



August 2018

# NONIMMIGRANT VISAS

## Outcomes of Applications and Changes in Response to 2017 Executive Actions

Accessible Version

# GAO Highlights

Highlights of [GAO-18-608](#), a report to congressional requesters

## Why GAO Did This Study

Previous attempted and successful terrorist attacks against the United States have raised questions about the security of the U.S. government's process for adjudicating NIVs, which are issued to foreign nationals, such as tourists, business visitors, and students, seeking temporary admission into the United States. For example, the December 2015 shootings in San Bernardino, California, led to concerns about NIV screening and vetting processes because one of the attackers was admitted into the United States under a NIV. In 2017, the President issued executive actions directing agencies to improve visa screening and vetting, and establishing nationality-based visa entry restrictions, which the Supreme Court upheld in June 2018.

GAO was asked to review NIV screening and vetting. This report examines (1) outcomes and characteristics of adjudicated NIV applications from fiscal years 2012 through 2017, and (2) key changes made to the NIV adjudication process in response to executive actions taken in 2017.

GAO analyzed State NIV adjudication data for fiscal years 2012 through 2017, the most recent and complete data available. GAO visited seven consular posts selected based on visa workload and other factors. GAO reviewed relevant executive orders and proclamations, and documents related to implementing these actions.

This is a public version of a sensitive report issued in June 2018. Information that DHS, State, and the Office of the Director of National Intelligence deemed sensitive has been removed.

View [GAO-18-608](#). For more information, contact Rebecca Gambler at (202) 512-8777 or [GamblerR@gao.gov](mailto:GamblerR@gao.gov).

August 2018

## NONIMMIGRANT VISAS

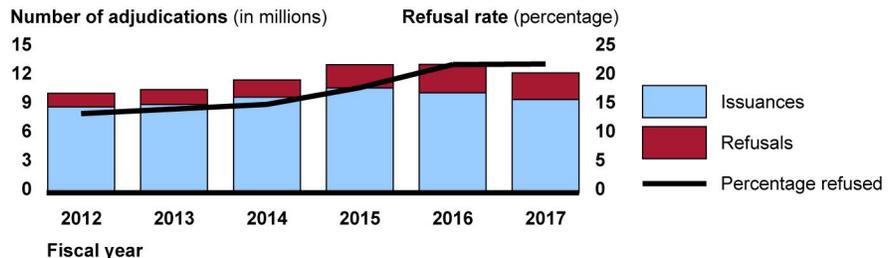
### Outcomes of Applications and Changes in Response to 2017 Executive Actions

#### What GAO Found

The total number of nonimmigrant visa (NIV) applications that Department of State (State) consular officers adjudicated annually peaked at about 13.4 million in fiscal year 2016, and decreased by about 880,000 adjudications in fiscal year 2017. NIV adjudications varied by visa group, country of nationality, and refusal reason:

- **Visa group.** From fiscal years 2012 through 2017, about 80 percent of NIV adjudications were for tourists and business visitors. During this time, adjudications for temporary workers increased by about 50 percent and decreased for students and exchange visitors by about 2 percent.
- **Country of nationality.** In fiscal year 2017, more than half of all NIV adjudications were for applicants of six countries of nationality: China (2.02 million, or 16 percent), Mexico (1.75 million, or 14 percent), India (1.28 million, or 10 percent), Brazil (670,000, or 5 percent), Colombia (460,000, or 4 percent), and Argentina (370,000, or 3 percent).
- **Refusal reason.** State data indicate that over this time period, 18 percent of adjudicated applications were refused; more than 90 percent were because the applicant did not qualify for the visa sought, and a small percentage (0.05 percent) were due to terrorism and security-related concerns.

#### Nonimmigrant Visa Adjudications, Fiscal Years 2012 through 2017



Source: GAO analysis of Department of State data. | GAO-18-608

In 2017, two executive orders and a proclamation issued by the President required, among other actions, visa entry restrictions for nationals of certain listed countries of concern, the development of uniform baseline screening and vetting standards, and changes to NIV screening and vetting procedures.

- GAO's analysis of State data indicates that, out of the nearly 2.8 million NIV applications refused in fiscal year 2017, 1,338 applications were refused due to visa entry restrictions implemented per the executive actions.
- State, the Department of Homeland Security (DHS), and others developed standards for screening and vetting by the U.S. government for all immigration benefits, such as for the requirement for applicants to undergo certain security checks.
- Further, State sought and received emergency approval from the Office of Management and Budget in May 2017 to develop a new form to collect additional information from some visa applicants, such as email addresses and social media handles.

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### Abbreviations

CBP	U.S. Customs and Border Protection
CLASS	Consular Lookout and Support System
DHS	Department of Homeland Security
DOJ	Department of Justice
EO	executive order
FBI	Federal Bureau of Investigation
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act

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KFE	Kingfisher Expansion
NCTC	National Counterterrorism Center
NIV	nonimmigrant visas
ODNI	Office of the Director of National Intelligence
PATRIOT	Pre-Adjudicated Threat Recognition and Intelligence Operations Team
SAO	security advisory opinion
State	Department of State
USCIS	U.S. Citizenship and Immigration Services



August 7, 2018

Congressional Requesters

Previous attempted and successful terrorist attacks against the United States have raised questions about the security of the U.S. government's process for adjudicating nonimmigrant visas (NIV), which are issued to foreign nationals, such as tourists, business visitors, and students seeking temporary admission into the United States.<sup>1</sup> For example, the December 2015 shootings in San Bernardino, California, raised concerns about NIV screening and vetting processes because one of the attackers was admitted into the United States under a NIV.<sup>2</sup> In addition, the December 2009 attempted bombing on a Northwest Airlines flight exposed weaknesses in how the U.S. government screened individuals seeking to come to the United States because information on the attacker

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<sup>1</sup>This report focuses on NIVs, which are visas issued to foreign nationals seeking temporary admission into the United States under a specific nonimmigrant category (8 U.S.C. § 1101(a)(15); 8 C.F.R. § 214.1(a)(1)-(2)), for an authorized period of stay delineated by a particular timeframe, or duration of status (i.e., admission for the time span of a specific program or activity, which may be variable). Immigrant visas, which are not addressed in this report, are issued to eligible foreign nationals who do not fall within one of the classes of nonimmigrants, and are seeking lawful permanent resident status in the United States with a path to citizenship. See 8 U.S.C. § 1101(a)(16). However, certain nonimmigrants—for example, recipients of K visas for the fiancé(e) or spouse of a U.S. citizen or their children—are also eligible for lawful permanent residence, provided they satisfy the applicable statutory criteria. This report also does not address individuals who are allowed to seek admission without a visa, such as citizens of Canada, as well as participants in the Visa Waiver Program, through which nationals of certain countries may apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. embassy or consulate abroad. See 8 U.S.C. § 1187; 8 C.F.R. §§ 212.1, 214.6(d), 217.1-217.7; 22 C.F.R. §§ 41.0-41.3.

<sup>2</sup>Tashfeen Malik was admitted into the United States in July 2014 with a K-1 nonimmigrant visa, which is a visa for the fiancé(e) of a U.S. citizen petitioner seeking entry into the United States solely to conclude a valid marriage with the petitioner within 90 days after admission. See 8 U.S.C. § 1101(a)(15)(K)(i). Following her marriage to Syed Farook, a U.S. citizen, in August 2014, Malik applied for and was later approved for an adjustment to lawful permanent resident status. The fact that one of the attackers was admitted to the United States under an NIV does not, itself, indicate a weakness in NIV screening and vetting processes, as such individuals may have become radicalized after arrival in the United States.

**Key Visa Adjudication Process Terms**

**Screening:** Reviewing visa application information for matches to derogatory information in relevant databases.

**Vetting:** Researching and investigating screened applicants with possible matches in those databases or based on other criteria.

Source: GAO. | GAO-18-608

had been fragmented across several U.S. government databases.<sup>3</sup> Federal agencies have reported that they have taken actions to address these weaknesses in the security of the NIV process.<sup>4</sup> Further, recent events have also highlighted the increased threat of one group of high-risk individuals, namely foreign fighters—individuals who leave home, travel abroad to terrorist safe havens, and join or assist violent extremist groups. Beginning in calendar year 2017, the President issued executive actions aimed at improving the screening and vetting protocols and procedures associated with the visa issuance process, including the imposition of visa entry restrictions for certain categories of foreign nationals from designated countries.<sup>5</sup>

The Department of State (State) is responsible for the adjudication of NIV applications, and manages the application process at U.S. embassies and consulates overseas in coordination with several departments and agencies.<sup>6</sup> In deciding to issue a visa, State's consular officers are on the front line of defense in protecting the United States against potential terrorists and others whose entry would likely be harmful to U.S. national

<sup>3</sup>On December 25, 2009, Umar Farouk Abdulmutallab, a 23-year-old Nigerian man, attempted to detonate a concealed explosive device on Northwest Airlines Flight 253 en route from Amsterdam to Detroit as the plane descended into the Detroit Metropolitan Wayne County Airport.

<sup>4</sup>We have previously reported on actions taken to address these weaknesses. See, e.g., GAO, *Terrorist Watchlist: Routinely Assessing Impacts of Agency Actions since the December 25, 2009 Attempted Attack Could Help Inform Future Efforts*, [GAO-12-476](#) (Washington, D.C.: May 31, 2012).

<sup>5</sup>See Exec. Order No. 13780, Protecting the Nation From Foreign Terrorist Entry Into the United States, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (issued Mar. 6). Executive Order (EO) 13780 revoked and replaced a prior EO of the same title, Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) (issued Jan. 27), implementation of which had largely been halted nationwide shortly after issuance by federal court injunction. Visa entry restrictions under EO 13780 were also blocked by the federal district courts in March 2017 but, upon review in June 2017, the U.S. Supreme Court permitted implementation of such restrictions subject to an exception for foreign travelers with bona fide ties to the United States. Pursuant to section 2(e) of EO 13780, the President issued Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) (issued Sept. 24), which restricted entry into the United States of nationals from eight countries (Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen) for an indefinite period. 82 Fed. Reg. 45,161 (Sept. 27, 2017). The Department of State announced that it began fully implementing the proclamation on December 8, 2017, as permitted by the Supreme Court's December 4 order. For further background on these and related executive actions, as well as associated challenges brought in federal courts, see appendix III.

<sup>6</sup>6 U.S.C. § 236(c), (d); 8 U.S.C. §§ 1201, 1202. In this report, we generally refer to U.S. embassies and consulates as posts.

interests. Consular officers must balance this security responsibility against the need to facilitate legitimate travel. Since its establishment, the Department of Homeland Security (DHS) has had authority to issue regulations with respect to the issuance and refusal of visas.<sup>7</sup> Other federal entities, such as the Office of the Director of National Intelligence's (ODNI) National Counterterrorism Center (NCTC) and the Department of Justice's (DOJ) Federal Bureau of Investigation (FBI), also contribute to the NIV screening and vetting process by providing intelligence and information against which applicants are screened, among other activities.

In light of continued concerns about the security of the visa process, you asked us to review the NIV screening and vetting process. This report is a public version of a sensitive report that we issued in June 2018.<sup>8</sup> Our June 2018 report addressed three objectives, including one describing NIV screening and vetting processes. DHS, ODNI, and State deemed some of the information in that report to be Sensitive But Unclassified, Law Enforcement Sensitive, or For Official Use Only, which must be protected from public disclosure. Although such sensitive information appeared throughout the report, the objective on NIV screening and vetting processes was predominately based on sensitive information. Consequently, this version only includes information on objectives (1) outcomes and characteristics of adjudicated NIV applications from fiscal years 2012 through 2017, and (2) key changes to the NIV screening and vetting process in response to executive actions taken in calendar year 2017 and related guidance.

To identify outcomes and characteristics of adjudicated NIV applications from fiscal years 2012 through 2017, we analyzed State NIV data for fiscal years 2012 through 2017—the most recently available full year data. The data fields we analyzed included month and year of adjudication; type of NIV; location of application; applicant nationality; outcome of application (e.g., issuance and refusal); and, if applicable,

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<sup>7</sup>The Homeland Security Act of 2002 established DHS and gave the Secretary of Homeland Security authority to issue regulations with respect to, administer, and enforce provisions of U.S. immigration laws relating to the functions of consular officers in connection with the granting or refusal of visas. Pub. L. No. 107-296, tit. I, IV, §§ 101(a), 428, 116 Stat. 2135, 2142, 2187-88 (classified at 6 U.S.C. §§ 111(a), 236).

<sup>8</sup>GAO, *Nonimmigrant Visas: Outcomes of Applications, Screening and Vetting Processes, and Changes in Response to 2017 Executive Actions*, GAO-18-286SU (Washington, D.C.: June 8, 2018).

reason for refusal. To assess the reliability of these data, we interviewed State officials who use and maintain the data and checked the data for missing information, outliers, and obvious errors, among other actions. On the basis of these steps, we determined that the data were sufficiently reliable for the purposes of our reporting objectives, including providing summary statistics on NIV adjudications, issuances, and refusal reasons.

To assist in our analysis of NIV data, we placed the majority of NIVs into one of seven groups (e.g., tourists and business visitors).<sup>9</sup> We developed the seven groups of related NIVs based on the purpose of the NIV and its eligibility criteria as defined in statute and as described by State and DHS documentation, among other factors.<sup>10</sup> Similarly, to assist in our analysis of the grounds upon which NIVs were refused, we grouped the grounds for refusal into one of seven categories (e.g., immigration-related ineligibility).<sup>11</sup> We developed the seven categories based on the reason for refusal as described in statute and in State documentation. We shared our NIV groups and refusal categories with State officials, who stated that our categories were generally appropriate for the analysis we conducted.

To identify key changes to the NIV screening and vetting process in response to executive actions taken in calendar year 2017 and related guidance, we reviewed executive actions taken in calendar year 2017 relevant to NIV screening and vetting, including Executive Order 13769,

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<sup>9</sup>More than 99.5 percent of visa applications adjudicated from fiscal years 2012 through 2017 fit within one of the seven groups we developed. The remaining NIVs, which combined were approximately 4,000 to 5,000 applications per year during this timeframe, are grouped as miscellaneous. This miscellaneous group includes, for example, T and U visas for victims of severe forms of trafficking in persons or other qualifying crimes. Although NIVs in this group are not included in one of the seven groups we developed, they are still accounted for in any totals presented in this report.

<sup>10</sup>Generally, NIVs for dependents (e.g., spouse, child, or personal employee) were grouped together, such as an academic student (F-1) and his or her spouse or minor children (F-2).

<sup>11</sup>More than 99.5 percent of visa refusals adjudicated from fiscal years 2012 through 2017 fit within one of the seven categories of refusals. The remaining refusal grounds, which combined was less than 400 refusals per year, are categorized as miscellaneous, and are included in totals presented in the report.

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Executive Order 13780, and Presidential Proclamation 9645.<sup>12</sup> We also reviewed State and DHS guidance, the Immigration and Nationality Act (INA), standard operating procedures, and documentation related to implementing requirements in the executive actions, and we interviewed State and DHS headquarters officials on their efforts to implement these requirements. We conducted site visits to seven consular posts to observe NIV screening and vetting operations and interview State, DHS, and DOJ officials implementing the new requirements from March through May 2017.<sup>13</sup> We selected these posts on the basis of their relatively high visa workloads; State and DHS data on the percentage of NIV applicants that potentially matched to derogatory information in fiscal year 2016; and geographic distribution to help account for variations in visa applicant populations and potential threats that consular officials encounter in different locations. Further, we visited posts that also had DHS's Visa Security Program, which provides an additional level of NIV screening and vetting by deploying agents to certain posts overseas to work with consular officers and review NIV applications. Our observations from these site visits are illustrative and provide insights about NIV operations, but are not generalizable to all posts. Further, we analyzed State's fiscal year 2017 NIV adjudication and refusal data to identify NIV applications that were refused solely due to visa entry restrictions implemented in accordance with the executive actions.

**Key Visa Adjudication Process Term**

Derogatory information: Information on a visa applicant that makes him or her potentially inadmissible to the United States or otherwise ineligible for a visa.

Source: GAO. | GAO-18-608

The performance audit upon which this report is based was conducted from November 2016 to June 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate, evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable

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<sup>12</sup>We discuss these and other related executive actions, and associated legal challenges brought in federal courts, in appendix III. In developing appendix III, we reviewed official copies of relevant executive actions published in the *Federal Register* (as applicable), which established visa screening and vetting policy, and entry restrictions for certain categories of foreign nationals from designated countries. We also obtained federal court decisions and associated litigation documents using industry standard legal research tools. While this report addresses NIV screening and vetting, we included certain other related executive actions and federal litigation from January 2017 through April 2018 in the appendix to provide a more complete presentation of legal standards applied, and precedent developed and relied up, by federal courts in resolving challenges to key aspects of the executive actions.

<sup>13</sup>The specific locations we visited are omitted from this report because State and DHS deemed these locations to be sensitive.

basis for our findings and conclusions based on our audit objectives. We subsequently worked with DHS, ODNI, and State from June to August 2018 to prepare this nonsensitive version of the original sensitive report for public release. This public version was also prepared in accordance with these standards.

## Background

### Roles and Responsibilities

Several U.S. agencies have roles and responsibilities related to the screening and vetting of NIV applicants, as shown in table 1.

**Table 1: U.S. Agencies' Roles and Responsibilities Related To Screening and Vetting Nonimmigrant Visa (NIV) Applicants**

Department	Component	Roles and Responsibilities Related to Screening and Vetting NIVs
Department of State (State)	Bureau of Consular Affairs	The Bureau of Consular Affairs and consular officers stationed at posts overseas adjudicate NIV applications. State requires in-person interviews with applicants in most cases, and incorporates multiple biographic and biometric security checks in the adjudication process.
	Bureau of Diplomatic Security	The Bureau of Diplomatic Security assigns Assistant Regional Security Officers-Investigators (ARSO-I) to posts overseas to investigate visa fraud and disrupt criminal networks and terrorist mobility.
Department of Homeland Security (DHS)	U.S. Immigration and Customs Enforcement (ICE)	ICE deploys Visa Security Program agents to certain posts overseas to work with consular officers and review NIV applications to identify national security, public safety, and other eligibility concerns with applicants.
	U.S. Customs and Border Protection (CBP)	In 2010, CBP's National Targeting Center implemented a program through which the center vets, on a continuous or recurrent basis, biographic and biometric information on all foreign nationals with valid NIVs against newly-obtained information that may affect the NIV holders' continued eligibility for the visa. <sup>a</sup> Known as "recurrent vetting," this process aims to ensure that changes in a traveler's visa status are identified in near real time.  The National Targeting Center also analyzes traveler data and threat information to identify high-risk travelers before they board U.S.-bound flights.
	U.S. Citizenship and Immigration Services (USCIS)	USCIS is responsible for adjudicating petitions for certain NIVs (including fiancé visas, religious workers, and categories of certain temporary employees) at its U.S.-based service centers prior to State's adjudication of the foreign beneficiaries' visa applications.

Department	Component	Roles and Responsibilities Related to Screening and Vetting NIVs
Department of Justice	Federal Bureau of Investigation (FBI)	<p>According to the FBI, the core mission of legal attachés at posts overseas is to establish and maintain liaison with principal law enforcement and security services in designated foreign countries, which enables the FBI to conduct its responsibilities in combating international terrorism, organized crime, cybercrime, and general criminal matters.</p> <p>Administered by the FBI, the Terrorist Screening Center is a multi-agency organization that administers the Terrorist Screening Database—the U.S. government’s consolidated watchlist of known and suspected terrorists. The Terrorist Screening Center is also authorized by the Attorney General to store, consolidate, maintain, and share identify information regarding actors who are national security threats, such as actors related to transitional organized crime and military threats.</p>
Office of the Director of National Intelligence (ODNI)	National Counterterrorism Center (NCTC)	<p>In 2013, NCTC launched Kingfisher Expansion (KFE), an interagency system that screens all NIV applicants for connections to terrorism by comparing applicant data to data holdings in the Terrorist Identities Datamart Environment.<sup>b</sup> NCTC deployed the first phase of KFE for NIVs and immigrant visas in June and September 2013, respectively, and the second phase of KFE for foreign nationals seeking temporary U.S. admission through the Visa Waiver Program, and refugee applicants, in March 2014 and April 2016, respectively.<sup>c</sup></p>

Source: GAO analysis of State, DHS, Department of Justice, and ODNI information. | GAO-18-608

<sup>a</sup>The National Targeting Center is a 24/7 operations entity responsible for providing advance information and research about high-risk travelers and cargo and facilitating coordination between law enforcement and intelligence agencies in support of CBP’s anti-terrorism mission and efforts to keep high-risk individuals and cargo from boarding U.S.-bound flights and vessels.

<sup>b</sup>NCTC’s Terrorist Identities Datamart Environment contains classified information pertaining to known or suspected international terrorists.

<sup>c</sup>Nationals of countries participating in the Visa Waiver Program may apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. embassy or consulate abroad. See 8 U.S.C. § 1187; 8 C.F.R. §§ 212.1, 217.1-217.7; 22 C.F.R. §§ 41.0-41.3.

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## NIV

### Key Visa Adjudication Process Terms

Validity period: The length of time during which a nonimmigrant visa (NIV) is valid for use by a foreign national seeking to travel to a U.S. port of entry and apply for admission into the United States.

Entries: The number of applications for admission into the country permitted under a single NIV.

Reciprocity arrangements: An understanding or arrangement between the U.S. government and another country on the length of time visas issued by either or both nations are valid for admission.

Source: GAO. | GAO-18-608

There are many NIVs, and for the purposes of this report, we have placed the majority of NIVs into one of seven groups, as shown in table 2.<sup>14</sup> The validity period and number of entries varies depending on (1) the particular NIV and (2) reciprocity arrangement with an individual's country of nationality, among other factors. For example, a foreign national of one country may be issued a tourist visa valid for 1 year that allows for a single U.S. entry, while a foreign national of another country may be issued a tourist visa valid for 5 years and that permits multiple entries. However, the authorized period of stay—that is, the amount of time that the nonimmigrant is permitted to remain in the United States after being admitted—has no relation to the validity period.<sup>15</sup> For more information on the various NIVs, see appendix I.

