the United States, in which case the revocation is effective upon the person's departure from the United States. This longstanding practice has its roots in legal considerations, including the respective authorities of the Immigration and Naturalization Service (now the Department of Homeland Security) and the Department of State and litigation risks. It was reviewed by the INS General Counsel and the State Department in 1999 in consultation with the Justice Department's Office of Immigration Litigation. After that review, INS and State agreed that the Secretary of State's authority to revoke should continue to be administered as reflected in the certificate.

More recently, at the request of DHS, the Department agreed, subject to establishment of clear interagency procedures, to consider revoking visas effective immediately in potential security cases involving persons who are undergoing inspections at ports of entry and have not yet been admitted. DHS did not ask the Department to change the effective date of its visa revocations in cases of aliens already admitted to the United States. As the GAO report notes, lack of a valid visa is not a ground for removal from the United States. Indeed, many aliens enter the United States on single-entry visas and thus inherently have no valid visa after admission. They are nevertheless in lawful status if in compliance with the conditions of admission imposed by the Department of Homeland Security (the conditions being duration of and purpose of stay). Thus, the only reason to change the effective date of the Department's visa revocations in cases of aliens already admitted to the United States would be to test the ability of the Executive branch to remove an alien who has been admitted to the United States on a valid visa that was subsequently revoked effective retroactively; i.e., to the time of admission or of visa issuance). This would entail instituting removal proceedings under Section 237 of the INA on the ground that the alien was inadmissible at time of entry. Such an approach would require taking the position that the alien as a matter of law entered without a valid

visa because after admission his visa was revoked under INA section 222(i) retroactive to a time prior to admission. Neither State nor any of the other concerned agencies have to our knowledge wished to undertake such a course of action, with its attendant litigation risks.

GAO Comments

The following are GAO's comments on the Department of State's letter dated June 10, 2003.

1. The scope of our review covered all visas revoked on terrorism concerns by the State Department, including headquarters officials and State's overseas consular officers, from September 11, 2001, through December 31, 2002. State Department officials determined that the total universe of such revocations consisted of 240 cases during that period and provided documentation for almost all of them. Headquarters officials, acting under the authority of the Secretary of State, revoked the visas in all of the cases. As noted in State's comments, in none of the cases did State believe that it had sufficient evidence to support a formal finding of inadmissibility; thus, all of the revocations were done as a precautionary measure.

2. Pages 10 and 11 of our report include information on this matter.

3. We agree that these individuals may not be terrorists. However, the State Department has revoked their visas because of terrorism concerns. Our recommendations are designed to ensure that persons whose visas have been revoked because of potential terrorism concerns be denied entry to the United States and those that may already be in the United States be investigated to determine if they pose a security threat.

4. The Departments of State and Homeland Security have different views on this issue. Homeland Security believes that the language that the State Department has been using on visa revocation certificates effectively forecloses the U.S. government from litigating the issue of whether a visa revocation has the effect of rendering the individual as out-of-status (see p. 25 of our report). Our recommendations, if implemented, would help resolve these conflicting views.

GAO's Mission

The General Accounting Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through the Internet. GAO's Web site (www.gao.gov) contains abstracts and full-text files of current reports and testimony and an expanding archive of older products. The Web site features a search engine to help you locate documents using key words and phrases. You can print these documents in their entirety, including charts and other graphics.

Each day, GAO issues a list of newly released reports, testimony, and correspondence. GAO posts this list, known as "Today's Reports," on its Web site daily. The list contains links to the full-text document files. To have GAO e-mail this list to you every afternoon, go to www.gao.gov and select "Subscribe to e-mail alerts" under the "Order GAO Products" heading.

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are $2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. General Accounting Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424-5454 or (202) 512-7470

Public Affairs

Jeff Nelligan, Managing Director, NelliganJ@gao.gov (202) 512-4800
U.S. General Accounting Office, 441 G Street NW, Room 7149
Washington, D.C. 20548

PRINTED ON RECYCLED PAPER

United States
General Accounting Office
Washington, D.C. 20548-0001

Official Business
Penalty for Private Use $300

Address Service Requested

Presorted Standard
Postage & Fees Paid
GAO
Permit No. GI00