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<sup>14</sup>See 8 U.S.C. § 1101(a)(15); 8 C.F.R. § 214.1(a). More than 99.5 percent of NIV applications adjudicated from fiscal years 2012 through 2017 fit within one of the seven groups listed in table 2. The remaining NIVs are grouped as miscellaneous, (which combined was approximately 4,000 to 5,000 adjudications per year during this timeframe) and are not included in the table. This miscellaneous group includes, for example, T and U visas for victims of severe forms of trafficking in persons or other qualifying crimes; and Q visas for foreign nationals coming temporarily to the United States as participants in a DHS-approved international cultural exchange program meant to provide practical training, employment, and sharing of history, culture, and traditions of the individual's home country, provided the nonimmigrant is to be employed under the same wages and working conditions as domestic workers. 8 U.S.C. § 1101(a)(15)(Q); 8 C.F.R. § 214.2(q). We present data on the miscellaneous group in appendix II, including annual adjudications and refusal rate.

<sup>15</sup>22 C.F.R. § 41.112. The authorized period of stay is the set or variable amount of time for which a NIV holder is admitted to the United States upon inspection by a DHS officer at a U.S. port of entry.

**Table 2: Examples of Nonimmigrant Visas (NIV) as Grouped by GAO**

Visa Groups	Examples	General Description
Tourists and business visitors	B-1, B-2, B-1/B-2, and border crossing cards	Includes visas for temporary visitors traveling to the United States for business or pleasure, as well as border crossing cards issued in combination with B-1/B-2 visas for Mexican nationals seeking to enter the United States for business or pleasure.
Students and exchange visitors	F-1, M-1, and J-1	Includes visas for students and exchange visitors through two programs—U.S. Immigration and Customs Enforcement’s Student and Exchange Visitor Program (SEVP), under which schools are certified for enrollment of foreign students (i.e., F and M visa holders) pursuing academic, vocational, or other nonacademic studies, and Department of State’s Exchange Visitor Program, which manages the issuance of J visas to exchange visitors, including certain students, scholars, trainees, au pairs, and teachers, among others.
Temporary workers	H-1B, H-2A, H-2B, L-1, I, and P-1	Includes visas for foreign nationals to work in the United States for a specified period of time and purpose, such as those working in specialty occupations or as fashion models, seasonal agricultural or other kinds of temporary workers, intracompany transferees, foreign media representatives, and internationally recognized athletes and entertainment groups.
Transit and crewmembers	C-1 and D	Includes visas for foreign nationals traveling in immediate and continuous transit through the United States en route to another country or to and from the United Nations, as well as visas for foreign crewmen serving on board a vessel or aircraft and intending to land temporarily in the United States or certain U.S. territories.
Foreign officials and employees	A-1 and G-1	Includes visas for accredited foreign diplomats recognized by the United States, as well as principal or other accredited representatives of U.S.-recognized foreign governments, and their staff, and immediate family of such officials.
Treaty traders and investors	E-1 and E-2	Includes visas for foreign nationals, and eligible family members, who are coming to the United States pursuant to a treaty to engage in substantial trade with the United States; or who invests substantial capital in, and develop and direct operations of, a commercial enterprise.
Fiancé(e)s and spouses	K-1 and K-3	Includes visas for a U.S. citizen’s foreign fiancé(e) seeking entry into the country to marry the U.S. petitioner within 90 days, and for a foreign national who has married a U.S. citizen and is seeking entry into the United States to await approval and availability of an immigrant visa.

Source: GAO analysis of Department of State information and the Immigration and Nationality Act. | GAO-18-608

Notes: This table is not a comprehensive list of NIVs. Generally, NIVs for dependents (e.g., spouse, child, or personal employee) were grouped together, such as an academic student (F-1) and his or her spouse or minor children (F-2). More than 99.5 percent of NIV applications adjudicated from fiscal years 2012 through 2017 fit within one of the seven groups listed above. The remaining NIVs not included in this table accounted for approximately 4,000 to 5,000 adjudications per year during this timeframe. This group includes, for example, T and U visas for victims of severe forms of trafficking in persons or other qualifying crimes; and Q visas for foreign nationals coming temporarily to the United States as participants in a Department of Homeland Security-approved international cultural exchange program meant to provide practical training, employment, and sharing of history, culture, and traditions of the individual’s home country. 8 U.S.C. § 1101(a)(15)(Q); 8 C.F.R. § 214.2(q).

## NIV Adjudication Process

State is generally responsible for the adjudication of NIV applications, and manages the NIV application process, including the consular officer corps

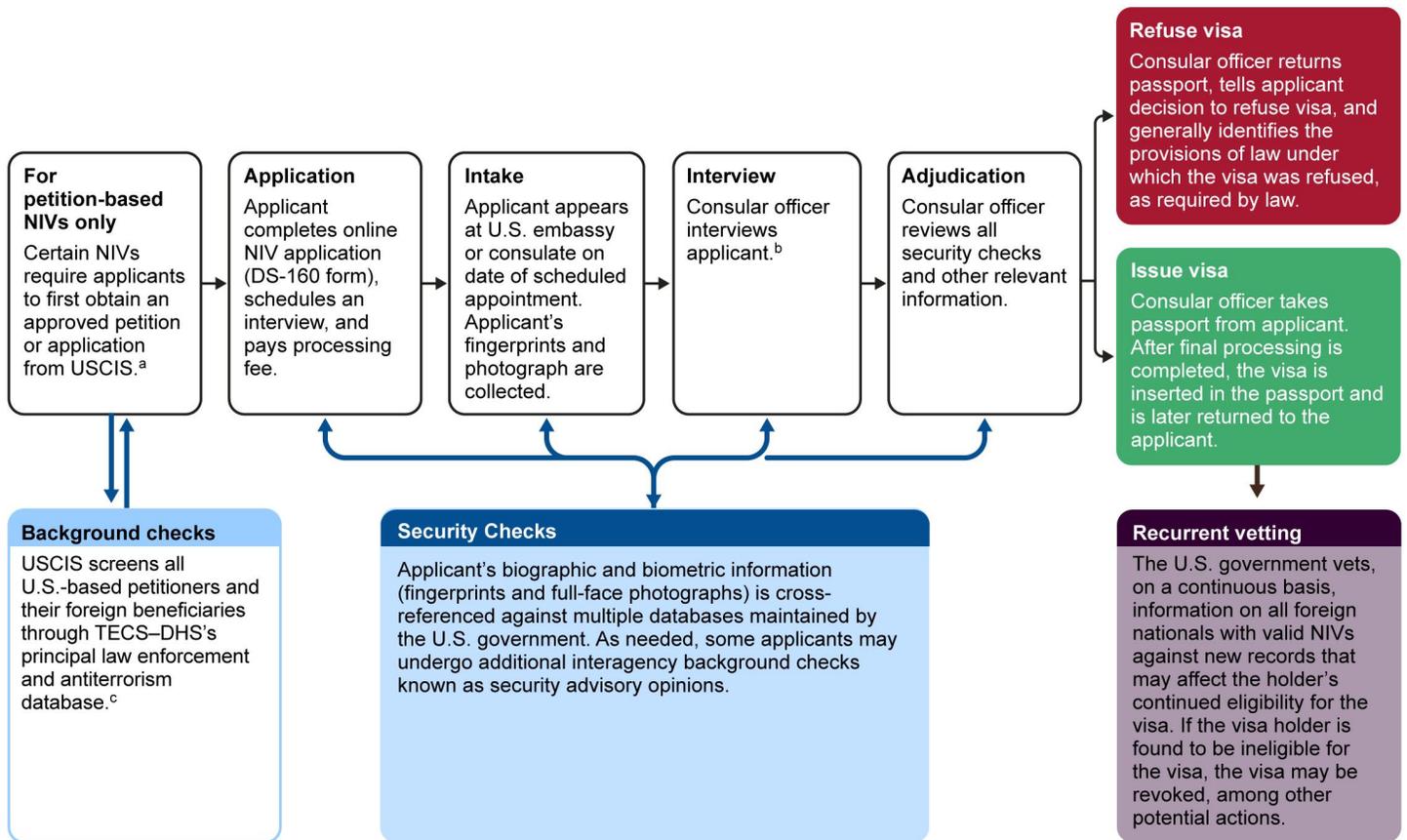
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and its functions at more than 220 visa-issuing posts overseas.<sup>16</sup> Depending on various factors, such as the particular NIV sought, the applicant's background, and visa demand, State officials noted that the length of the visa adjudication process can vary from a single day to months. This screening and vetting process for determining who will be issued or refused a visa contains several steps, as shown in figure 1:

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<sup>16</sup>See 6 U.S.C. § 236(c), (d); 8 U.S.C. §§ 1201-1202. However, there are certain cases in which USCIS handles nonimmigrant processing exclusively. For all T visas for victims of trafficking, USCIS is entirely responsible for the application process given that these applicants must be physically present within the United States or a U.S. territory, or at a port of entry to be eligible for T nonimmigrant status, and therefore would not be subject to consular processing abroad. 8 U.S.C. § 1101(a)(15)(T). For some U visas for victims of qualifying crimes, where the petitioner is inside the United States and thus not required to undergo the consular process, USCIS is wholly responsible for adjudicating eligibility for U nonimmigrant status. 8 U.S.C. § 1101(a)(15)(U).

**Figure 1: Nonimmigrant Visa (NIV) Adjudication Processes**



**Legend**  
 DHS Department of Homeland Security  
 USCIS U.S. Citizenship and Immigration Services

Source: GAO analysis of Department of State information. | GAO-18-608

Note: Additional details on NIV security checks are omitted from this figure because DHS, the Department of State, and the Office of the Director of National Intelligence considered such information sensitive.

<sup>a</sup>Prior to completing an application, some NIVs require that a petition be filed on behalf of the beneficiary (visa applicant), or on their own behalf for self-petitioning visa categories, with USCIS, which is responsible for approving, denying, or in certain circumstances, withholding adjudication of the petition; notifying the petitioner of its decision; and sending the approved petition to the Department of State. In certain cases, USCIS handles nonimmigrant processing exclusively. For example, USCIS is entirely responsible for the T visa application process for victims of trafficking given that these applicants must be physically present within the United States or a U.S. territory, or at a port of entry to be eligible for T nonimmigrant status, and therefore would not be subject to consular processing abroad. 8 U.S.C. § 1101(a)(15)(T). Further, applicants seeking a student (F and M) or exchange visitor (J) visa must be accepted into a program from a DHS-certified school or State-designated sponsor, respectively, prior to applying for a NIV. See 8 U.S.C. § 1101(a)(15)(F); 8 C.F.R. § 214.2(f); 8 U.S.C. § 1101(a)(15)(M); 8 C.F.R. § 214.2(m); and 8 U.S.C. § 1101(a)(15)(J); 8 C.F.R. § 214.2(j).

<sup>b</sup>See 8 U.S.C. § 1202 (a), (c), (h); 22 C.F.R. § 41.102. Prior to March 2017, applicants who qualified for a waiver of the in-person interview requirement were not required to schedule or appear at post for an interview for their nonimmigrant visa application to be adjudicated by a consular officer. Executive Order 13780, issued in March 2017, directed the Secretary of State to immediately suspend the Visa Interview Waiver Program and ensure compliance with 8 U.S.C. § 1202, requiring that all those seeking nonimmigrant visas undergo an in-person interview, subject to specific statutory exceptions. The Executive Order further identified categories of foreign nationals traveling under certain visa categories or for particular purposes for which the interview waiver program suspension does not apply, such as individuals traveling on a diplomatic or diplomatic-type visa. See Protecting the Nation from Foreign Terrorist Entry Into the United States, Exec. Order No. 13780, § 9, 82 Fed. Reg. 13,209, 13,216-217 (Mar. 9, 2017) (issued Mar. 6).

<sup>c</sup>TECS (not an acronym) includes a database subset of known or suspected terrorists from the Terrorist Screening Database—the U.S. government’s consolidated watchlist of known and suspected terrorists.

<sup>d</sup>Fingerprints are sent to the Federal Bureau of Investigation and Department of Homeland Security for screening.

- **Petitions.** Prior to State’s adjudication process, some NIVs require applicants to first obtain an approved petition from U.S. Citizenship and Immigration Services (USCIS), as shown in table 3.<sup>17</sup> For example, applicants seeking an employment-based NIV or a U.S. citizen’s foreign national fiancé(e) seeking U.S. entry to conclude a valid marriage, must obtain an approved petition from USCIS prior to applying for their NIV.<sup>18</sup> The petitioner (i.e., a U.S. citizen, organization or business entity) completes the petition on behalf of the applicant (i.e., the beneficiary), and the petition would be submitted to a U.S.-based USCIS service center for adjudication.<sup>19</sup>

**Table 3: U.S. Citizenship and Immigration Services (USCIS) Immigration Forms for Nonimmigrant Visas (NIV)**

USCIS Form	Examples of NIVs Requiring Approved Form
I-129 Petition for a Nonimmigrant Worker <sup>a</sup>	H-1B – Temporary workers with “specialty occupation” H-2A – Seasonal agricultural workers L-1 – Intracompany transferees <sup>d</sup> O-1 – Temporary worker with extraordinary ability or achievement in the sciences, arts, education, business, athletics, television, or film
I-129F Petition for Alien Fiancé(e)	K-1 – Foreign national fiancé(e)s of U.S. citizens K-3 – Foreign national spouses of U.S. citizens awaiting petition approval and availability of immigrant visa

<sup>17</sup>USCIS may approve, deny, or withhold adjudication of a visa petition or other benefit request. See 8 C.F.R. § 103.2.

<sup>18</sup>See 8 U.S.C. § 1101(a)(15)(H), (L), (K); 8 C.F.R. § 214.2(h), (l), (k).

<sup>19</sup>For U visas there is a self-petition process whereby the petitioner-beneficiary submits the petition on their own behalf. 8 U.S.C. § 1101(a)(15)(U).

USCIS Form	Examples of NIVs Requiring Approved Form
I-914 Application for T Nonimmigrant Status <sup>b</sup>	T-1 – Victims of severe form of trafficking T-2 – Spouse of T-1 visa holder
I-918 Petition for U Nonimmigrant Status <sup>c</sup>	U-1 – Victims of qualifying crimes U-2 – Spouse or U-1 visa holder

Source: GAO analysis of the Immigration and Nationality Act and USCIS information. | GAO-18-608

Note: This table does not include other USCIS forms, such as application for extension or change of nonimmigrant status, Form I-539, or application for adjustment of status, Form I-485.

<sup>a</sup>This also includes related forms, such as the I-129CW for nonimmigrant transitional workers in the Commonwealth of the Northern Mariana Islands only and I-129S petition to classify an L-1 nonimmigrant intracompany transferee on the basis of a previously approved blanket L petition.

<sup>b</sup>This also includes related forms, such as the I-914A supplement for family member of a T-1 recipient.

<sup>c</sup>This also includes related forms, such as the I-918A supplement and I-929 petition for qualifying family members of a U-1 nonimmigrant.

<sup>d</sup>If applicable, petitioners for L-1 beneficiaries can file an I-129S petition to classify an L-1 nonimmigrant intracompany transferee on the basis of a previously approved blanket L petition.

- USCIS Background Checks.** As part of the adjudication process for visas requiring a USCIS-approved petition before the NIV application is submitted to State, USCIS conducts background checks on U.S.-based petitioners and foreign beneficiaries.<sup>20</sup> For example, petitioner and beneficiary information is screened against TECS—DHS’s principal law enforcement and antiterrorism database that includes enforcement, inspection, and operational records.<sup>21</sup> Further, for U.S. citizens petitioning for a K-1 visa on behalf of their fiancé(e), an FBI fingerprint check may also be required of the U.S. citizen petitioner.<sup>22</sup> If the background checks identify a potential match to derogatory information, the background check unit at the USCIS service center

<sup>20</sup>USCIS also adjudicates T nonimmigrant “applications” (I-914, Application for T Nonimmigrant Status).

<sup>21</sup>TECS is used for preventing terrorism, providing border security and law enforcement, and sharing information about people who are inadmissible or may pose a threat to the security of the United States. Originally developed in the 1980s, TECS provides traveler processing and screening, investigations, case management, and intelligence functions for multiple federal, state, and local agencies. TECS is not an acronym. TECS includes a database subset of known or suspected terrorists from the Terrorist Screening Database.

<sup>22</sup>According to USCIS officials, some petitioners are required to undergo an FBI fingerprint check per requirements in the Adam Walsh Child Protection and Safety Act of 2006, which prohibits DHS from approving any family-based petition, including a fiancé(e) petition, for any U.S. citizen petitioner convicted of a specified offense against a minor unless the Secretary of Homeland Security, in the Secretary’s sole and unreviewable discretion, determines that the petitioner poses no risk to his or her foreign fiancé(e). Pub. L. No. 109-248, tit. IV, § 402, 120 Stat. 587, 622-23 (2006) (amending 8 U.S.C. §§ 1101(a)(15)(K), 1154(a)(1)(A)-(B)).

that received the petition is to conduct further research to confirm the match, such as running checks against other government systems and collaborating with other government agencies. If all background check hits have been resolved and documented, and there is no reason not to proceed, USCIS will adjudicate the petition.<sup>23</sup> In fiscal year 2017, USCIS reported that it received about 640,000 petitions for NIVs, and approved over 550,000.

- **NIV Application.** After having obtained USCIS approval of the NIV petition, as applicable, the foreign national begins the consular process by completing an online NIV application, known as a DS-160. Upon submitting an application, the applicant can schedule an interview at a post overseas and pays the processing fee.
- **Intake and in-person interview.** The applicant appears at the U.S. embassy or consulate on the day of his or her scheduled interview. During intake, State staff confirms the applicant's biographic information and collects his or her fingerprints and photograph. Generally, all applicants aged 14 through 79 applying for an NIV must be interviewed in person by a consular officer unless the interview requirement is waived pursuant to statute.<sup>24</sup> Consular officers are to determine an applicant's eligibility to receive the particular visa being sought, on the basis of the visa application, the applicant's personal interview, and other relevant documentation and information.
- **Security checks.**<sup>25</sup> The various security checks NIV applicants undergo generally screen the applicant's information (biographic and biometric) against multiple U.S. government databases to identify potential matches with records of individuals who are known threats to the United States or other derogatory information that could make the

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<sup>23</sup>Additional details on USCIS's background check processes are omitted because DHS considered such information sensitive.

<sup>24</sup>See 8 U.S.C. § 1202(c), (h); 22 C.F.R. § 41.102. Prior to March 2017, applicants who qualified for a waiver of the in-person interview requirement were not required to schedule or appear at post for an interview for their NIV application to be adjudicated by a consular officer. For example, State reported that 332,980 NIVs were issued in fiscal year 2016 under State's Interview Waiver Program, which is about 3.2 percent of the 10,381,159 nonimmigrant visas issued that fiscal year. EO 13780, issued in March 2017, directed the Secretary of State to immediately suspend this program and ensure compliance with 8 U.S.C. § 1202, requiring that all those seeking NIVs undergo an in-person interview, subject to specific statutory exceptions. See Exec. Order No. 13780, § 9, 82 Fed. Reg. at 13,216-217 (Mar. 9, 2017).

<sup>25</sup>Additional details on NIV applicant security checks are omitted because DHS, State, and ODNI considered such information sensitive.

applicant ineligible. For example, applicants' biographic information is screened against State's Consular Lookout and Support System namecheck and INTERPOL's Stolen and Lost Travel Document Database check.<sup>26</sup> In addition, biometric checks include running an applicant's fingerprints and full-face photograph against multiple government systems.<sup>27</sup> Counterterrorism checks include Kingfisher Expansion (KFE), which compares applicant data to the data holdings in NCTC's Terrorist Identities Datamart Environment.<sup>28</sup> Further, at some locations overseas, DHS's Visa Security Program uses the Pre-Adjudicated Threat Recognition and Intelligence Operations Team (PATRIOT) check to identify national security, public safety, and other eligibility concerns related to visa applicants.<sup>29</sup> Prior to adjudicating the visa application, consular officers must review all such security check results. Some applicants are not subjected to all of the

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<sup>26</sup>CLASS is State's namecheck system, which contains records provided by numerous agencies on persons with immigration violations and terrorism concerns, among other potential ineligibilities. INTERPOL's database contains almost 60 million records of lost or stolen travel documents (e.g., passports). According to State, INTERPOL has 190 member countries, most of which report lost and stolen travel documents via this database.

<sup>27</sup>Facial recognition technology measures the features of the human face, such as the distance between the pupils, and creates a record of that information for each individual face registered in the program.

<sup>28</sup>NCTC's Terrorist Identities Datamart Environment provides information on known or suspected international terrorists.

<sup>29</sup>We reported on the Visa Security Program and PATRIOT in March 2018. See GAO, *Border Security: Actions Needed to Strengthen Performance Management and Planning for Expansion of DHS's Visa Security Program*, [GAO-18-314](#) (Washington, D.C.: Mar. 20, 2018).

### Key Visa Adjudication Process Terms

**Inadmissible:** Individuals are inadmissible to the United States if they fall within the classes of foreign nationals defined as such under the Immigration and Nationality Act (INA), as amended, Pub. L. No. 82-414, tit. II, ch. 2, § 212(a), 66 Stat. 163, 182-87 (1952) (classified, as amended, at 8 U.S.C. § 1182(a)), such as foreign nationals who have engaged in terrorist or criminal activities or previously violated U.S. immigration law. If a visa applicant is found inadmissible, and has not obtained a waiver from the Department of Homeland Security, the applicant would be statutorily ineligible for a visa.

**Ineligible:** An individual is ineligible for a visa if it appears to the Department of State consular officer, based on the application or supporting documentation, that the applicant is not qualified to receive a visa under any provision of law. If the consular officer decides that an applicant is ineligible for visa issuance, the refusal may be based on statutory grounds of inadmissibility under INA § 212(a), or may be due to the individual's failure to otherwise satisfy the applicable eligibility requirements for the particular visa, as defined in the INA. For example, a consular officer may refuse a J-1 exchange visitor visa to an applicant coming to the United States to perform services as a member of the medical profession if the applicant does not either demonstrate competency in oral and written English or hold a degree from an accredited school of medicine, as required of such visa applicants under INA § 212(j).

Source: GAO analysis of the INA. | GAO-18-608

security checks depending on certain characteristics, such as age and visa category. For example, State does not generally require that fingerprints be collected for applicants who are either under 14 years old or over 79 years old, or for foreign government officials seeking certain visas.<sup>30</sup>

As needed, some applicants undergo an interagency review process called a security advisory opinion (SAO), which is a multi-agency, U.S.-based review process for certain NIV applicants. For example, SAOs are mandatory in cases of certain security check hits, a foreign national's background, or a foreign national's intention while in the United States. In addition, consular officers have the discretion to request an SAO for any visa applicant. Through the SAO process, consular officers send additional information on applicants to U.S.-based agencies, who review that information against their holdings. Department of State data indicate that consular officers made over 180,000 requests for SAOs for NIV applicants in fiscal year 2017.

- **Adjudication.** If the consular officer determines that the applicant is eligible for the visa on the basis of the application, supporting documentation, and other relevant information such as statements made in an interview, he or she will take the applicant's passport for final processing, but the visa cannot be printed until all security checks have been returned and reviewed. If the consular officer determines that the applicant is inadmissible to the United States or otherwise ineligible under the applicable visa eligibility criteria, he or she informs the applicant that the visa has been refused, and identifies the provision(s) of law under which the visa was refused.
- **Recurrent vetting.** In March 2010, shortly after the December 2009 attempted bombing by a foreign national traveling to the United States on a valid visa, CBP began vetting individuals with NIVs on a recurrent basis. This program has led State to revoke visas after they have been issued when information was later discovered that rendered the individual inadmissible to the United States or otherwise

<sup>30</sup>According to State officials, although some applicants do not undergo fingerprint screening, their biographic information is screened against records in the National Crime Interstate Identification Index, which contains criminal history information, via State's CLASS check. National Crime Interstate Identification Index records include information on persons who are indicted for, or have been convicted of, a crime punishable by imprisonment for a term exceeding 1 year or have been convicted of a misdemeanor crime of domestic violence.

ineligible for the visa.<sup>31</sup> In addition, CBP analysts may take other actions as needed after identifying new derogatory information, such as recommending that the airline deny boarding to the traveler because the traveler is likely to be deemed inadmissible upon arrival in the United States (known as a no-board recommendation) or making a referral to ICE, which may seek to remove the individual if already within the United States.<sup>32</sup> According to NCTC, KFE also conducts recurrent vetting of NIV holders against emerging threat information.<sup>33</sup>

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<sup>31</sup>A consular officer or the Secretary of State is authorized to revoke a visa or other documentation at any time, at his or her discretion. A revoked visa is no longer valid for entry or reentry to the United States. INA § 221(i) (8 U.S.C. § 1201(i)).

<sup>32</sup>CBP analyzes traveler data and threat information to identify high-risk travelers before they board U.S.-bound flights. Specifically, National Targeting Center analysts assess whether travelers are high-risk by matching their information against U.S. government databases and lists, and rules-based targeting, which enables CBP to identify unknown high-risk individuals. Based upon the analysis, if a traveler will likely be deemed inadmissible upon arrival in the United States, CBP officers may recommend to the air carrier that it not allow the traveler to board. Air carriers, however, retain authority to board the traveler unless the traveler has been identified by the Transportation Security Administration as being on the No Fly List or otherwise prohibited from flying. GAO, *Border Security: CBP Aims to Prevent High-Risk Travelers from Boarding U.S.-Bound Flights, But Needs to Evaluate Program Performance*, [GAO-17-216](#) (Washington, D.C.: January 24, 2017).

<sup>33</sup>Additional details on recurrent vetting are omitted because DHS and ODNI considered such information sensitive.

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## Number of NIV Adjudications and Refusal Rates Increased Through Fiscal Year 2016, and Declined in Fiscal Year 2017; NIV Application Characteristics Vary

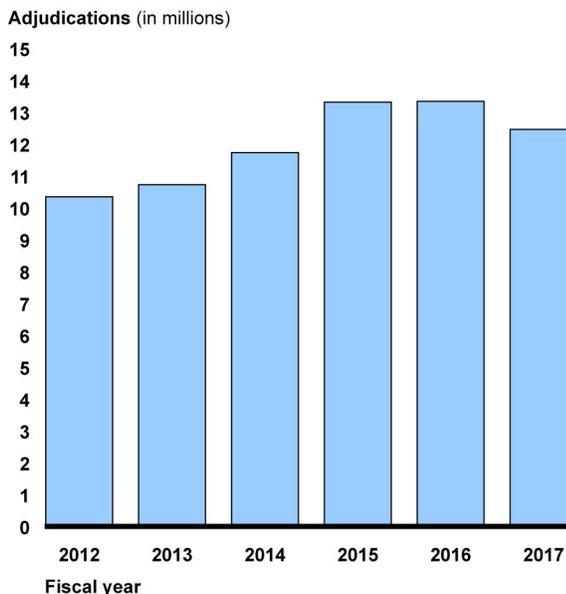
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### Number of NIV Applications Adjudicated Increased Annually from Fiscal Years 2012 through 2016 and Declined in Fiscal Year 2017

The total number of NIV applications that consular officers adjudicated annually (or, NIV adjudications) peaked at about 13.4 million in fiscal year 2016, which was an increase of approximately 30 percent since fiscal year 2012. In fiscal year 2017, NIV adjudications decreased by about 880,000 adjudications, or about 7 percent. Figure 2 shows the number of applications adjudicated each year from fiscal year 2012 through 2017. Appendix II includes additional data on NIV adjudications related to this and the other figures in this report.

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**Figure 2: Nonimmigrant Visa (NIV) Adjudications, Fiscal Years 2012 through 2017**



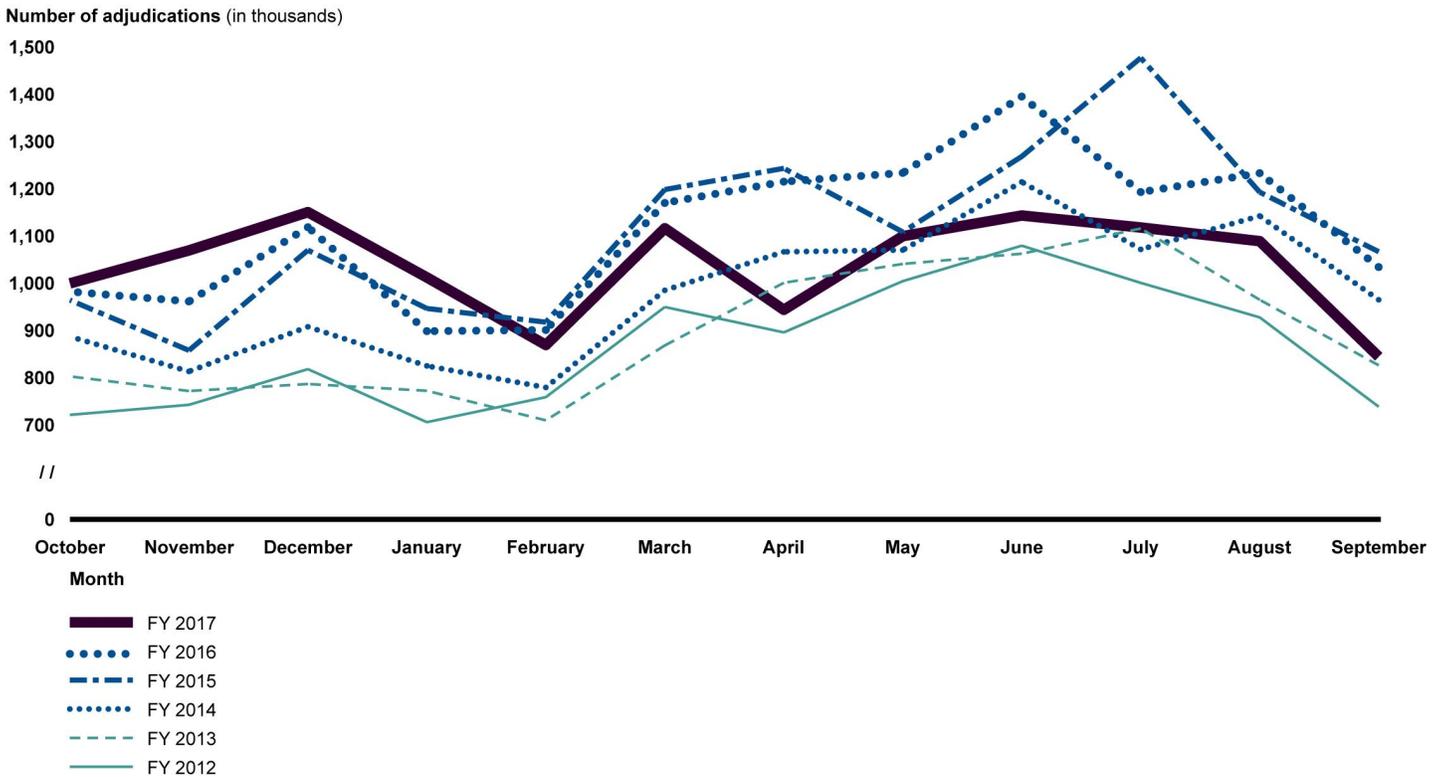
Source: GAO analysis of Department of State data. | GAO-18-608

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Note: NIV adjudications represent all nonimmigrant applications that were adjudicated during that fiscal year. Such applications may have been initiated in prior fiscal years. This includes applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security. In such cases, the application is counted as a single adjudication.

**Annual Monthly Trends.** State data from fiscal years 2012 through 2016 indicate that NIV adjudications generally followed an annual cycle, ebbing during certain months during the fiscal year; however, adjudications in fiscal year 2017 departed slightly from this trend. Specifically, from fiscal years 2012 through 2016, the number of NIV adjudications typically peaked in the summer months. State officials noted that the summer peak is generally due to international students who are applying for their visas for the coming academic year. However, in fiscal year 2017, the summer months did not experience a similar increase from previous months, departing from the trend over the previous five fiscal years, according to State data. Instead, NIV adjudications peaked in December of fiscal year 2017. State officials attributed some of the decline in fiscal year 2017 to a decrease in Chinese NIV applicants, which we discuss later in this report. Figure 3 shows monthly NIV adjudications for fiscal years 2012 through 2017.

**Figure 3: Nonimmigrant Visas (NIV) Adjudications by Month, Fiscal Years 2012 through 2017**



Source: GAO analysis of Department of State data. | GAO-18-608

Notes: NIV adjudications represent all nonimmigrant applications that were adjudicated during that month. Such applications may have been initiated in prior months. This includes applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security. In such cases, the application is counted as a single adjudication.

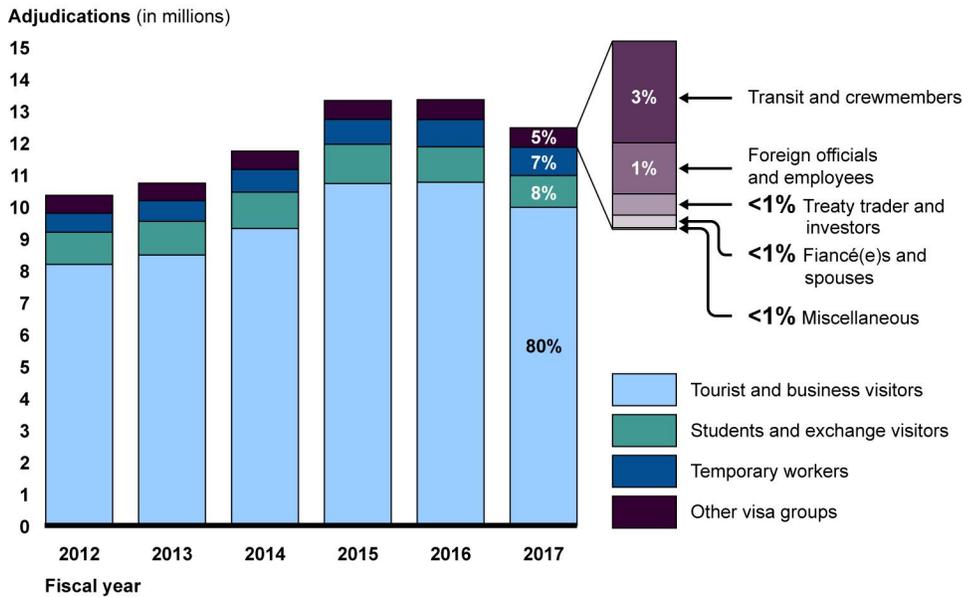
### Most NIV Adjudications from Fiscal Years 2012 through 2017 Were for Tourist and Business Visitor Visas, and Approximately Half of All Applicants Came from Six Countries

State data on NIV applications adjudicated from fiscal years 2012 through 2017 indicate that the number of adjudications by visa group, applicant's country of nationality, and location of adjudication were generally consistent, with some exceptions.

**Visa Group.** From fiscal years 2012 through 2017, about 80 percent of NIV adjudications were for tourist and business visitors as shown in figure

4. The next largest groups were visas for students and exchange visitors and temporary workers, which accounted for an average of 9 percent and 6 percent, respectively, of all adjudications during this time period.

**Figure 4: Adjudications of Nonimmigrant Visa (NIV) Applications by Visa Group, Fiscal Years 2012 through 2017**

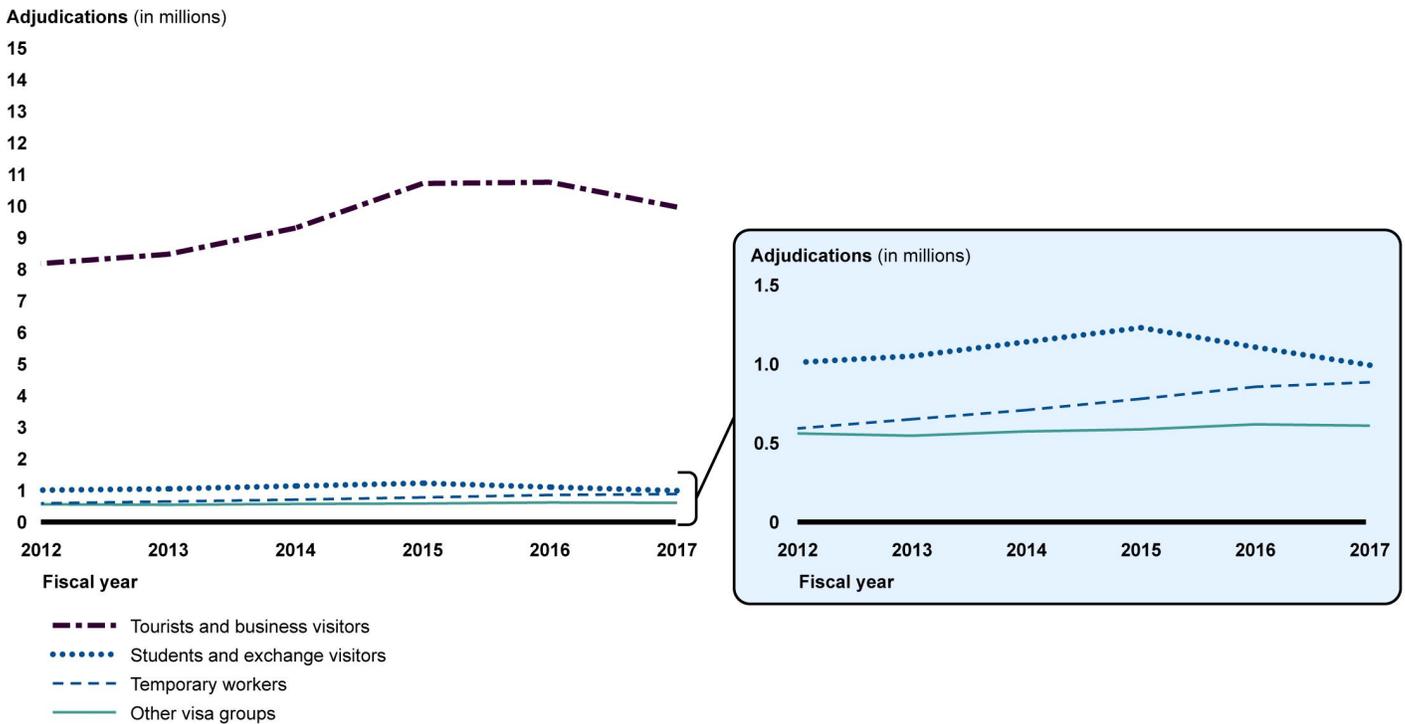


Source: GAO analysis of Department of State data. | GAO-18-608

Notes: NIV adjudications represent all nonimmigrant applications that were adjudicated during that year. Such applications may have been initiated in prior years. This includes applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security. In such cases, the application is counted as a single adjudication.

Although adjudications for visas in some categories increased, others decreased over time. For example, as shown in figure 5, NIV adjudications for temporary workers increased by approximately 50 percent from fiscal years 2012 through 2017 (592,000 to 885,000). During the same time period, adjudications for tourist and business visitors also increased by approximately 20 percent overall (from 8.18 million to 9.97 million), but decreased from fiscal years 2016 to 2017. However, NIV adjudications for student and exchange visitor visas decreased by about 2 percent from fiscal years 2012 through 2017 (1.01 million to 993,000) overall, but experienced a peak in fiscal year 2015 of 1.2 million. Appendix I includes additional information on NIV adjudication by visa group from fiscal years 2012 through 2017.

**Figure 5: Nonimmigrant Visa (NIV) Adjudications by Visa Group, Fiscal Years 2012 through 2017**



Source: GAO analysis of Department of State data. | GAO-18-608

Notes: NIV adjudications represent all nonimmigrant applications that were adjudicated during that fiscal year. Such applications may have been initiated in prior months. This includes applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security. In such cases, the application is counted as a single adjudication.

State officials identified reasons to explain these trends:

- Temporary Workers.** Although there was an increase in adjudications across all types of temporary worker visas, the largest percentage increase was for H-2A visas, which are for foreign workers seeking to perform agricultural services of a temporary or seasonal nature.<sup>34</sup> Specifically, adjudications of H-2A visas increased by 140 percent from fiscal years 2012 to 2017 (from about 71,000 to 170,000). State officials noted that H-2A visas are not numerically

<sup>34</sup>8 U.S.C. § 1101(a)(15)(H)(ii)(a); 8 C.F.R. § 214.2(h).

limited by statute.<sup>35</sup> Further, State officials stated that they believe U.S. employers are increasingly less likely to hire workers without lawful status and are petitioning for lawfully admitted workers, which in part led to an increase in H-2A visa demand.

- **Tourist and Business Visitors.** State officials partly attributed the overall changes to tourist and business visitor visas to the extension of the validity period of such visas for Chinese nationals, which represented the largest single country of nationality for tourist and business visitor visas in fiscal year 2017 (17.7 percent).<sup>36</sup> In November 2014, the United States and the People’s Republic of China reciprocally increased the validity periods of multiple-entry tourist and business visitor visas issued to each other’s citizens for up to 10 years.<sup>37</sup> The change in policy was intended to support improved trade, investment, and business by facilitating travel between the two countries. According to State officials, extending validity periods can create an initial increase in demand for such visas, followed by a period of stabilization or even decline as NIV holders would be required to apply for renewal less frequently. According to State officials, in early fiscal year 2015, the increase in the validity period to 10 years for such visas created a spike in Chinese demand in fiscal year 2015, and by fiscal year 2016, the initial demand for these visas had been met and Chinese economic growth was simultaneously slowing, resulting in fewer adjudications for such visas in fiscal year 2017. State data for this time period indicate that the number of adjudications for tourist and business visitor visas for Chinese nationals increased from 1.58 million in fiscal year 2014 to 2.54 million in fiscal year 2015, followed by a decline to 2.34 million in fiscal year 2016 and 1.76 million in fiscal year 2017.
- **Student and Exchange Visitors.** Similar to tourist and business visitors, State officials partly attributed the overall changes in student and exchange visitor visa adjudications to the extension of the validity

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<sup>35</sup>Some NIVs are numerically limited by statute, such as H-1B visas for temporary workers performing services in a specialty occupation or as a fashion model, and H-2B visas for temporary workers for non-agricultural labor or services where capable unemployed Americans cannot be found. See 8 U.S.C. § 1101(a)(15)(H). Under 8 U.S.C. § 1184(g), the number of foreign nationals who may be issued visas or otherwise provided nonimmigrant status during any fiscal year is limited to 65,000 for H-1B and 66,000 for H-2B.

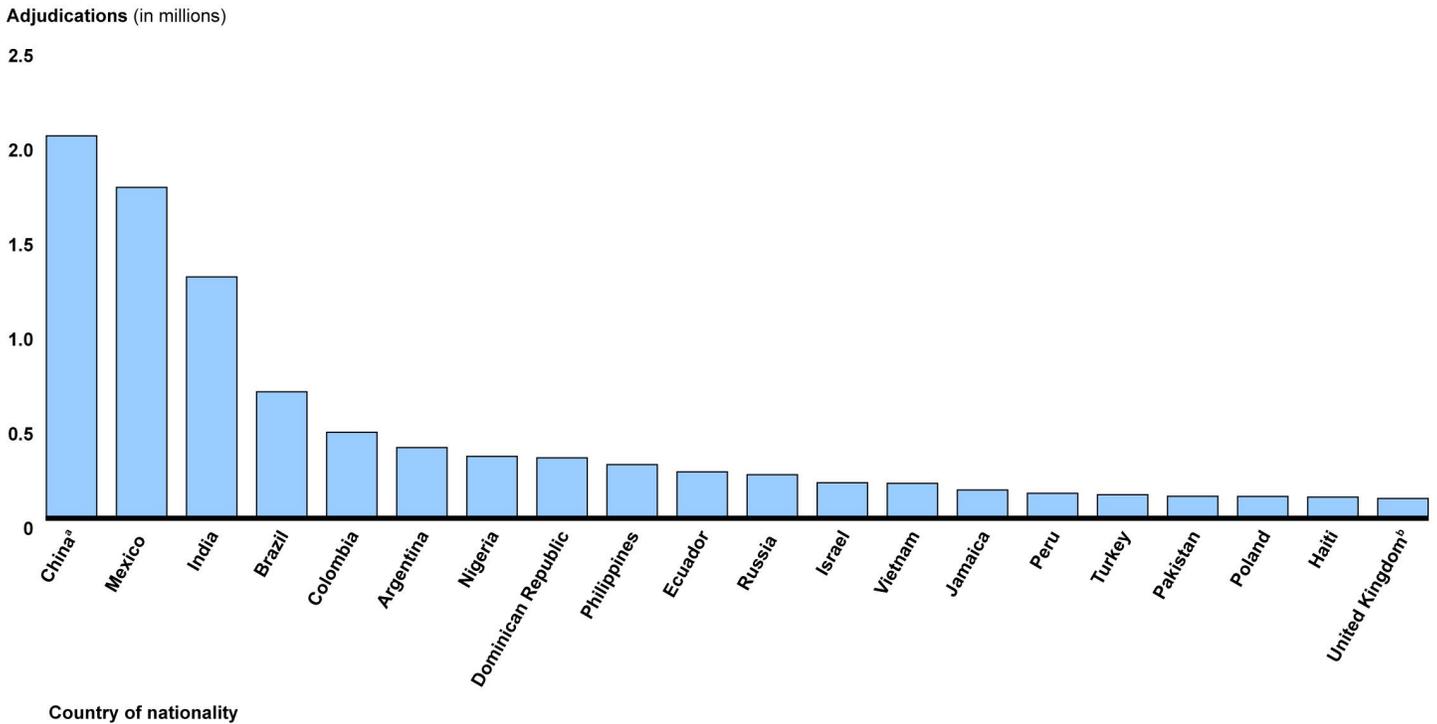
<sup>36</sup>The visa validity period is the length of time the holder of a U.S. NIV is permitted to travel to, and apply for U.S. admission at, a port of entry in the United States.

<sup>37</sup>The visa validity period of such visas for Chinese nationals was previously one year.

period of such visas for Chinese nationals, which represented the largest single country of nationality for student and exchange visitor visas in fiscal year 2017 (19 percent). In November 2014, the United States extended the validity period of the F visa for academic students from 1 year to 5 years. State officials noted that similar to tourist and business visitor visas, there was an initial surge in Chinese F-visa applicants due to the new 5-year F-visa validity period that began in fiscal year 2015, but the number dropped subsequently because Chinese students with such 5-year visas no longer needed to apply as frequently for F visas. State data for this time period indicate that the number of visa adjudications for F visas for Chinese nationals increased from about 267,000 in fiscal year 2014 to 301,000 in fiscal year 2015, followed by a decline of 172,000 in fiscal year 2016 and 134,000 in fiscal year 2017.

**Applicant's Country of Nationality.** In fiscal year 2017, more than half of all NIV adjudications were for applicants of six countries of nationality: China (2.02 million, or 16 percent), Mexico (1.75 million, or 14 percent), India (1.28 million, or 10 percent), Brazil (670,000, or 5 percent), Colombia (460,000, or 4 percent), and Argentina (370,000, or 3 percent), as shown in figure 6.

**Figure 6: Top 20 Countries of Nationality for Nonimmigrant Visa (NIV) Adjudications, Fiscal Year 2017**



Source: GAO analysis of Department of State data. | GAO-18-608

Note: NIV adjudications represent all nonimmigrant applications that were adjudicated during fiscal year 2017. Such applications may have been initiated in prior months. This includes applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security (DHS). In such cases, the application is counted as a single adjudication.

<sup>a</sup>For the purposes of this table, we do not include Hong Kong.

<sup>b</sup>The United Kingdom participates in the Visa Waiver Program, through which nationals of certain countries may apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. embassy or consulate abroad. See 8 U.S.C. § 1187; 8 C.F.R. §§ 212.1, 217.1-217.7; 22 C.F.R. §§ 41.0-41.3. However, nationals of the United Kingdom applying for other nonimmigrant visas, such as those for temporary workers or students, as well as those seeking to travel to the United States under the Visa Waiver Program but were denied through DHS's Electronic System for Travel Authorization, must still apply for and obtain a visa from a U.S. consulate abroad.

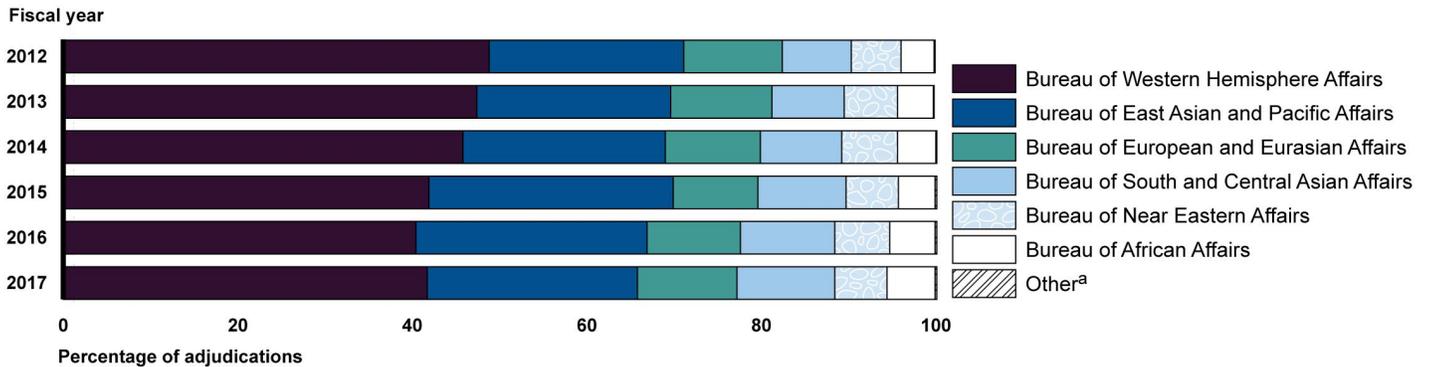
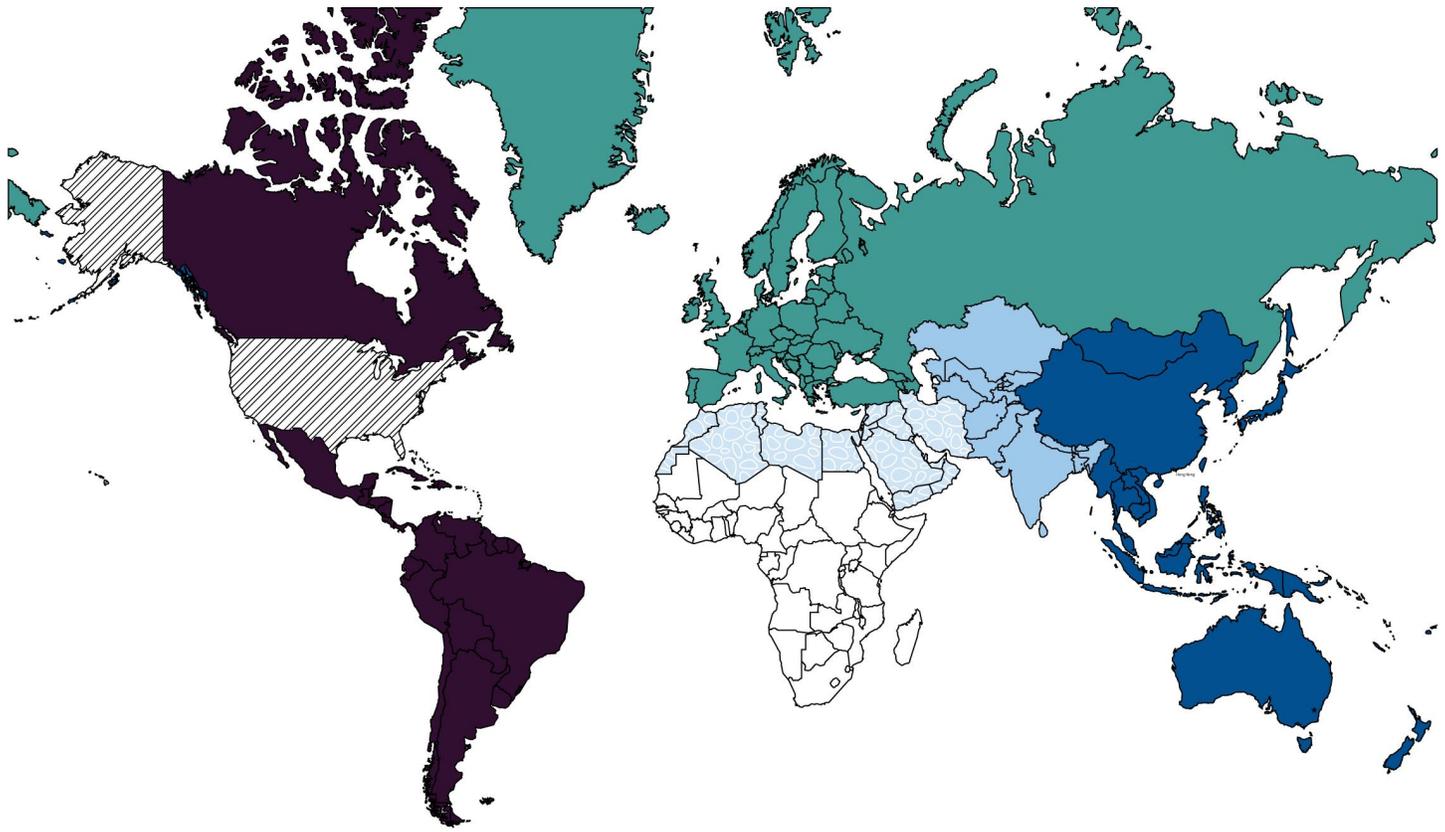
**Location of Adjudication.** State data indicate that the geographic distribution of NIV adjudications across visa-issuing posts worldwide

remained relatively consistent from fiscal years 2012 through 2017.<sup>38</sup> NIV adjudications from visa-issuing posts in the Western Hemisphere comprised the largest proportion worldwide during this time period; however, this proportion decreased from 48.8 percent in fiscal year 2012 to 41.7 percent in fiscal year 2017. During the same time period, the proportion of NIV adjudications at visa-issuing posts in other regions increased slightly. For example, the percentage of NIV adjudications from posts in Africa increased from 3.8 percent to 5.5 percent, and the percentage of adjudications from posts in South and Central Asia increased from 7.9 percent to 11.2 percent from fiscal years 2012 through 2017. Figure 7 provides the proportion of NIV adjudications at visa-issuing posts from each region from fiscal years 2012 through 2017.

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<sup>38</sup>For the purposes of this report, we define regions according to the boundaries used by the Department of State: Bureau of African Affairs, Bureau of East Asian and Pacific Affairs, Bureau of European and Eurasian Affairs, Bureau of Near Eastern Affairs, Bureau of South and Central Asian Affairs, and Bureau of Western Hemisphere Affairs. Applicants at consular posts include local nationals and third-country nationals, the latter of which are those who apply for a visa at a post outside of their country of nationality.

**Figure 7: Adjudicated Nonimmigrant Visas (NIV) by Location of Application, Fiscal Years 2012 through 2017**



Sources: GAO analysis of Department of State data; Map Resources (map). | GAO-18-608

Note: These data represent NIV adjudications by consular posts in certain regions, and not the applicant's nationality. Therefore, a particular consular post may include nationals from the country in which the post is located, as well as third-country nationals, which are those who apply for a visa at a post outside of their country of nationality. We define regions according to the boundaries used by the Department of State: Bureau of African Affairs, Bureau of East Asian and Pacific Affairs, Bureau of European and Eurasian Affairs, Bureau of Near Eastern Affairs, Bureau of South and Central Asian Affairs, and Bureau of Western Hemisphere Affairs.

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<sup>a</sup>Other includes locations not covered by the Department of State's regional bureaus, such as nonimmigrant visas that were adjudicated within the United States by the U.S Mission to the United Nations or the Department of State's Bureau of Consular Affairs.

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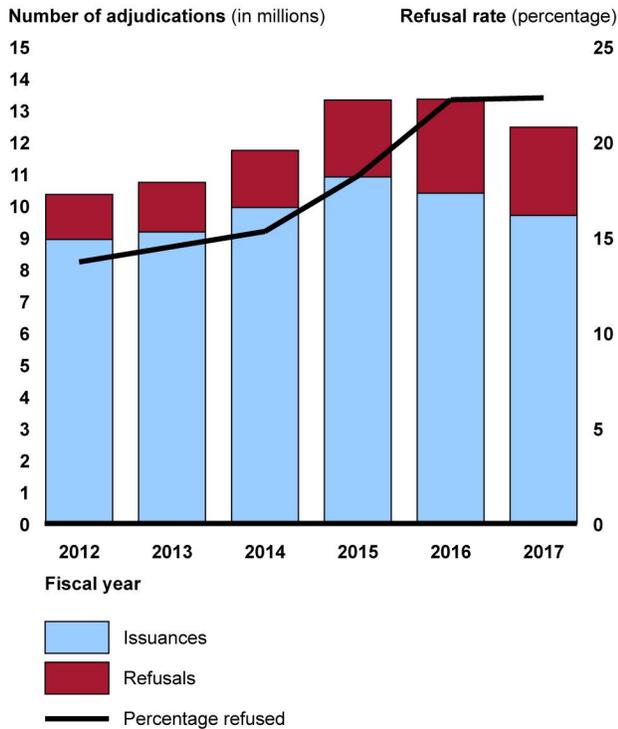
## NIV Refusal Rate Has Increased Since Fiscal Year 2012 and Varies By Visa Group

The percentage of NIVs refused—known as the refusal rate—increased from fiscal years 2012 through 2016, and was about the same in fiscal year 2017 as the previous year.<sup>39</sup> As shown in figure 8, the NIV refusal rate rose from about 14 percent in fiscal year 2012 to about 22 percent in fiscal year 2016, and remained about the same in fiscal year 2017; averaging about 18 percent over the time period. As a result, the total number of NIVs issued peaked in fiscal year 2015 at about 10.89 million, before falling in fiscal years 2016 and 2017 to 10.38 million and 9.68 million, respectively.

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<sup>39</sup>The refusal rate is the number of visas that were ultimately refused divided by the total number of adjudications. This figure does not include visas that were initially refused (for example, due to insufficient documentation or for administrative processing) but then subsequently issued, nor does it include visas that were initially refused but later issued per a DHS waiver.

**Figure 8: Issued and Refused Nonimmigrant Visas (NIV) and Refusal Rate, Fiscal Years 2012 through 2017**



Source: GAO analysis of Department of State data. | GAO-18-608

Note: Issued visas include NIVs that were issued during that fiscal year. Such applications may have been initiated in prior fiscal years. Issued visas include applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security. The refusal rate is the number of visas that were ultimately refused divided by the total number of adjudications.

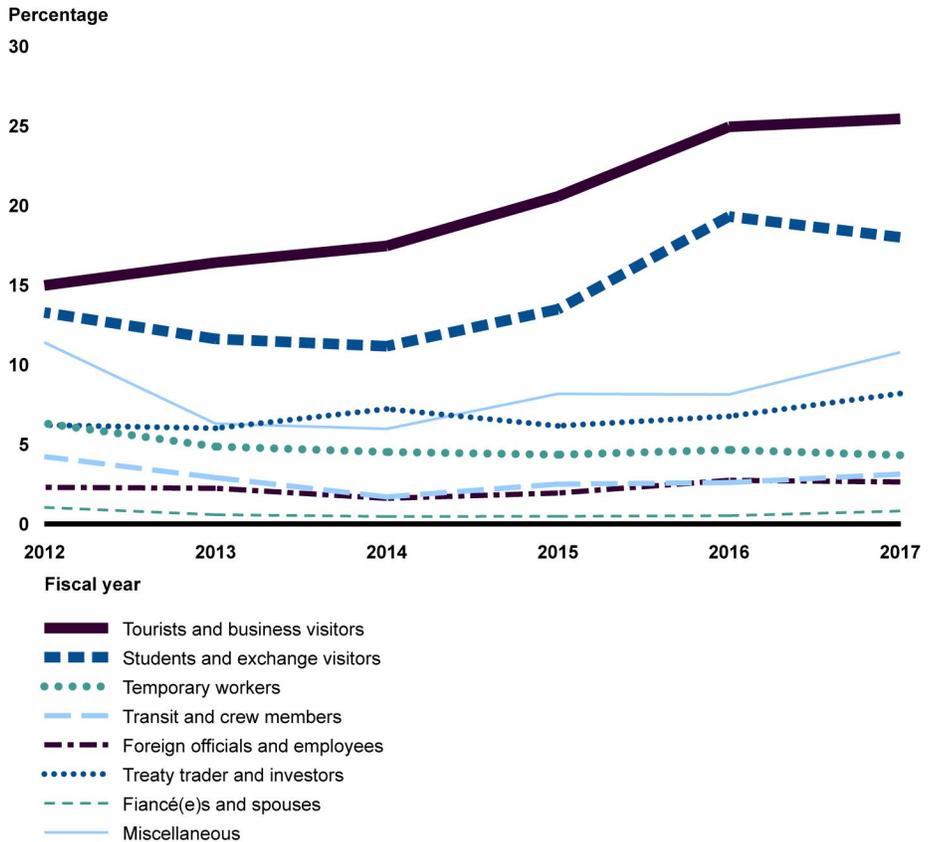
The NIV refusal rate can fluctuate from year to year due to many factors. For example, according to State officials, removing a large, highly-qualified set of travelers from the NIV applicant population can drive up the statistical refusal rate. State officials also noted that when a country joins the Visa Waiver Program or a visa for certain nationalities increase from 1-year to 10-year visa validity periods, these individuals no longer apply for visas and affect the overall refusal rate. Further, State officials noted that changes in political and economic conditions in individual countries can affect visa eligibility, which in turn affects the overall refusal rate. State officials noted that the degree to which an applicant might seek to travel to the United States unlawfully is directly related to political, economic, and social conditions in their countries. For example, if global or regional economic conditions deteriorate, more applicants may have

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an incentive to come to the United States illegally by, for example, obtaining a NIV with the intent to unlawfully stay for a particular time period or purpose other than as permitted by their visa, which then would increase the number of NIV applications that consular officers are refusing.

From fiscal years 2012 through 2017, the refusal rate varied by visa group. The highest refusal rate was for tourists and business visitors, which rose from about 15 percent in fiscal year 2012 to over 25 percent in fiscal year 2017, as shown in figure 9. Other visa categories, such as foreign officials and employees, transit and crewmembers, and fiancé(e)s and spouses, had refusal rates below 5 percent during this time period. State officials noted that because different visa categories have different eligibility and documentary requirements, they have different refusal rates. For example, F, J, and H visas require documentation of eligibility for student, exchange, or employment status, respectively.

**Figure 9: Refusal Rates by Nonimmigrant Visa (NIV) Group, Fiscal Years 2012 through 2017**



Source: GAO analysis of Department of State data. | GAO-18-608

Note: The refusal rate is the number of NIVs that were ultimately refused divided by the total number of adjudications. This figure does not include visas that were initially refused (for example, due to insufficient documentation or for administrative processing) but then subsequently issued, nor does it include visas that were initially refused but later issued per a Department of Homeland Security waiver.

### Most NIV Applications Refused from Fiscal Years 2012 through 2017 Were for Reasons Other than Terrorism-Related Ineligibilities

According to State data, while the majority of NIV refusals from fiscal years 2012 through 2017 were a result of consular officers finding the applicants ineligible, a relatively small number of refusals were due to terrorism and other security-related concerns. NIV applicants can be refused a visa on a number of grounds of inadmissibility or other

ineligibility under U.S. immigration law and State policy. For the purposes of this report, we have grouped most of these grounds for refusal into one of seven categories, as shown in table 4.<sup>40</sup>

**Table 4: Examples of Grounds Upon Which a Nonimmigrant Visa (NIV) Can Be Refused Per the Immigration and Nationality Act (INA) and Department of State Policy**

Grounds	Description and Examples
Ineligible Nonimmigrant <sup>a</sup>	For most NIV categories, the applicant is presumed to be an intending immigrant until the applicant establishes to the satisfaction of the consular officer that he or she is entitled to a nonimmigrant status. An applicant may be refused under this provision if, among other things, the consular officer determines the applicant lacks sufficient ties to his or her home country, or intends to abandon foreign residence; that evidence otherwise indicates an intent to immigrate to the United States permanently; or that the applicant is likely to violate the terms of the visa after being admitted.
Inadequate documentation <sup>b</sup>	The consular officer determined that the application is not in compliance with the INA because, for example, it lacks necessary documentation to allow the consular officer to determine visa eligibility. In such cases, the applicant would not be found eligible for the visa unless and until satisfactory documentation is provided to the consular officer or after the completion of administrative processing, such as security advisory opinions.
Terrorism and other security-related ineligibility <sup>c</sup>	This ground includes engaging in or inciting terrorist activity, being a member of a terrorist organization, participating in genocide, espionage, and committing torture, among other conditions or activities.
Criminal and related ineligibility <sup>d</sup>	This ground includes conviction of certain crimes, controlled substance trafficking, prostitution, and money laundering, among other conditions or activities.
Health-related ineligibility <sup>e</sup>	This ground includes having a communicable disease significant to public health, having a physical or mental disorder that may pose a threat to self or others, and being a drug abuser, among other conditions or activities.
Immigration-related ineligibility <sup>f</sup>	This ground includes a prior U.S. presence without admission or parole, <sup>9</sup> smuggling foreign nationals, abuse of student visas, failure to attend removal proceedings, fraud or willful misrepresentation to obtain an immigration benefit, among other conditions or activities.
Presidential directive-related ineligibility <sup>h</sup>	Whenever the President finds that the entry of any foreign nationals or classes thereof into the United States would be detrimental to the interests of the United States, he or she may by proclamation, and for such period as he or she shall deem necessary, suspend, or impose appropriate restrictions on, the entry of all foreign nationals or any such classes as immigrants or nonimmigrants. For example, some Presidential Proclamations have barred entry into the United States on the basis of the applicant's affiliation, such as certain government or military officials.

Source: GAO analysis and the INA and Department of State policy documents. | GAO-18-608

Notes: This table is not a comprehensive list of grounds under which a NIV can be refused.

<sup>a</sup>INA § 214(b) (8 U.S.C. § 1184(b)). In some instances, nonimmigrant visas are intended for those seeking permanent residence and a path to citizenship. For example, the K-3 NIV is for the U.S. citizen's foreign spouse, permitting him or her to enter the United States while awaiting approval of the petition submitted on their behalf and availability of an immigrant visa. 8 U.S.C. § 1101(a)(15)(K)(ii). Recipients of T and U visas for victims of severe forms of trafficking in persons or other qualifying crimes are also eligible for lawful permanent residence.

<sup>40</sup>More than 99.5 percent of visa applications adjudicated and refused from fiscal years 2012 through 2017 fit within one of the seven categories. The remaining refusal grounds are categorized as miscellaneous (fewer than 400 refusals per year). We present data on miscellaneous refusals in appendix II.

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<sup>b</sup>INA § 221(g) (8 U.S.C. § 1201(g)).

<sup>c</sup>INA § 212(a)(3) (8 U.S.C. § 1182(a)(3)).

<sup>d</sup>See id. § 212(a)(2).

<sup>e</sup>Id. at § 212(a)(1).

<sup>f</sup>Id. at § 212(a)(6), (9).

<sup>g</sup>Parole, granted on a discretionary and case-by-case basis by the Secretary of Homeland Security for urgent humanitarian reasons or significant public benefit, permits a foreign national to enter the United States temporarily, without constituting an admission. 8 U.S.C. § 1182(d)(5).

<sup>h</sup>Id. at § 212(f). Pursuant to executive actions taken in calendar year 2017, the President invoked the authority under INA § 212(f) to suspend immigrant and nonimmigrant entry of nationals of certain countries of particular or identified concern. See, e.g., Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) (issued Jan.27), Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (issued Mar. 6), and Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) (issued Sept.24). For background on the President's authority under INA § 212(f), as articulated by the federal courts, see Appendix III.

State data indicate the more than 90 percent of NIVs refused each year from fiscal years 2012 through 2017 were based on the consular officers' determination that the applicants were ineligible nonimmigrants—in other words, the consular officers believed that the applicant was an intending immigrant seeking to stay permanently in the United States, which would generally violate NIV conditions, or that the applicant otherwise failed to demonstrate eligibility for the particular visa he or she was seeking. For example, an applicant applying for a student visa could be refused as an ineligible nonimmigrant for failure to demonstrate possession of sufficient funds to cover his or her educational expenses as required. Similarly, an applicant could be refused as an ineligible nonimmigrant for indicating to the consular officer an intention to obtain a student visa to engage in unsanctioned activities while in the United States, such as full-time employment instead of pursuing an approved course of study.

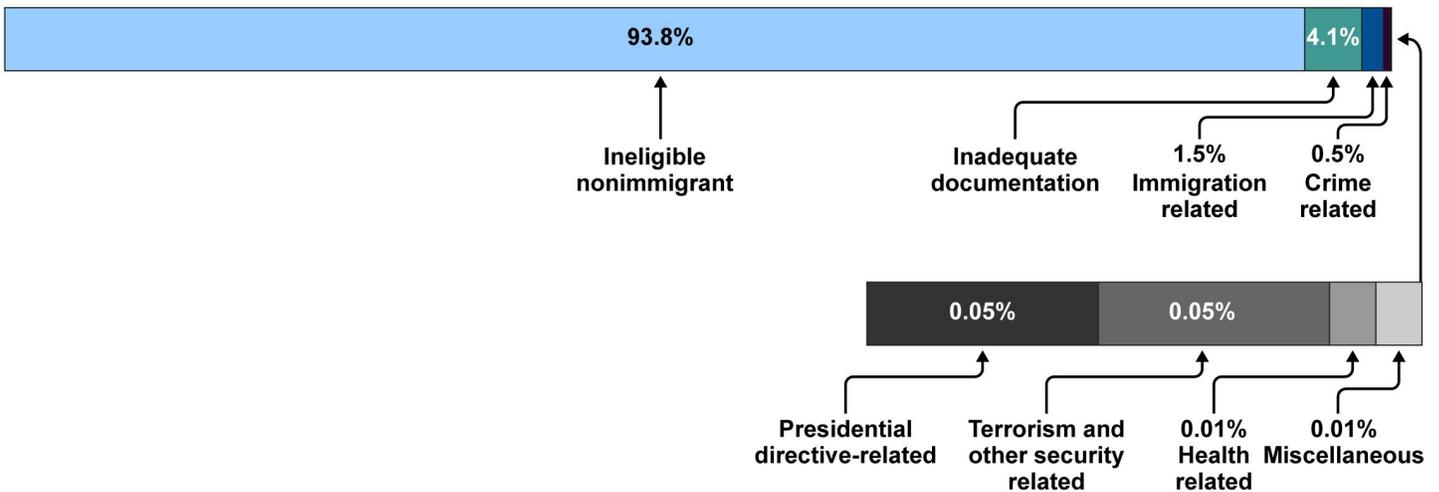
According to State data, the second most common reason for refusal during this time period was inadequate documentation, which accounted for approximately 5 percent of refusals each year. In such cases, a consular officer determined that the application failed to include necessary documentation for the consular officer to ascertain whether the applicant was eligible to receive a visa at that time.<sup>41</sup> If, for example, the applicant provides sufficient additional information in support of the application, a consular officer may subsequently issue the visa, as appropriate.

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<sup>41</sup>State considers the application to be refused, and the applicant would not be issued a visa unless and until satisfactory documentation of visa eligibility is provided and the consular officer subsequently completes the adjudication process and issues the visa.

Our analysis of State data indicates that relatively few applicants—approximately 0.05 percent—were refused for terrorism and other security-related reasons from fiscal years 2012 through 2017. Security-related reasons can include applicants who have engaged in genocide, espionage, or torture, among other grounds. Terrorism-related grounds of inadmissibility include when an applicant has engaged in or incited terrorist activity, is a member of a terrorist organization, or is the child or spouse of a foreign national who has been found inadmissible based on terrorist activity occurring within the last five years, among other reasons.<sup>42</sup> As shown in figure 10, in fiscal year 2017, State data indicate that 1,256 refusals (or 0.05 percent) were based on terrorism and other security-related concerns, of which 357 refusals were specifically for terrorism-related reasons.<sup>43</sup>

**Figure 10: Nonimmigrant Visa Refusal Reasons, Fiscal Year 2017**



Source: GAO analysis of Department of State data. | GAO-18-608

Note: This figure does not include visas that were initially refused (for example, due to insufficient documentation or for administrative processing) but then subsequently issued, nor does it include visas that were initially refused but later issued per a Department of Homeland Security waiver. For grounds under ineligible nonimmigrant, see INA § 214(b) (8 U.S.C. § 1184(b)); inadequate documentation, see the Immigration and Nationality Act (INA) § 221(g) (8 U.S.C. § 1201(g)); terrorism and other security-related inadmissibilities, see INA § 212(a)(3) (8 U.S.C. § 1182(a)(3)); for criminal and

<sup>42</sup>INA § 212(a)(3)(B) (8 U.S.C. § 1182(a)(3)(B)).

<sup>43</sup>The 357 refusals that were specifically for terrorism-related reasons do not include applications for which DHS later issued a waiver. According to State officials, in addition, there were a total of 273 applications that were initially refused for terrorism-related reasons in fiscal year 2017, but for which DHS issued a waiver.

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related ineligibilities, see INA § 212(a)(2) (8 U.S.C. § 1182(e)(2)); for health-related ineligibilities, see INA § 212(a)(1) (8 U.S.C. § 1182(a)(1)); for immigration-related ineligibilities, see INA § 212(a)(6), (9) (8 U.S.C. § 1182(a)(6),(9)); and for presidential directive related ineligibilities, see INA § 212(f) (8 U.S.C. § 1182(f)). Pursuant to executive actions taken in calendar year 2017, the President invoked the authority under INA § 212(f) to suspend immigrant and nonimmigrant entry of nationals of certain countries of particular or identified concern. See, e.g., Exec. Ord. No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) (issued Jan. 27), Exec. Ord. No. 13780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (issued Mar. 6), and Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) (issued Sept. 24). For background on the President's authority under INA § 212(f), as articulated by the federal courts, see Appendix III. More than 99.5 percent of visa refusals adjudicated in fiscal year 2017 fit within one of these seven categories. The remaining refusal grounds are categorized as miscellaneous (fewer than 400 refusals per year).

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## Executive Actions Taken in Calendar Year 2017 Resulted in Some NIV Refusals and Agencies Are Implementing Additional Changes to NIV Screening and Vetting Processes

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### Executive Actions Taken in Calendar Year 2017 Introduced New Visa Entry Restrictions and Requirements to Enhance Screening and Vetting, Including for NIVs

In calendar year 2017, the President issued two executive orders and a presidential proclamation that required, among other actions, visa entry restrictions for nationals of certain countries of concern, a review of information needed for visa adjudication, and changes to visa (including NIV) screening and vetting protocols and procedures (see timeline in figure 11).<sup>44</sup> Initially, the President issued Executive Order 13769, Protecting the Nation from Foreign Terrorist Entry Into the United States (EO-1), in January 2017.<sup>45</sup> In March 2017, the President revoked and replaced EO-1 with the issuance of Executive Order 13780 (EO-2), which had the same title as EO-1.<sup>46</sup> Among other things, EO-2 suspended entry of certain foreign nationals for a 90 day period, subject to exceptions and

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<sup>44</sup>GAO has previously reported on the implementation of these executive orders. See GAO, *Border Security and Immigration: Initial Executive Order Actions and Resource Implications*, [GAO-18-470](#) (Washington, D.C.: June 12, 2018).

<sup>45</sup>Protecting the Nation from Foreign Terrorist Entry Into the United States, Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) (issued Jan. 27) (EO-1).

<sup>46</sup>Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (issued Mar. 6) (EO-2).

waivers.<sup>47</sup> It further directed federal agencies—including DHS, State, DOJ and ODNI—to review information needs from foreign governments for visa adjudication and develop uniform screening and vetting standards for U.S. entities to follow when adjudicating immigration benefits, including NIVs. In September 2017, as a result of the reviews undertaken pursuant to EO-2, the President issued Presidential Proclamation 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (Proclamation), which imposes certain conditional restrictions and limitations on the entry of nationals of eight countries—Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela and Yemen—into the United States for an indefinite period.<sup>48</sup> These restrictions are to remain in effect until the Secretaries of Homeland Security and State determine that a country provides sufficient information for the United States to assess adequately whether its nationals pose a security or safety threat.<sup>49</sup> Challenges to both EOs and the Proclamation have affected their implementation and, while EO-2's entry restrictions have expired,<sup>50</sup> the visa entry restrictions outlined in the Proclamation continue to be fully implemented as of June 2018,

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<sup>47</sup>EO-2, as well as its predecessor EO-1, addressed the immigrant and nonimmigrant visa entry of certain foreign nationals, and refugee admission through the U.S. Refugee Resettlement Program; however, for purposes of this report we focus on the executive actions as they relate to NIVs. In conjunction with EO-2, the President, on March 6, also issued a memorandum to the Secretaries of State and Homeland Security and the Attorney General, calling for heightened screening and vetting of visa applications and other immigration benefits. See Memorandum Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits, Ensuring Enforcement of All Laws for Entry Into the United States, and Increasing Transparency Among Departments and Agencies of the Federal Government and for the American People, 82 Fed. Reg. 16,279 (Apr. 3, 2017). Whereas EO-1 imposed visa entry restrictions for a 90 day period for nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen, EO-2 imposed such restrictions on the same countries listed in EO-1 with the exception of Iraq.

<sup>48</sup>Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) (issued Sept. 24). The Proclamation was issued pursuant to section 2(e) of EO-2.

<sup>49</sup>For example, on April 10, 2018, the President announced that nationals of Chad would no longer be subject to visa entry restrictions under Proclamation No. 9645, because Chad's identity-management and information sharing practices have improved sufficiently. See Maintaining Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats, Proclamation No. 9723, 83 Fed. Reg. 15,937 (Apr. 13, 2018) (issued Apr. 10).

<sup>50</sup>After the expiration of EO-2's entry restrictions, the Supreme Court vacated and remanded cases related to EO-2 to the Fourth and Ninth Circuits with instructions to dismiss them as moot. *Trump v. Int'l Refugee Assistance Project*, 138 S. Ct. 353 (2017); *Trump v. Hawaii*, 138 S. Ct. 377 (2017).

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consistent with the U.S. Supreme Court's June 26, 2018, decision, which held that the President may lawfully establish nationality-based entry restrictions under the INA, and that Proclamation 9645 itself "is squarely within the scope of Presidential authority."<sup>51</sup> A more detailed listing of the executive actions and related challenges to those actions brought in the federal courts can be found in appendix III.

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<sup>51</sup>On December 4, 2017, the Supreme Court issued two orders staying the Maryland and Hawaii federal district courts' preliminary injunctions, respectively, thereby allowing the third iteration of visa entry restrictions to go into full force and effect pending the outcome of federal litigation, see *Trump v. Int'l Refugee Assistance Project*, No. 17A560, 2017 U.S. LEXIS 7358 (2017); *Trump v. Hawaii*, No. 17A550, 2017 U.S. LEXIS 7357 (2017). As of June 2018, the Proclamation's visa entry restrictions continue to be fully implemented, pursuant to the Supreme Court's opinion of June 26, 2018. See *Trump v. Hawaii*, 138 S. Ct. 2392 (2018). See Appendix III for a more detailed account of challenges to these and other related executive actions.



Circuit granted, in part, the administration's request for an emergency stay of the Hawaii federal district court's preliminary injunction, thereby allowing visa entry restrictions to go into effect with respect to the nationals of Chad, Iran, Libya, Somalia, Syria and Yemen, subject to the Supreme Court's exception for those with a bona fide relationship to a U.S. person or entity. *Hawaii v. Trump*, No. 17-17168, 2017 U.S. App. LEXIS 22725 (2017).

<sup>e</sup>The Supreme Court issued two orders staying the Maryland and Hawaii federal district courts' orders of October 17 and 20 preliminarily enjoining implementation of Proclamation No. 9645, pending decisions of the Ninth and Fourth Circuits in the governments' appeals, and the Supreme Court regarding a petition for a writ of certiorari (if sought). *Trump v. Int'l Refugee Assistance Project*, No. 17A560, 2017 U.S. LEXIS 7358 (2017); *Trump v. Hawaii*, No. 17A550, 2017 U.S. LEXIS 7357 (2017).

<sup>f</sup>On December 22, 2017, the Ninth Circuit issued a decision partially affirming the Hawaii federal district court's preliminary injunction, but this ruling is stayed pursuant to the Supreme Court's December 4 order. *Hawaii v. Trump*, 878 F.3d 662 (9th Cir. 2017). On January 19, 2018, the Supreme Court granted the government's petition to review the December 22, 2017, decision of the Ninth Circuit. *Trump v. Hawaii*, 138 S. Ct. 923 (2018). On February 15th, 2018, the Fourth Circuit affirmed the preliminary injunction granted by the Maryland federal court district, but stayed its decision pending the outcome of the Ninth Circuit case before the Supreme Court. *Int'l Refugee Assistance Project v. Trump*, 883 F.3d 233 (4th Cir. 2018).

<sup>g</sup>*Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

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## Some NIV Applications in Fiscal Year 2017 Were Refused Due to the Executive Actions Taken in 2017; Adjudications of Applications for Nationals of Affected Countries Decreased from Prior Fiscal Years

Our analysis of State data indicates, out of the nearly 2.8 million NIV applications refused in fiscal year 2017, 1,338 were refused due to visa entry restrictions implemented in accordance with the executive actions.<sup>52</sup> To implement the entry restrictions, in March 2017, State directed its consular officers to continue to accept all NIV applications and determine whether the applicant was otherwise eligible for a visa without regard to the applicable EO or Proclamation.<sup>53</sup> If the applicant was ineligible for the visa on grounds unrelated to the executive action, such as having prior immigration violations, the applicant was to be refused on those grounds. If the applicant was otherwise eligible for the visa, but fell within the scope of the nationality-specific visa restrictions implemented pursuant to the applicable EO or Proclamation and was not eligible for a waiver or exception, the consular officer was to refuse the visa and enter a refusal

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<sup>52</sup>The Proclamation's new indefinite restrictions did not go into full effect until fiscal year 2018.

<sup>53</sup>State guidance directed consular officers to halt interviews for visa applicants subject to EO-1 visa entry restrictions beginning on January 28, 2017. This guidance was in place until federal courts halted the implementation of EO-1 visa entry restrictions in February 2017.

code into State’s NIV database indicating that the applicant was refused solely due to the executive actions.<sup>54</sup> More than 90 percent of the NIV applications refused in fiscal year 2017 pursuant to an executive action were for tourist and business visitor visas, and more than 5 percent were for students and exchange visitors.<sup>55</sup>

State data also indicate that the number of applications adjudicated for nationals of the 7 countries identified in EO-1—Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen—decreased by 22 percent in fiscal year 2017, as compared to a 7 percent general decrease in NIV adjudications worldwide that year. For example, as shown in table 5, the decrease in adjudications from fiscal years 2016 to 2017 for nationals of the 7 countries identified in EO-1 ranged from around 12 percent to more than 40 percent.

**Table 5: Percentage Decrease in Nonimmigrant Visa (NIV) Adjudications by Selected Country of Nationality**

Country of Nationality	Percentage decrease in adjudications from fiscal years 2016 to 2017
Iran	12.6%
Iraq	13.7%
Libya	37.1%
Somalia	27.8%
Sudan	22.2%
Syria	43.5%
Yemen	32.4%
Worldwide	6.6%

Source: GAO analysis of Department of State data. | GAO-18-608

Note: Executive Order 13769, Protecting the Nation from Foreign Terrorist Entry Into the United States (EO-1), issued on January 27, 2017, barred entry of nationals from the seven countries in this table. On March 6, 2017, the President issued Executive Order 13780 (EO-2), which revoked and replaced EO-1 and, among other things, established revised visa entry restrictions, but removed Iraq from the list of countries subject to such restrictions. See Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 9, 2017).

<sup>54</sup>State instructed consular officers to use the refusal code for a refusal based on section 212(f) of the INA. It later created a unique refusal code for refusals related to these executive actions.

<sup>55</sup>Specific details on other characteristics of applicants the refused in fiscal year 2017 pursuant to an executive action, such as visa types and countries of nationality, are omitted because State deemed the information sensitive.

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## State, DHS, and Other Agencies Are Implementing Changes to NIV Screening and Vetting Processes Consistent with the Executive Actions and Associated Guidance

As directed by the executive actions, DHS, State, DOJ, and ODNI took several steps to enhance NIV screening and vetting processes given their responsibilities for implementing the presidential actions. Among other things, the responsibilities included: (1) a review of information needed for visa adjudication; (2) the development of uniform screening standards for immigration programs; and (3) implementation of enhanced visa screening and vetting protocols and procedures.

**Review of information needed for visa adjudication.** In accordance with EO-2, DHS conducted a worldwide review, in consultation with State and ODNI, to identify additional information needed from foreign countries to determine that an individual is not a security or public-safety threat when adjudicating an application for a visa, admission, or other immigration benefit.<sup>56</sup> According to State officials, an interagency working group composed of State, DHS, ODNI, and National Security Council staff was formed to conduct the review. To conduct this review, DHS developed a set of criteria for information sharing in support of immigration screening and vetting, as shown by table 6. According to DHS officials, to develop these criteria, DHS, in coordination with other agencies, identified current standards and best practices for information collection and sharing under various categories of visas to create a core list of information needed from foreign governments in the visa adjudication process. For example, State sent an information request to all U.S. posts overseas requesting information on host nations' information sharing practices, according to State officials.

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<sup>56</sup>Exec. Order No. 13780, § 2(a), (b), (d), (e), 82 Fed. Reg. at 13,212-213.

**Table 6: Information Collection and Sharing Criteria for Country Evaluation, as Required by the March 2017 Executive Order**

Category	Criteria
Identity management information	<ul style="list-style-type: none"> <li>• Country issues, or has active plans to issue, electronic passports that conform to International Civil Aviation Organization specifications and include a facial biometric image to enable verification of travel documents;<sup>a</sup></li> <li>• country regularly reports lost and stolen passports to the INTERPOL Stolen and Lost Travel Document Database to maintain the integrity of travel documents; and</li> <li>• country makes available any other identity information at the request of the United States, including, as appropriate, additional biographic and biometric data and relevant immigration status.</li> </ul>
National security and public-safety information	<ul style="list-style-type: none"> <li>• Country makes available information on individuals it knows or has reasonable grounds to believe are terrorists, including foreign terrorist fighters;</li> <li>• country makes available criminal history record information on its nationals, as well as permanent and temporary residents, who are seeking U.S. visas or other immigration benefits;</li> <li>• country provides exemplars of all passports and national identity documents it issues to the Department of Homeland Security’s U.S. Immigration and Customs Enforcement Forensic Laboratory, to improve U.S. government fraud detection capabilities;</li> <li>• country does not impede the transfer of information to the U.S. government about passengers and crew traveling to the United States; and</li> <li>• country does not designate individuals for international terrorist watchlisting as national security threats or criminals solely based on their political or religious beliefs.</li> </ul>
National security and public safety risk	<ul style="list-style-type: none"> <li>• Country takes measures to ensure that it is not, and does not have, the potential to become, a terrorist safe haven;</li> <li>• country accepts the repatriation of its nationals who are subject to a final order of removal in the United States and provides travel documents to facilitate their removal; and</li> <li>• if appropriate, meets the statutory and policy requirements of the Visa Waiver Program.</li> </ul>

Source: GAO analysis of Department of State information. | GAO-18-608

<sup>a</sup>The International Civil Aviation Organization is a specialized agency of the United Nations with a primary objective to provide for the safe, orderly, and efficient development of international civil aviation. It establishes security standards and recommended practices to help ensure a minimum baseline level of international aviation security.

To assess the extent to which countries were meeting the newly established criteria, DHS officials stated that they used various information sources to preliminarily develop a list of countries that were or were not meeting the standards for adequate information sharing. For example, DHS officials stated that they reviewed information from INTERPOL on a country’s frequency of reporting lost and stolen passport information, consulted with ODNI for information on which countries are terrorist safe havens, and worked with State to obtain information that State officials at post may have on host nations’ information sharing practices. According to the Proclamation, based on DHS assessments of each country, DHS reported to the President on July 9, 2017, that 47 countries were “inadequate” or “at risk” of not meeting the standards. DHS officials identified several reasons that a country may have been assessed as “inadequate” with regard to the criteria. For example, some

countries may have been willing to provide information, but lacked the capacity to do so. Or, some countries may not have been willing to provide certain information, or simply did not currently have diplomatic relations with the U.S. government.

As was required by EO-2, State engaged with foreign governments on their respective performance based on these criteria for a 50-day period.<sup>57</sup> In July 2017, State directed its posts to inform their respective host governments of the new information sharing criteria and request that host governments provide the required information or develop a plan to do so. Posts were directed to then engage more intensively with countries DHS’s report preliminarily deemed “inadequate” or “at risk”. Each post was to submit an assessment of mitigating factors or specific interests that should be considered in the deliberations regarding any travel restrictions for nationals of those countries. DHS officials stated that they reviewed the additional information host nations provided to State and then reevaluated the initial classifications to determine if any countries remained “inadequate.”

On September 15, 2017, in accordance with EO-2, DHS submitted to the President a list of countries recommended for inclusion in a presidential proclamation that would prohibit certain categories of foreign nationals of such countries from entering the United States.<sup>58</sup> The countries listed were Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen—which were assessed as “inadequate,” and Somalia, which was identified as a terrorist safe haven. The Presidential Proclamation indefinitely suspended entry into the United States of certain nonimmigrants from the listed countries (see table 7) and directed DHS, in consultation with State, to devise a process to assess whether the entry restrictions should be continued, modified or terminated.<sup>59</sup>

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<sup>57</sup>Exec. Order No. 13780, § 2(d), 82 Fed. Reg. at 13,213. Specifically, EO-2 directed the Secretary of State to request that all foreign governments not providing adequate information regarding their nationals to the United States begin providing such information within 50 days of notification.

<sup>58</sup>See id. § 2(e), 82 Fed. Reg. at 13,213.

<sup>59</sup>See Proclamation No. 9645, §§ 2, 4, 82 Fed. Reg. at 45,165-167, 45,169-170.

**Table 7: Presidential Proclamation Nonimmigrant Visa (NIV) Entry Restrictions by Country of Nationality (as of April 2018)**

Country(ies) of Nationality	Scope of NIV Restrictions <sup>a</sup>
Yemen, Libya, Chad	All temporary visitor (B-1, B-2, and B-1/B-2) visas <sup>b</sup>
Syria	All NIVs
North Korea	All NIVs
Iran	All NIVs except nonimmigrants seeking entry on valid student (F and M) or exchange visitor (J) visas
Venezuela	Official-type and diplomatic-type visas for officials of certain government agencies and temporary visitor (B-1, B-2, and B-1/B-2) visas for their immediate family members
Somalia	None <sup>c</sup>

Source: GAO analysis of Presidential Proclamation 9645 of September 24, 2017. | GAO-18-608

Note: The Presidential Proclamation also permits consular officers to grant waivers to the restrictions and authorize the issuance of visas on a case-by-case basis if the visa applicant can demonstrate the following: (a) denying entry would cause undue hardship to the applicant; (b) the visa applicant's entry would not pose a threat to the national security or public safety of the United States; and (c) his or her entry would be in the U.S. national interest.

<sup>a</sup>The Presidential Proclamation has provided certain exceptions to the entry restrictions. For example, unless otherwise specified, suspensions do not apply to diplomatic (A-1 or A-2) or diplomatic-type visas, visas for employees of international organizations and NATO (NATO-1-6, G-1, G-2, G-3, or G-4), or visas for travel to the United Nations (C-2).

<sup>b</sup>As of April 10, 2018, the Proclamation's visa entry restrictions are not applicable to nationals of Chad.

<sup>c</sup>The restrictions for Somalia only apply to immigrant visas, and do not apply to NIVs.

In September 2017, State issued additional guidance to posts on implementation of the Presidential Proclamation.<sup>60</sup> As of July 2018, State continues to accept and process the NIV applications of foreign nationals from the eight countries covered by the Proclamation.<sup>61</sup> Such applicants are to be interviewed, according to State guidance, and consular officers are to determine if the applicant is otherwise eligible for the visa, meets any of the proclamation's exceptions, or qualifies for a waiver.

**Development of uniform screening standards for U.S. immigration benefit programs.** Consistent with EO-2, State, DHS, DOJ, and ODNI developed a uniform baseline for screening and vetting standards and

<sup>60</sup>Details from this guidance have been omitted because State considered such information sensitive.

<sup>61</sup>As of April 10, 2018, the Proclamation's visa entry restrictions are not applicable to nationals of Chad.

procedures by the U.S. government.<sup>62</sup> According to State officials, an interagency working group comprised of State, DHS, DOJ, and ODNI staff is implementing these requirements. Based on its review of existing screening and vetting processes, DHS officials stated that the working group established uniform standards for (1) applications, (2) interviews, and (3) security system checks (i.e., biographic and biometric).

- Regarding applications, DHS officials stated that the group identified data elements against which applicants are to be screened and vetted.<sup>63</sup> In February 2018, DHS Office of Policy officials stated that they had taken steps to create more consistency across U.S. government forms that collect information used for screening and vetting purposes, such as State's DS-160 NIV application as well as 12 DHS forms. For example, officials stated that they anticipate issuing Federal Register notices announcing the intended changes to such forms.
- Regarding interviews, DHS officials stated that the working group established a requirement for all applicants seeking an immigration benefit, including NIV applicants, to undergo a baseline uniform national security and public safety interview. DHS officials stated that the working group modeled its interview baseline on elements of the refugee screening interview. To help implement this standard, DHS officials stated that the department is offering more training courses in enhanced communications (i.e. detecting deception and eliciting responses) and making such courses accessible to other U.S. government entities and U.S. officials overseas.
- Regarding security checks, the working group identified certain checks that should be conducted for all applicants seeking an immigration benefit, including NIV applicants. For example, DHS officials stated that the working group concluded that all applicants for U.S. immigration benefits should be screened against DHS's TECS, among other federal databases. In February 2018, DHS Office of Policy officials stated that they were also exploring the extent to which current screening and vetting technologies can be expanded. For example, technology that is being used to screen applicants for

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<sup>62</sup>DHS, in conjunction with State, DOJ, and ODNI, is to submit a series of reports to the President describing the progress of the development of these standards. See Exec. Order No. 13780, § 5(a), (b), 82 Fed. Reg. at 13,215. According to DHS officials, all of these reports were submitted to the President as of October 2017.

<sup>63</sup>Specific details, such as the number and examples of such data elements, have been omitted because DHS and State deemed such information to be sensitive.

counterterrorism concerns can potentially be modified to screen applicants for other concerns such as public safety or participation in transnational organized crime. However, these officials noted such changes to technology can take a long time.

DHS officials stated that each department and agency is responsible for implementing the uniform standards for their relevant immigration programs. For example, with regard to maintaining information electronically, State officials stated that for nonimmigrant and immigrant visas, as of May 2018, they collected most, but not all, of the application data elements.<sup>64</sup>

In addition to executive actions taken in calendar year 2017, the President issued National Security Presidential Memorandum 9 on February 6, 2018, which directed DHS, in coordination with State, DOJ, and ODNI, to establish a National Vetting Center to optimize the use of federal government information in support of the national vetting enterprise.<sup>65</sup> This memorandum stated that the U.S. government must develop an integrated approach to the use of intelligence and other data, across national security components, in order to improve how departments and agencies coordinate and use information to identify individuals presenting a threat to national security, border security, homeland security, or public safety. The center is to be overseen and guided by a National Vetting Governance Board, consisting of six senior executives designated by DHS, DOJ, ODNI, State, the Central Intelligence Agency, and the Department of Defense. Further, within 180 days of the issuance of the memorandum, these six departments and agencies, in coordination with the Office of Management and Budget, are to jointly submit to the President for approval an implementation plan for the center, addressing, among other things, the initial scope of the center's vetting activities; the roles and responsibilities of agencies participating in the center; a resourcing strategy for the center; and a projected schedule to reach both initial and full operational capability. On February 14, 2018, the Secretary of Homeland Security selected an official to serve as the Director of the National Vetting Center and delegated the center's authorities to CBP.

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<sup>64</sup>Additional details on these data elements and State's implementation of the uniform standard have been omitted because State deemed such information to be sensitive.

<sup>65</sup>National Security Presidential Memorandum/NSPM-9, *Optimizing the Use of Federal Government Information in Support of the National Vetting Enterprise* (Washington, D.C.: Feb. 6, 2018).

DHS Office of Policy officials stated in February 2018 that the center is intended to serve as the focal point of the larger screening and vetting enterprise, and will coordinate policy and set priorities. The center will use the uniform baselines for screening and vetting standards and procedures established per EO-2 to set short- and long-term priorities to improve screening and vetting across the U.S. government. Further, these officials stated screening and vetting activities will continue to be implemented by the entities that are currently implementing such efforts, but roles and responsibilities for screening and vetting for immigration benefits may be modified in the future based on the work of the center. According to DHS Office of Policy officials, efforts to implement National Security Presidential Memorandum 9, such as the development of an implementation plan, are ongoing as of June 2018.

**Implementation of new visa screening and vetting protocols and procedures.** In response to the EOs and a March 2017 presidential memorandum issued the same day as EO-2, State has taken several actions to implement new visa screening and vetting protocols and procedures.<sup>66</sup> For example, State sought and received emergency approval from the Office of Management and Budget in May 2017 to develop a new form, the DS-5535.<sup>67</sup> The form collects additional information from a subset of visa applicants to more rigorously evaluate applicants for visa ineligibilities, including those related to national security and terrorism. The new information requested includes the applicant's travel history over the prior 15 years, all phone numbers used over the prior 15 years, and all email addresses and social media handles

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<sup>66</sup>The March 2017 Presidential Memorandum that accompanied EO-2 directed the Secretaries of State and Homeland Security, in consultation with the Attorney General, to implement protocols and procedures to enhance the screening and vetting of applications for visas and other immigration benefits to increase the safety and security of the American people. See 82 Fed. Reg. 16,279, § 2 (Apr. 3, 2017) (issued Mar. 6). Additional details on State's implementation of new visa screening and vetting protocols and procedures have been omitted because State deemed such information to be sensitive

<sup>67</sup>State issued a series of notices regarding information it proposes requesting if not already included in an application, from a subset of visa applicants worldwide, in order to more rigorously evaluate applicants for terrorism or other national security-related visa ineligibilities. See Notice of Information Collection Under OMB Emergency Review: Supplemental Questions for Visa Applicants, 82 Fed. Reg. 20,956, 20,957 (May 4, 2017); 60-Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants, 82 Fed. Reg. 36,180 (Aug. 3, 2017); 30-Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants, 82 Fed. Reg. 56,099 (Nov. 27, 2017). DHS also took action congruent with State's proposed data collection to update the information stored in an alien's (i.e., foreign national) central immigration file maintained by the U.S. government. See 82 Fed. Reg. 43,556 (Sept. 18, 2017).

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used in the last 5 years. State estimated that, across all posts, the groups requiring additional vetting represented about 70,500 individuals per year.<sup>68</sup>

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## Agency Comments

We provided a draft of the sensitive version of this report to DHS, DOJ, State, and ODNI. DHS, DOJ, and State provided technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until seven days from the report date. At that time, we will send copies of this report to the Secretaries of Homeland Security and State, the Attorney General, and the Director of National Intelligence. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or [GamblerR@gao.gov](mailto:GamblerR@gao.gov). Key contributors to this report are listed in appendix IV.



Rebecca Gambler  
Director, Homeland Security and Justice

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<sup>68</sup>This estimate includes applicants for both NIVs and immigrant visas. State based this estimate on the fact that consular officers worldwide asked approximately 25,000 applicants questions contained within the DS-5535 between May and October 2017, according to State's request for approval from the Office of Management and Budget.

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*List of Requesters*

The Honorable Ron Johnson  
Chairman  
The Honorable Claire McCaskill  
Ranking Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate

The Honorable Bennie Thompson  
Ranking Member  
Committee on Homeland Security  
House of Representatives

The Honorable Martha McSally  
Chairwoman  
Subcommittee on Border and Maritime Security  
Committee on Homeland Security  
House of Representatives

# Appendix I: Enclosures on Nonimmigrant Visa Groups

There are many nonimmigrant visas (NIV), which are issued to foreign nationals such as tourists, business visitors, and students seeking temporary admission into the United States.<sup>1</sup> For the purposes of this report, we placed the majority of NIVs into one of seven groups.<sup>2</sup> In the following enclosures, we provide a descriptive overview of each group on the basis of our analysis of the Department of State's (State) fiscal years 2012 through 2017 NIV data. Each enclosure also contains the following:

- **Description of the group.** In this section, we provide a narrative description of the group, as well as a table of the specific NIVs that comprise the group.
- **Characteristics of the applicants.** In this section, we provide the number of annual NIV adjudications<sup>3</sup> for fiscal years 2012 through

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<sup>1</sup>This report focuses on NIVs, which are visas issued to foreign nationals seeking temporary admission into the United States under a specific nonimmigrant category (8 U.S.C. § 1101(a)(15); 8 C.F.R. § 214.1(a)(1)-(2)), for an authorized period of stay delineated by a particular timeframe, or duration of status (i.e., admission for the time span of a specific program or activity, which may be variable). Immigrant visas, which are not addressed in this report, are issued to eligible foreign nationals who do not fall within one of the classes of nonimmigrants, and are seeking lawful permanent resident status in the United States with a path to citizenship. See 8 U.S.C. § 1101(a)(16). However, certain nonimmigrants—for example, recipients of K visas for the fiancé(e) or spouse of a U.S. citizen or their children—are also eligible for lawful permanent residence, provided they satisfy the applicable statutory criteria. This report also does not address individuals who are allowed to seek admission without a visa, such as citizens of Canada, as well as participants in the Visa Waiver Program, through which nationals of certain countries may apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. embassy or consulate abroad. See 8 U.S.C. § 1187; 8 C.F.R. §§ 212.1, 214.6(d), 217.1-217.7; 22 C.F.R. §§ 41.0-41.3.

<sup>2</sup>More than 99.5 percent of visa applications adjudicated from fiscal years 2012 through 2017 fit within one of the seven groups listed that GAO developed. The remaining visa categories or subcategories not included in the table, which combined was approximately 4,000 to 5,000 applications per year during this timeframe, are grouped as miscellaneous.

<sup>3</sup>Nonimmigrant visa adjudications represent all nonimmigrant applications that were adjudicated during a given time period. Such applications may have been initiated in prior months. This includes applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security. In such cases, the application is counted as a single adjudication. In some cases, data may not sum to 100 percent due to rounding.

2017, the specific NIVs adjudicated in fiscal year 2017 within the group, the regions<sup>4</sup> to which applicants applied for these NIVs in fiscal year 2017, and the top five nationalities that applied for NIVs in the group in fiscal year 2017.<sup>5</sup>

- **Issuances.** In this section, we provide the number of NIVs issued within this group for fiscal years 2012 through 2017.<sup>6</sup>
- **Refusals.** In this section, we provide the refusal rate for the entire NIV group for fiscal years 2012 through 2017.<sup>7</sup> For the NIVs that were refused in fiscal year 2017 for this group, we also provide the top ground for refusal. NIV applicants can be refused a visa on a number of grounds of inadmissibility or other ineligibility under U.S. immigration law and State policy. However, across all visa groups, the top categories were either ineligible nonimmigrant or inadequate documentation:
  - **Ineligible nonimmigrant.** For most NIV categories, the applicant is presumed to be an intending immigrant until the applicant establishes to the satisfaction of the consular officer that he or she is entitled to a nonimmigrant status. An applicant may be refused under this provision if, among other things, the consular officer determines the applicant lacks sufficient ties to his or her home country, or intends to abandon foreign residence; that evidence otherwise indicates an intent to immigrate to the United States

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<sup>4</sup>We define regions according to the boundaries used by the Department of State: Bureau of African Affairs, Bureau of East Asian and Pacific Affairs, Bureau of European and Eurasian Affairs, Bureau of Near Eastern Affairs, Bureau of South and Central Asian Affairs, and Bureau of Western Hemisphere Affairs.

<sup>5</sup>In some cases, percentages may not sum to 100 because of rounding.

<sup>6</sup>Issued visas include nonimmigrant visas that were issued during that fiscal year, though such applications may have been initiated in prior fiscal years. Issued visas also include applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security.

<sup>7</sup>The refusal rate is the number of visas that were ultimately refused divided by the total number of adjudications. This figure does not include visas that were initially refused (for example, due to insufficient documentation or for administrative processing) but then subsequently issued, nor does it include visas that were initially refused but later issued per a Department of Homeland Security waiver.

permanently; or that the applicant is likely to violate the terms of the visa after being admitted.<sup>8</sup>

- **Inadequate documentation.** The consular officer determined that the application is not in compliance with the INA because, for example, it lacks necessary documentation to allow the consular officer to determine visa eligibility. In such cases, the applicant would not be found eligible for the visa unless and until satisfactory documentation is provided to the consular officer or after the completion of administrative processing, such as security advisory opinions.<sup>9</sup>

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<sup>8</sup>Immigration and Nationality Act (INA) § 214(b) (8 U.S.C. § 1184(b)). In some instances, nonimmigrant visas are intended for those seeking permanent residence and a path to citizenship. For example, the K-3 NIV is for the U.S. citizen's foreign spouse, permitting him or her to enter the United States while awaiting approval of the petition submitted on their behalf and availability of an immigrant visa. 8 U.S.C. § 1101(a)(15)(K)(ii). Recipients of T and U visas for victims of severe forms of trafficking in persons or other qualifying crimes are also eligible for lawful permanent residence.

<sup>9</sup>INA § 221(g) (8 U.S.C. § 1201(g)).

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**Appendix I: Enclosures on Nonimmigrant Visa  
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# Appendix II: Nonimmigrant Visa Statistics, Fiscal Years 2012 through 2017

Nonimmigrant visas (NIV) are issued to foreign nationals such as tourists, business visitors, and students seeking temporary admission into the United States.<sup>1</sup> The Department of State (State) is generally responsible for the adjudication of NIV applications, and manages the application process, including the consular officer corps and its functions at more than 220 U.S. embassies and consulates (i.e., visa-issuing posts) overseas.<sup>2</sup> Depending on various factors, such as the particular NIV sought, the applicant's background, and visa demand, State officials noted that the length of the visa adjudication process can vary from a single day to months.

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<sup>1</sup>This report focuses on NIVs, which are visas issued to foreign nationals seeking temporary admission into the United States under a specific nonimmigrant category (8 U.S.C. § 1101(a)(15); 8 C.F.R. § 214.1(a)(1)-(2)), for an authorized period of stay delineated by a particular timeframe, or duration of status (i.e., admission for the time span of a specific program or activity, which may be variable). Immigrant visas, which are not addressed in this report, are issued to eligible foreign nationals who do not fall within one of the classes of nonimmigrants, and are seeking lawful permanent resident status in the United States with a path to citizenship. See 8 U.S.C. § 1101(a)(16). However, certain nonimmigrants—for example, recipients of K visas for the fiancé(e) or spouse of a U.S. citizen or their children—are also eligible for lawful permanent residence, provided they satisfy the applicable statutory criteria. This report also does not address individuals who are allowed to seek admission without a visa, such as citizens of Canada, as well as participants in the Visa Waiver Program, through which nationals of certain countries may apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. embassy or consulate abroad. See 8 U.S.C. § 1187; 8 C.F.R. §§ 212.1, 214.6(d), 217.1-217.7; 22 C.F.R. §§ 41.0-41.3.

<sup>2</sup>See 6 U.S.C. § 236(c), (d); 8 U.S.C. §§ 1201-1202. However, there are certain cases in which USCIS handles nonimmigrant processing exclusively. For all T visas for victims of trafficking, USCIS is entirely responsible for the application process given that these applicants must be physically present within the United States or a U.S. territory, or at a port of entry to be eligible for T nonimmigrant status, and therefore would not be subject to consular processing abroad. 8 U.S.C. § 1101(a)(15)(T). For some U visas for victims of qualifying crimes, where the petitioner is inside the United States and thus not required to consular process, USCIS is wholly responsible for adjudicating eligibility for U nonimmigrant status. 8 U.S.C. § 1101(a)(15)(U).

This appendix provides descriptive statistics of NIV adjudications, issuances, and refusals for fiscal years 2012 through 2017. Specific details are shown in table 8 below.

**Table 8: Nonimmigrant Visa Adjudications, Fiscal Years (FY) 2012 through 2017**

Fiscal Year	Issuances	Refusals	Total Adjudications	Percent Refused
FY 2012	8,925,804	1,417,457	10,343,261	13.7
FY 2013	9,162,972	1,559,932	10,722,904	14.5
FY 2014	9,931,724	1,796,000	11,727,724	15.3
FY 2015	10,891,173	2,419,772	13,310,945	18.2
FY 2016	10,381,162	2,954,477	13,335,639	22.2
FY 2017	9,681,626	2,773,924	12,455,550	22.3
<b>Grand Total</b>	<b>58,974,461</b>	<b>12,921,562</b>	<b>71,896,023</b>	<b>18.0</b>

Source: GAO analysis of Department of State data. | GAO-18-608

Note: Nonimmigrant visa adjudications represent all nonimmigrant applications that were adjudicated during that fiscal year. Such applications may have been initiated in prior fiscal years. This includes applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security. In such cases, the application is counted as a single adjudication.

State data from fiscal years 2012 through 2016 indicate that NIV adjudications generally followed an annual cycle, ebbing during certain months during the fiscal year; however, adjudications in fiscal year 2017 departed slightly from this trend. Specifically, from fiscal years 2012 through 2016, the number of NIV adjudications typically reached its highest peak in the summer months, as shown in table 9. For example, State officials noted that a summer peak is generally due to international students who are applying for their visas for the coming academic year.

**Table 9: Nonimmigrant Visa Adjudications, by Month, Fiscal Years (FY) 2012 through 2017**

Month	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
October	721,344	802,774	887,062	964,248	982,223	999,751
November	742,617	771,837	813,283	857,782	961,462	1,069,460
December	818,119	786,673	907,807	1,069,942	1,118,651	1,150,438
January	705,850	772,296	824,991	946,531	898,498	1,012,278
February	758,851	709,740	779,385	917,615	900,987	869,255
March	949,682	868,328	985,030	1,198,269	1,170,000	1,116,302
April	895,930	1,000,908	1,066,489	1,243,215	1,215,029	943,706
May	1,004,385	1,040,832	1,070,221	1,108,459	1,233,468	1,099,613
June	1,079,473	1,062,463	1,214,417	1,268,330	1,395,259	1,143,311

**Appendix II: Nonimmigrant Visa Statistics,  
Fiscal Years 2012 through 2017**

Month	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
July	1,000,732	1,115,839	1,071,669	1,477,030	1,192,862	1,117,974
August	927,710	964,937	1,142,395	1,192,816	1,233,007	1,089,036
September	738,568	826,277	964,975	1,066,708	1,034,193	844,426
<b>Grand Total</b>	<b>10,343,261</b>	<b>10,722,904</b>	<b>11,727,724</b>	<b>13,310,945</b>	<b>13,335,639</b>	<b>12,455,550</b>

Source: GAO analysis of Department of State data. | GAO-18-608

Note: Nonimmigrant visa adjudications represent all nonimmigrant applications that were adjudicated during that month. Such applications may have been initiated in prior months. This includes applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security. In such cases, the application is counted as a single adjudication.

There are many NIVs, and for the purposes of this report, we have placed the majority of NIVs into one of seven groups.<sup>3</sup> Table 10 includes the annual NIV adjudications, issuances, and refusal rates, for each visa group for fiscal years 2012 through 2017.

**Table 10: Nonimmigrant Visa Adjudications, Issuances, and Refusal Rates, by Visa Group, Fiscal Years (FY) 2012 through 2017**

Visa Categories	Visa Subcategories	Fiscal Year					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
n/a	n/a						
Tourists and business visitors	Adjudications	8,179,760	8,475,169	9,304,923	10,714,548	10,754,548	9,968,157
	Issued	6,954,621	7,084,808	7,680,703	8,510,095	8,071,999	7,432,359
	Refusal Rate	15.0%	16.4%	17.5%	20.6%	24.9%	25.4%
Students and exchange visitors	Adjudications	1,010,435	1,050,306	1,140,338	1,230,009	1,106,645	992,855
	Issued	876,232	928,310	1,013,047	1,064,176	892,999	814,138
	Refusal Rate	13.3%	11.6%	11.2%	13.5%	19.3%	18.0%
Temporary workers	Adjudications	592,298	650,940	708,814	779,940	856,087	884,667
	Issued	554,868	619,291	676,771	746,038	816,300	846,407
	Refusal Rate	6.3%	4.9%	4.5%	4.4%	4.7%	4.3%
Transit and crewmembers	Adjudications	307,859	296,661	304,536	316,418	331,112	330,117
	Issued	294,841	288,014	299,370	308,503	322,515	319,786
	Refusal Rate	4.2%	2.9%	1.7%	2.5%	2.6%	3.1%
Foreign officials and employees	Adjudications	168,091	161,705	165,237	166,656	169,347	166,187
	Issued	164,229	158,079	162,579	163,418	164,702	161,796

<sup>3</sup>More than 99.5 percent of visa applications adjudicated from fiscal years 2012 through 2017 fit within one of the seven groups listed in table 10. The remaining visa categories or subcategories not included in the table, which combined was approximately 4,000 to 5,000 applications per year during this timeframe, are grouped as miscellaneous.

**Appendix II: Nonimmigrant Visa Statistics,  
Fiscal Years 2012 through 2017**

Visa Categories	Visa Subcategories	Fiscal Year						
		n/a	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
	Refusal Rate		2.3%	2.2%	1.6%	1.9%	2.7%	2.6%
Treaty trader and investors	Adjudications		48,092	53,323	57,170	63,103	68,976	68,580
	Issued		45,107	50,120	53,044	59,215	64,315	62,962
	Refusal Rate		6.2%	6.0%	7.2%	6.2%	6.8%	8.2%
Fiancé(e) and spouses	Adjudications		32,489	30,467	41,684	35,730	44,482	40,533
	Issued		32,152	30,290	41,488	35,558	44,251	40,204
	Refusal Rate		1.0%	0.6%	0.5%	0.5%	0.5%	0.8%
Miscellaneous	Adjudications		4,237	4,333	5,022	4,541	4,442	4,454
	Issued		3,754	4,060	4,722	4,170	4,081	3,974
	Refusal Rate		11.4%	6.3%	6.0%	8.2%	8.1%	10.8%
<b>Total</b>	<b>Adjudications</b>		<b>10,343,261</b>	<b>10,722,904</b>	<b>11,727,724</b>	<b>13,310,945</b>	<b>13,335,639</b>	<b>12,455,550</b>
	<b>Issued</b>		<b>8,925,804</b>	<b>9,162,972</b>	<b>9,931,724</b>	<b>10,891,173</b>	<b>10,381,162</b>	<b>9,681,626</b>
	<b>Refusal Rate</b>		<b>13.7%</b>	<b>14.6%</b>	<b>15.3%</b>	<b>18.2%</b>	<b>22.2%</b>	<b>22.3%</b>

Source: GAO analysis of Department of State data. | GAO-18-608

Note: Visa groups were developed by GAO based on the general purpose of the visa, among other factors. Dependents of the principal visa holder, such as a spouse, child, or personal employee, are generally categorized with the principal visa holder. Nonimmigrant visa adjudications represent all nonimmigrant applications that were adjudicated during that fiscal year. Such applications may have been initiated in prior fiscal years. This includes applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security. In such cases, the application is counted as a single adjudication.

NIV applicants seeking to travel to the United States represent many different nationalities, but the countries of nationality with the most NIV adjudications have remained relatively consistent in recent years. Table 11 provides the top 25 countries of nationality for NIV adjudications for fiscal years 2012 through 2017.

**Table 11: Top 25 Countries of Nationality for Nonimmigrant Visa (NIV) Adjudications, Fiscal Years (FY) 2012 through 2017**

Country of Nationality	Fiscal Year						Total
	2012	2013	2014	2015	2016	2017	
China <sup>a</sup>	1,427,739	1,625,225	1,966,851	2,958,970	2,635,645	2,022,145	<b>12,636,575</b>
Mexico	1,893,399	1,717,540	1,750,283	1,841,870	1,796,208	1,750,121	<b>10,749,421</b>
India	749,983	812,676	972,036	1,219,779	1,286,796	1,276,611	<b>6,317,881</b>
Brazil	1,091,138	1,023,111	1,127,904	990,055	613,366	669,142	<b>5,514,716</b>
Colombia	381,535	521,098	526,025	437,210	484,040	455,208	<b>2,805,116</b>
Argentina	265,205	257,529	234,657	258,367	315,955	374,313	<b>1,706,026</b>
Philippines	242,900	220,568	214,104	240,964	268,439	284,149	<b>1,471,124</b>

**Appendix II: Nonimmigrant Visa Statistics,  
Fiscal Years 2012 through 2017**

Country of Nationality	Fiscal Year						Total
	2012	2013	2014	2015	2016	2017	
n/a							
Nigeria	135,276	188,917	226,237	242,926	323,674	327,413	<b>1,444,443</b>
Russia	251,750	302,981	265,788	175,597	208,485	230,274	<b>1,434,875</b>
Venezuela	259,114	256,642	203,905	283,286	258,509	96,176	<b>1,357,632</b>
Ecuador	116,880	135,714	210,074	232,661	223,028	245,710	<b>1,164,067</b>
Dominican Republic	106,520	98,099	95,177	140,135	214,409	319,511	<b>973,851</b>
Israel	139,333	141,943	145,735	164,671	191,986	188,527	<b>972,195</b>
Vietnam	80,647	90,297	108,594	153,510	175,724	184,838	<b>793,610</b>
Jamaica	79,200	80,248	117,352	155,086	175,394	150,190	<b>757,470</b>
Turkey	103,359	109,187	109,971	126,089	134,769	124,400	<b>707,775</b>
Peru	93,614	99,321	117,004	130,548	132,188	132,102	<b>704,777</b>
Saudi Arabia	110,594	115,016	142,932	138,004	113,980	82,121	<b>702,647</b>
Pakistan	66,234	73,815	97,573	122,643	146,507	116,345	<b>623,117</b>
Poland	80,671	83,531	96,464	101,628	108,241	115,871	<b>586,406</b>
United Kingdom <sup>b</sup>	87,060	90,793	93,883	94,554	107,978	104,975	<b>579,243</b>
Guatemala	85,919	82,522	97,763	101,630	116,803	91,856	<b>576,493</b>
Haiti	64,665	70,690	82,164	97,059	133,014	112,376	<b>559,968</b>
Ukraine	70,556	68,862	83,718	112,271	116,672	103,825	<b>555,904</b>
Egypt	96,423	79,630	82,693	81,839	95,709	96,164	<b>532,458</b>

Source: GAO analysis of Department of State data. | GAO-18-608

Note: NIV adjudications represent all nonimmigrant applications that were adjudicated during that fiscal year. Such applications may have been initiated in prior fiscal years. This includes applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security. In such cases, the application is counted as a single adjudication.

<sup>a</sup>For the purposes of this table, this does not include Hong Kong.

<sup>b</sup>The United Kingdom participates in the Visa Waiver Program, through which nationals of certain countries may apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. embassy or consulate abroad. See 8 U.S.C. § 1187; 8 C.F.R. §§ 212.1, 217.1-217.7; 22 C.F.R. §§ 41.0-41.3. However, nationals of the United Kingdom applying for other nonimmigrant visas, such as those for temporary workers or students, as well as those seeking to travel to the United States under the Visa Waiver Program but were denied through DHS's Electronic System for Travel Authorization, must still apply for and obtain a visa from a U.S. consulate abroad.

NIV applicants can apply for their NIVs at more than 220 visa-issuing U.S. posts overseas. Table 12 describes the regions to which NIV applicants applied from fiscal years 2012 through 2017.

**Appendix II: Nonimmigrant Visa Statistics,  
Fiscal Years 2012 through 2017**

**Table 12: Adjudicated Nonimmigrant Visas by Location of Application, Fiscal Years (FY) 2012 through 2017**

Region	Percentage of Applications					
	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Bureau of Western Hemisphere Affairs	48.8	47.4	45.8	41.9	40.4	41.7
Bureau of East Asian and Pacific Affairs	22.3	22.2	23.2	28.0	26.5	24.1
Bureau of European and Eurasian Affairs	11.3	11.6	10.9	9.7	10.7	11.4
Bureau of South and Central Asian Affairs	7.9	8.3	9.3	10.1	10.8	11.2
Bureau of Near Eastern Affairs	5.7	6.1	6.4	6.0	6.3	6.0
Bureau of African Affairs	3.8	4.1	4.4	4.2	5.2	5.5
Other <sup>a</sup>	0.1	0.1	0.1	0.2	0.2	0.2

Source: GAO analysis of Department of State data. | GAO-18-608

Note: Percentages may not sum to 100 because of rounding. These data represent nonimmigrant visa adjudications by consular posts in certain regions, and not the applicant's nationality. Therefore, a particular consular post may include nationals from the country in which the post is located, as well as third-country nationals, which are those who apply for a visa at a post outside of their country of nationality. We define regions according to the boundaries used by the Department of State: Bureau of African Affairs, Bureau of East Asian and Pacific Affairs, Bureau of European and Eurasian Affairs, Bureau of Near Eastern Affairs, Bureau of South and Central Asian Affairs, and Bureau of Western Hemisphere Affairs.

<sup>a</sup>Other includes locations not covered by the Department of State's regional bureaus, such as nonimmigrant visas that were adjudicated within the United States by the U.S. Mission to the United Nations or the Department of State's Bureau of Consular Affairs.

NIV applicants can be refused a visa on a number of grounds of inadmissibility or other ineligibility under U.S. immigration law and State policy. For the purposes of this report, we have grouped most of these grounds for refusal into one of seven categories, and group the remaining into a miscellaneous category, as shown in table 13.<sup>4</sup>

**Table 13: Nonimmigrant Visa Refusal Reasons, Fiscal Years (FY) 2012 through 2017**

Refusal categories	Number of Refusals					
	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Ineligible nonimmigrant <sup>a</sup>	1,292,659	1,421,182	1,686,124	2,238,391	2,766,710	2,600,474
Inadequate documentation <sup>b</sup>	83,156	95,436	56,503	116,711	127,356	114,591
Immigration related <sup>c</sup>	30,195	33,109	40,601	49,571	45,963	42,952
Crime related <sup>d</sup>	9,838	8,502	11,174	13,605	12,568	12,823
Terrorism and other security-related <sup>e</sup>	810	819	959	1,043	1,478	1,256

<sup>4</sup>More than 99.5 percent of visa refusals for applications adjudicated from fiscal years 2012 through 2017 fit within one of the seven categories. The remaining refusal grounds, which combined was less than 400 refusals per year, are categorized as miscellaneous.

**Appendix II: Nonimmigrant Visa Statistics,  
Fiscal Years 2012 through 2017**

Refusal categories	Number of Refusals					
	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Health related <sup>f</sup>	477	483	369	372	352	296
Presidential directive-related <sup>g</sup>	65	62	29	39	12	1,381
Miscellaneous	257	339	241	40	38	151
<b>Total</b>	<b>1,417,457</b>	<b>1,559,932</b>	<b>1,796,000</b>	<b>2,419,772</b>	<b>2,954,477</b>	<b>2,773,924</b>

Source: GAO analysis of Department of State data. | GAO-18-608

Note: This table is not a comprehensive list of grounds under which a NIV can be refused. This table does not include visas that were initially refused (for example, due to insufficient documentation or for administrative processing) but then subsequently issued, nor does it include visas that were initially refused but later issued per a Department of Homeland Security waiver.

<sup>a</sup>INA § 214(b) (8 U.S.C. § 1184(b)). In some instances, nonimmigrant visas are intended for those seeking permanent residence and a path to citizenship. For example, the K-3 NIV is for the U.S. citizen's foreign spouse, permitting him or her to enter the United States while awaiting approval of the petition submitted on their behalf and availability of an immigrant visa. 8 U.S.C. § 1101(a)(15)(K)(ii). Recipients of T and U visas for victims of severe forms of trafficking in persons or other qualifying crimes are also eligible for lawful permanent residence.

<sup>b</sup>INA § 221(g) (8 U.S.C. § 1201(g)).

<sup>c</sup>Id. at § 212(a)(6), (9).

<sup>d</sup>See id. § 212(a)(2).

<sup>e</sup>INA § 212(a)(3) (8 U.S.C. § 1182(a)(3)).

<sup>f</sup>Id. at § 212(a)(1).

<sup>g</sup>Id. at § 212(f). Pursuant to executive actions taken in 2017, the President invoked the authority under INA § 212(f) to suspend immigrant and nonimmigrant entry of nationals of certain countries of particular or identified concern. See, e.g., Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) (issued Jan. 27), Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (issued Mar. 6), and Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) (issued Sept. 24). For background on the President's authority under INA § 212(f), as articulated by the federal courts, see Appendix III.

# Appendix III: Foreign National Entry Restrictions and Related Litigation, January 2017 Through June 2018

From January through October 2017, the administration took various executive actions establishing nationality-based entry restrictions for certain categories of foreign nationals from designated countries. This appendix supplements information included in this report to provide a more comprehensive presentation of changes to U.S. immigration policy affecting nonimmigrant and immigrant entry into the United States, and outlines the legal standards applied, and precedent developed and relied upon, by federal courts in resolving challenges to the executive actions. In particular, it describes relevant aspects of the executive actions specifically addressed in this report—Executive Orders 13769 and 13780, both titled Protecting the Nation from Foreign Terrorist Entry into the United States, and Presidential Proclamation 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats—that imposed visa entry restrictions on certain countries’ nationals and included provisions addressing NIV screening and vetting, as well as other executive actions on immigration issued by the current administration.<sup>1</sup> Furthermore, this appendix provides a detailed account of the interrelated challenges to these executive actions brought in the federal courts through June 2018.

In summary, on March 6, 2017, the President issued Executive Order (EO) 13780, Protecting the Nation from Foreign Terrorist Entry Into the

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<sup>1</sup>A fourth executive action taken in early fiscal year 2018—Executive Order (EO) 13815, Resuming the United States Refugee Admissions Program With Enhanced Vetting Capabilities—specifically addresses the U.S. Refugee Admissions Program (USRAP), which we did not review as part of this report. However, the relation of this executive action and its associated litigation to the executive actions specifically addressed warrants inclusion of EO 13815 in this appendix for completeness.

United States, which instituted visa and refugee entry restrictions,<sup>2</sup> and an accompanying memorandum addressed to the Secretaries of State and Homeland Security and the Attorney General, calling for heightened screening and vetting of visa applications and other immigration benefits.<sup>3</sup> EO 13780 stated that it is U.S. policy to improve the screening and vetting protocols and procedures associated with the visa-issuance process and U.S. Refugee Admissions Program (USRAP).<sup>4</sup> Enforcement of sections 2(c) and 6(a) of EO 13780 which established visa entry restrictions for nationals of six countries of particular concern—Iran, Libya, Somalia, Sudan, Syria, and Yemen—for a 90-day period,<sup>5</sup> and suspended all refugee admissions for 120 days,<sup>6</sup> was enjoined by federal district court orders issued in March 2017. On appeal, the U.S. Courts of Appeals for the Fourth and Ninth Circuits generally upheld these decisions. Upon review by the U.S. Supreme Court in June 2017, the injunction was partially lifted except with respect to foreign nationals who have bona fide

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<sup>2</sup>Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 9, 2017). EO 13780 revoked and replaced a prior EO of the same title, Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) (issued Jan. 27), pursuant to which similar visa and refugee entry restrictions had been established before enforcement of such restrictions was blocked nationwide due to a federal court injunction. EO 13769 is discussed in more detail later in this appendix.

<sup>3</sup>Memorandum Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits, Ensuring Enforcement of All Laws for Entry Into the United States, and Increasing Transparency Among Departments and Agencies of the Federal Government and for the American People, 82 Fed. Reg. 16,279 (Apr. 3, 2017) (issued Mar. 6).

<sup>4</sup>For our recent work on the refugee admission process and assessment of related fraud risks, see GAO, *Refugees: Federal Agencies and Their Partners Have Implemented Certain Measures, but Need to Further Strengthen Applicant Screening and Assess Fraud Risks*, [GAO-18-156T](#) (Washington, D.C.: Oct. 26, 2017); GAO, *Refugees: State and Its Partners Have Implemented Several Antifraud Measures but Could Further Reduce Staff Fraud Risks*, [GAO-17-737](#) (Washington, D.C.: July 31, 2017); GAO, *Refugees: Actions Needed by State Department and DHS to Further Strengthen Applicant Screening Process and Assess Fraud Risks*, [GAO-17-706](#) (Washington, D.C.: July 31, 2017).

<sup>5</sup>EO 13769 had temporarily suspended entry of Iraqi nationals as well; however, EO 13780 did not include Iraq in the list of countries whose nationals were subject to visa entry restrictions, citing it as presenting a special case. In particular, EO 13780 stated that “the close cooperative relationship between the United States and the democratically elected Iraqi government, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq’s commitment to combat ISIS justify different treatment for Iraq.” Exec. Order No. 13780, § 1(g), 82 Fed. Reg. at 13,212.

<sup>6</sup>EO 13769 had also indefinitely barred admission of Syrian refugees; however, although EO 13780 reinstated the 120-day worldwide suspension of USRAP, it removed the indefinite restriction for Syrian nationals seeking refugee status.

ties to the United States Implementation of EO 13780 commenced on June 29, 2017.

On September 24, 2017, pursuant to section 2(e) of EO 13780, the President issued Presidential Proclamation 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats.<sup>7</sup> This proclamation restricts entry into the United States of certain categories of foreign nationals from eight countries—Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen—for an indefinite period. Preliminary injunctions issued by the U.S. District Courts for the Districts of Maryland (Maryland federal district court) and Hawaii (Hawaii federal district court) in October 2017 prohibited implementation of these visa entry restrictions except with respect to North Korean and Venezuelan nationals.<sup>8</sup> On December 4, 2017, the U.S. Supreme Court issued two orders staying these district court injunctions; and on January 19, 2018, the Supreme Court granted the government’s petition for review of the December 22, 2017, decision of the Ninth Circuit, which partially affirmed the Hawaii federal district court’s preliminary injunction. As of June 2018, these latest visa entry restrictions continue to be fully implemented consistent with the Supreme Court’s June 26, 2018, decision, which held that the President may lawfully establish nationality-based entry restrictions, and that Proclamation 9645 itself “is squarely within the scope of Presidential

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<sup>7</sup>See Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017).

<sup>8</sup>The Maryland federal district court’s injunction also permitted implementation of visa entry restrictions for other covered foreign nationals who lack a credible claim of a bona fide relationship with a person or entity in the United States.

authority.”<sup>9</sup> The following sections describe these executive actions and related litigation in greater detail.<sup>10</sup>

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## Executive Actions and Related Litigation

### Executive Order 13769

On January 27, 2017, the President issued EO 13769, Protecting the Nation from Foreign Terrorist Entry Into the United States, which directed a review of information needs for adjudicating visas and other immigration benefits to confirm individuals seeking such benefits are who they claim to be, and are not security or public-safety threats.<sup>11</sup> To temporarily reduce investigative burdens during the review period, the EO suspended U.S. entry for nationals of seven countries of particular concern—Iraq, Libya, Somalia, Sudan, Syria, and Yemen. In addition, EO 13769 put USRAP on hold for 120 days and indefinitely barred admission of Syrian refugees. Shortly after its issuance, however, the EO faced numerous legal challenges in federal courts across the country involving various

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<sup>9</sup>*Trump v. Hawaii*, 138 S. Ct. 2392 (2018). The Supreme Court held oral arguments in this case on April 25, 2018. Previously, on February 23, 2018, Fourth Circuit challengers filed a petition for a writ of certiorari seeking for the Supreme Court to review their claims together with the Ninth Circuit case.

<sup>10</sup>For further background on these executive actions, as well as associated litigation and injunctive relief, see Hillel R. Smith & Ben Harrington, Cong. Research Serv., LSB10017, Overview of “Travel Ban” Litigation and Recent Developments (April 23, 2018); and Wilson C. Freeman, Cong. Research Serv., LSB10124, The Travel Ban Case and Nationwide Injunctions (May 2, 2018). In addition, other relevant executive actions include the President signing EO 13815, which resumed USRAP subject to certain conditions. See Resuming the United States Refugee Admissions Program With Enhanced Vetting Capabilities, Exec. Order No. 13815, 82 Fed. Reg. 50,055 (Oct. 27, 2017) (issued Oct. 24). On December 23, 2017, the U.S. District Court for the Western District of Washington (Washington federal district court) preliminarily enjoined implementation of restrictions on refugee admission imposed by EO 13815 and its accompanying memorandum. Furthermore, on February 6, 2018, the President issued a memorandum directing the establishment of a National Vetting Center to coordinate the management and governance of the national vetting enterprise. See National Security Presidential Memorandum/NPSM – 9 on Optimizing the Use of Federal Government Information in Support of the National Vetting Enterprise (Feb. 6, 2018), *available at* <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-optimizing-use-federal-government-information-support-national-vetting-enterprise/> (last visited May 11, 2018).

<sup>11</sup>Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017). On January 27, 2017, pursuant to EO 13769, the Department of State provisionally revoked all valid nonimmigrant and immigrant visas of nationals of Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen, subject to certain exceptions.

constitutional and statutory issues such as detainee applications for writs of habeas corpus, alleged religious or nationality-based discrimination, and the extent of the EO's applicability to certain categories of foreign nationals, including U.S. lawful permanent residents (LPR) and dual nationals holding passports issued by a listed country as well as another nation not subject to visa entry restrictions.<sup>12</sup>

On February 3, 2017, the Washington federal district court entered a nationwide temporary restraining order (TRO) prohibiting enforcement of the EO's entry restrictions.<sup>13</sup> In rejecting the government's argument that a TRO only cover the particular states at issue, the court reasoned that partial implementation would "undermine the constitutional imperative of 'a uniform Rule of Naturalization' and Congress's instruction that the 'immigration laws of the United States should be enforced vigorously and uniformly.'"<sup>14</sup> On February 9, 2017, the Ninth Circuit affirmed the nationwide injunction, thereby denying the government's emergency motion for a stay of the Washington federal district court's TRO pending appeal, because the government did not show a likelihood of success on the merits of its appeal, or that failure to enter a stay would cause irreparable injury.<sup>15</sup> On March 6, 2017, however, the President issued EO 13780, which revoked and replaced EO 13769, and established revised restrictions on entry for nationals of the same countries of particular concern, except Iraq.

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<sup>12</sup>On February 1, 2017, White House Counsel issued interpretive guidance acknowledging "reasonable uncertainty about whether [EO 13769 entry restrictions] apply to [LPRs]... [and] [a]ccordingly... clarif[ied] that Sections 3(c) and 3(e) do not apply to such individuals." On February 3, 2017, DHS issued a statement that visa entry restrictions are "not appl[icable] to [LPRs], dual citizens with passports from a country other than the seven listed, or those traveling on diplomatic, NATO, or UN visas. Special Immigrant Visa holders who are nationals of these seven countries may board U.S.-bound planes, and apply for and receive a national interest exception to the pause upon arrival."

<sup>13</sup>*Washington v. Trump*, No. C17-0141JLR, 2017 U.S. Dist. LEXIS 16012 (W.D. Wash. 2017).

<sup>14</sup>2017 U.S. Dist. LEXIS 16012 at \*8 (quoting 809 F.3d 134, 155 (5th Cir. 2015) (quoting U.S. CONST. art. I, § 8, cl. 4; and Immigration and Reform Control Act of 1986, Pub. L. No. 99-603, §115(1), 100 Stat. 3359, 3384)).

<sup>15</sup>*Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017) (per curiam). For a discussion of other court rulings between January 27 and February 3, 2017, enjoining implementation of EO 13769 entry restrictions, and DHS's compliance with those injunctions, see DHS-OIG, *DHS Implementation of Executive Order #13769 "Protecting the Nation From Foreign Terrorist Entry Into the United States" (January 27, 2017)*, OIG-18-37 (Washington, D.C.: Jan. 18, 2018).

### Executive Order 13780

On March 6, 2017, the President signed EO 13780, Protecting the Nation from Foreign Terrorist Entry Into the United States, which revoked and replaced EO 13769 and put in place revised visa and refugee entry restrictions,<sup>16</sup> and issued an accompanying memorandum calling for heightened screening and vetting of visa applications and other immigration benefits.<sup>17</sup> In general, sections 2(c) and 6(a) of EO 13780 barred visa travel for nationals of six designated countries—Iran, Libya, Somalia, Sudan, Syria, and Yemen—for 90 days, and all refugee admission for 120 days.<sup>18</sup> On March 15, 2017, sections 2 and 6 of the EO were enjoined on statutory grounds (i.e., based on potential violation of U.S. immigration law) pursuant to the order of the Hawaii federal district court granting the plaintiffs’ motion for a TRO.<sup>19</sup> On March 16, 2017, the Maryland federal district court issued a preliminary injunction barring implementation of visa entry restrictions on a nationwide basis with respect to nationals of the six listed countries.<sup>20</sup>

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<sup>16</sup>Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (issued Mar. 6). EO 13780 revoked and replaced EO 13769, which had previously been enjoined nationwide by the Washington federal district court. See *Washington v. Trump*, 2017 U.S. Dist. LEXIS 16012 (W.D. Wash. 2017), *aff’d*, 847 F.3d 1151 (9th Cir. 2017).

<sup>17</sup>82 Fed. Reg. 16,279. In implementation of this memorandum, State issued a series of notices regarding information it proposes requesting, if not already included in an application, from a subset of visa applicants worldwide, in order to more rigorously evaluate applicants for terrorism or other national security-related visa ineligibilities. See Notice of Information Collection Under OMB Emergency Review: Supplemental Questions for Visa Applicants, 82 Fed. Reg. 20,956, 20,957 (May 4, 2017); 60-Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants, 82 Fed. Reg. 36,180 (Aug. 3, 2017); 30-Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants, 82 Fed. Reg. 56,099 (Nov. 27, 2017). DHS also took action congruent with State’s proposed data collection to update the information stored in an alien’s (i.e., foreign national) central immigration file maintained by the U.S. government. See, e.g., Privacy Act of 1974; System of Records, 82 Fed. Reg. 43,556 (Sept. 18, 2017).

<sup>18</sup>82 Fed. Reg. at 13,213, 13,215-16. EO 13769 had also temporarily suspended entry of Iraqi nationals, and indefinitely barred admission of Syrian refugees; however, EO 13780 did not include Iraq in the list of countries whose nationals were subject to visa entry restrictions, citing it as presenting a special case, and though it did not include an indefinite restriction for Syrian refugees it did reinstitute the 120-day worldwide suspension of USRAP.

<sup>19</sup>See *Hawai’i v. Trump*, 241 F. Supp. 3d 1119 (D. Haw. 2017).

<sup>20</sup>See *Int’l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539 (D. Md. 2017).

On May 25, 2017, the Fourth Circuit affirmed the Maryland federal district court's injunction on constitutional grounds (i.e., based on potential violation of the Establishment Clause of the First Amendment to the U.S. Constitution).<sup>21</sup> On June 12, 2017, the Ninth Circuit generally affirmed the Hawaii federal district court's ruling, but vacated the district court's order to the extent it enjoined internal review procedures not burdening individuals outside the Executive Branch, therefore permitting the administration to conduct the internal reviews of visa information needs as directed in the EO.<sup>22</sup> On June 14, 2017, the President issued a memorandum to the Secretaries of State and Homeland Security, Attorney General, and Director of National Intelligence, directing that sections 2 and 6 of EO 13780 were to be implemented 72 hours after all applicable injunctions are lifted or stayed.<sup>23</sup>

On June 26, 2017, the Supreme Court granted, in part, the government's application to stay the March 15 and 16 injunctions of the Hawaii and Maryland federal district courts, as generally upheld on May 25 and June 12 by the Fourth and Ninth Circuits.<sup>24</sup> The Court explained that the administration may enforce visa and refugee travel restrictions under sections 2 and 6 except with respect to an individual who can "credibly claim a bona fide relationship with a person or entity in the United States." In the case of a visa or refugee applicant who is the relative of a person in the United States, such foreign national would be exempt from entry restrictions provided the family connection with their U.S. relative meets the "close familial relationship" standard. The Court further explained that a qualifying relationship with a U.S. entity would have to be formal, documented, and formed in the ordinary course, and not for the purpose of evading EO 13780.

On June 29, 2017, the day that implementation of EO 13780 began, the State Department issued guidance providing that a close familial

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<sup>21</sup>*Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017). See U.S. CONST. amend. I.

<sup>22</sup>*Hawaii v. Trump*, 859 F.3d 741 (9th Cir. 2017) (per curiam).

<sup>23</sup>Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence re: Effective Date in Executive Order 13780, 82 Fed. Reg. 27,965 (June 19, 2017).

<sup>24</sup>See *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080 (2017) (per curiam) (providing also that the government's petitions for certiorari have been granted and that the cases will be heard during the first session of the October Term 2017).

relationship exists for the parents, spouse, children, adult sons or daughters, sons and daughters-in-law, and siblings of a person in the United States, but not for such person's grandparents, grandchildren, uncles, aunts, nephews, nieces, sisters-in-law, brothers-in-law or other relatives.<sup>25</sup> The State of Hawaii filed a motion with the Hawaii federal district court seeking, among other things, a declaration that the partial injunction in place after the Supreme Court's ruling prohibited application of travel restrictions to fiancés, grandparents, grandchildren, brothers and sisters in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States. On July 13, 2017, the Hawaii federal district court ruled, among other things, that section 2 of the EO, generally barring travel to the United States for nationals of certain countries, does not apply to the grandparents, grandchildren, brothers and sisters in-law, aunts, uncles, nieces, nephews and cousins of persons in the United States, who were initially excluded from the administration's interpretation of "close family."<sup>26</sup> The government appealed this decision to the Supreme Court.

On July 19, 2017, the Supreme Court denied the government's motion seeking further clarification of its June 26 ruling, stayed the Hawaii federal district court's order to the extent it included refugees covered by a formal assurance from a U.S.-based resettlement agency within the scope of the preliminary injunction, pending appeal to the Ninth Circuit, and left unchanged the district court's broader formulation of exempt "close family."<sup>27</sup> On September 7, 2017, the Ninth Circuit upheld the Hawaii federal district court's definition of close family members who are not to be subjected to travel restrictions, and rejected the government's argument that refugees who had undergone a stringent review process and been approved by U.S.-based resettlement agencies lack a bona fide relationship to the United States, thus allowing admission of such refugees.<sup>28</sup> On September 11, 2017, the Supreme Court temporarily

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<sup>25</sup>State Department's Special Briefing with Senior Administration Officials on the Implementation of Executive Order 13780 Protecting the Nation From Foreign Terrorist Entry Into the United States (Washington, D.C.: June 29, 2017), available at [https://www.state.gov/r/pa/prs/ps/2017/06/272281.htm#\\_ftnref1](https://www.state.gov/r/pa/prs/ps/2017/06/272281.htm#_ftnref1) (last visited May 11, 2018). After further consideration, the administration determined that fiancés also qualify as close family.

<sup>26</sup>*Hawaii v. Trump*, 263 F. Supp. 3d 1049 (D. Haw. 2017).

<sup>27</sup>*Trump v. Hawaii*, No. 16-1540, 2017 U.S. LEXIS 4322 (2017).

<sup>28</sup>*Hawaii v. Trump*, 871 F.3d 646 (9th Cir. 2017).

enjoined aspects of the Hawaii federal district court's holding that would permit admission of certain refugees with formal assurances from a U.S. resettlement entity. The next day, on September 12, 2017, the Supreme Court indefinitely stayed the Ninth Circuit's September 7 ruling with respect to refugees covered by a formal assurance, thereby permitting the administration to suspend entry of such refugees.<sup>29</sup>

On September 24, 2017, pursuant to section 2(e) of EO 13780, the President issued Presidential Proclamation 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public Safety Threats, which expanded the scope and duration of visa entry restrictions from six to eight countries, and from a 90-day to an indefinite period for the listed countries.<sup>30</sup> On September 25, 2017, in light of the September 24 proclamation, the Supreme Court directed the parties to file briefs addressing whether, or to what extent, the cases before it regarding EO 13780 are moot.<sup>31</sup> On October 10, 2017, after receiving the parties' supplemental briefs, the Supreme Court decided that because section 2(c) of EO 13780 expired on September 24, there was no live case or controversy; and without expressing a view on the merits, the Court vacated and remanded the Maryland case to the Fourth Circuit with instructions to dismiss as moot the challenge to EO 13780.<sup>32</sup> On October 24, 2017, consistent with its October 10 ruling, the Supreme Court also vacated and remanded the Hawaii case related to EO 13780 to the Ninth Circuit with instructions to

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<sup>29</sup>*Trump v. Hawaii*, 138 S. Ct. 49 (2017). However, a January 5, 2018, order of the Washington federal district court, denying defendants' motion for reconsideration of the preliminary injunction of Executive Order 13815 (conditionally resuming USRAP), which was issued on October 24, 2017, treated the Ninth Circuit's September 7 ruling as binding precedent given that the Supreme Court's September 12 stay order did not vacate the Ninth Circuit's decision. Therefore, as of June 2018, the administration is prohibited from implementing the temporary suspension of admission, and reallocation of resources from processing applications, of refugees from 11 particular countries of concern; and is also forbidden from enforcing the indefinite bar on entry of following-to-join refugees.

<sup>30</sup>See Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017).

<sup>31</sup>*Trump v. Hawaii*, 138 S. Ct. 50, 2017 U.S. LEXIS 4440 (2017); *Trump v. Int'l Refugee Assistance Project*, 138 S. Ct. 50, 2017 U.S. LEXIS 4439 (2017).

<sup>32</sup>*Trump v. Int'l Refugee Assistance Project*, 138 S. Ct. 353 (2017). In accordance with a memorandum issued by the President on June 14, 2017, the EO's temporary visa entry restrictions for nationals of six listed countries of particular concern expired on September 24, 2017, 90 days after the effective date of June 26, 2017, the day that the Supreme Court partially lifted injunctions preventing implementation of such restrictions. See 82 Fed. Reg. 27,965 (June 19, 2017).

dismiss it as moot.<sup>33</sup> Consequently, after challenges to EO 13780 visa and refugee entry restrictions, as curtailed by the Supreme Court's ruling of June 26, 2017, were rendered moot, litigation continued with respect to the President's proclamation of September 24, 2017.

### Presidential Proclamation 9645

On September 24, 2017, pursuant to section 2(e) of EO 13780, the President issued Presidential Proclamation 9645 (the Proclamation), Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats, which imposes certain conditional restrictions and limitations on entry into the United States of nationals of eight countries—Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen—for an indefinite period.<sup>34</sup> According to the Proclamation, travel restrictions are tailored to each nation's information sharing and identity management deficiencies based on standard immigration screening and vetting criteria established by the Secretary of Homeland Security, and are to remain in effect until such time as the Secretaries of Homeland Security and State determine that a country provides sufficient information for the United States to assess adequately whether its nationals pose a security or safety threat.

On October 17, 2017, the Hawaii federal district court issued a TRO, on statutory grounds, enjoining on a nationwide basis the implementation and enforcement of travel restrictions provided for under the Proclamation, except with respect to North Korean or Venezuelan nationals.<sup>35</sup> On the same day, the Maryland federal district court granted in part plaintiffs' motion for preliminary injunction, primarily on constitutional grounds, thereby prohibiting implementation of visa entry

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<sup>33</sup>*Trump v. Hawaii*, 138 S. Ct. 377 (2017).

<sup>34</sup>82 Fed. Reg. 45,161 (Sept. 27, 2017). Specifically, section 2(e) of EO 13780 directed the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, to submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit the entry of appropriate categories of such countries' nationals until requested information for adjudication of immigration benefits sought by these foreign nationals is provided or the Secretary of Homeland Security certifies otherwise adequate information sharing. See Exec. Order No. 13780, § 2(e), 82 Fed. Reg. at 13,213.

<sup>35</sup>*Hawai'i v. Trump*, 265 F. Supp. 3d 1140 (2017). Plaintiffs did not seek an injunction of the visa entry restrictions for North Korean or Venezuelan nationals. See 265 F. Supp. 3d at 1148, n.10.

restrictions nationwide, except for nationals of North Korea and Venezuela as well as other covered foreign nationals who lack a credible claim of a bona fide relationship with a person or entity in the United States.<sup>36</sup> On October 20, 2017, the Hawaii federal district court converted its October 17 TRO into a preliminary injunction, thereby continuing the nationwide prohibition on enforcement or implementation of the suspension on entry for nationals of Chad, Iran, Libya, Somalia, Syria, and Yemen.<sup>37</sup> The district court did not stay its ruling or hold it in abeyance should an appeal be filed in the Ninth Circuit.

On November 13, 2017, the Ninth Circuit granted, in part, the government's request for an emergency stay of the Hawaii federal district court's preliminary injunction, thereby allowing visa entry restrictions to go into effect with respect to the nationals of Chad, Iran, Libya, Somalia, Syria, and Yemen.<sup>38</sup> However, consistent with the Supreme Court's June 2017 ruling, the court ordered that those with a bona fide relationship to a person or entity in the United States not be subject to such travel restrictions. On November 20, 2017, the government petitioned the Supreme Court for a stay of the preliminary injunction issued by the Hawaii federal district court, pending consideration and disposition of the government's appeal from that injunction to the Ninth Circuit and, if that court affirms the injunction, pending filing and disposition of a petition for a writ of certiorari and any further proceedings in the Supreme Court.

On November 28, 2017, plaintiffs in the challenge to the Proclamation arising out of Hawaii asked that the Supreme Court deny the government's request to lift the partial injunction left in place by the Ninth Circuit.<sup>39</sup> On the same day, plaintiffs in the case arising out of Maryland requested that the Supreme Court not grant a stay of the federal district

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<sup>36</sup>*Int'l Refugee Assistance Project v. Trump*, 265 F. Supp. 3d 570 (2017).

<sup>37</sup>*Hawai'i v. Trump*, No. 17-00050, Preliminary Injunction, ECF No. 390 (Filed Oct. 20, 2017).

<sup>38</sup>*Hawai'i v. Trump*, No. 17-17168, 2017 U.S. App. LEXIS 22725 (2017).

<sup>39</sup>The Hawaii federal district court's October 17 TRO enjoined on a nationwide basis the implementation and enforcement of visa entry restrictions established by the Proclamation, except with respect to North Korean or Venezuelan nationals. On October 20, the district court converted its TRO into a preliminary injunction. On November 13, the Ninth Circuit granted in part the government's request for an emergency stay of the preliminary injunction, but ordered that those with a bona fide relationship to a person or entity in the United States not be subject to visa entry restrictions.

court's preliminary injunction.<sup>40</sup> In both cases, plaintiffs assert that the more expansive visa entry restrictions violate U.S. immigration law; additionally, for the Maryland case, plaintiffs argue that such restrictions are unconstitutional as a form of discrimination based on national origin.

On December 4, 2017, the Supreme Court issued two orders staying the Maryland and Hawaii federal district courts' orders of October 17 and 20 that preliminarily enjoined implementation of the Proclamation, pending decisions of the Ninth and Fourth Circuits in the government's appeals, and of the Supreme Court regarding a petition for a writ of certiorari (if sought).<sup>41</sup> As a result, the Proclamation's visa entry restrictions were permitted to go into full effect unless and until they are either enjoined by the courts of appeals and a writ of certiorari is not sought thereafter, or the Supreme Court either denies a petition for certiorari (thereby resulting in termination of the Supreme Court's stay order) or grants such petition followed by a final injunction prohibiting current or future implementation of the Proclamation's restrictions. The Supreme Court further noted its expectation that the courts of appeals will render decisions "with appropriate dispatch," in light of both courts having decided to consider their respective cases on an expedited basis. On December 8, 2017, the Department of State announced that it began fully implementing the Proclamation, as permitted by the Supreme Court, at the opening of business at U.S. embassies and consulates overseas.

On December 22, 2017, the Ninth Circuit affirmed in part and vacated in part the Hawaii federal district court's October 20 order enjoining enforcement of visa entry restrictions under the Proclamation, while limiting the preliminary injunction's scope to foreign nationals who have a bona fide relationship with a person or entity in the United States.<sup>42</sup> Without reaching plaintiffs' constitutional claims, the court of appeals concluded that the Proclamation exceeded the scope of authority delegated to the President by Congress under the Immigration and Nationality Act (INA), in particular, sections 202(a)(1)(A) (immigrant visa

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<sup>40</sup>The October 17 preliminary injunction of the Maryland federal district court, which was later affirmed by the Fourth Circuit, prohibited implementation of entry restrictions nationwide, with the exception that travel limitations may be applied to nationals of North Korea and Venezuela, and covered foreign nationals who lack a credible claim of a bona fide relationship with a person or entity in the United States.

<sup>41</sup>*Trump v. Int'l Refugee Assistance Project*, 138 S. Ct. 542, 2017 U.S. LEXIS 7358 (2017); *Trump v. Hawaii*, 138 S. Ct. 542, 2017 U.S. LEXIS 7357 (2017).

<sup>42</sup>*Hawaii v. Trump*, 878 F.3d 662 (9th Cir. 2017) (per curiam).

nondiscrimination) and 212(f) (presidential suspension of, or imposition of restrictions on, alien entry), by deviating from statutory text, legislative history and prior executive practice; not including the requisite finding that entry of certain foreign nationals would be detrimental to U.S. interests; and contravening the INA's prohibition on nationality-based discrimination in the issuance of immigrant visas. However, the court stayed its decision, given that the Supreme Court's December 4 order lifted the federal district courts' injunctions pending not only review by the courts of appeals, but also "disposition of the Government's petition for a writ of certiorari, if such writ is sought."

On January 5, 2018, the government filed a petition for a writ of certiorari seeking review of the December 22, 2017, judgment of the Ninth Circuit which left in place the Hawaii federal district court injunction of the Proclamation's visa entry restrictions for individuals with bona fide ties to the United States. On January 19, 2018, the Supreme Court granted the government's certiorari petition and will therefore consider, and issue an opinion on the merits of, the Ninth Circuit's decision.<sup>43</sup>

On February 15, 2018, the Fourth Circuit affirmed the preliminary injunction granted by the Maryland federal district court on constitutional grounds, but stayed its decision pending the outcome of the Ninth Circuit case before the Supreme Court. The court of appeals found that "[p]laintiffs offer[ed] undisputed evidence that the President has openly and often expressed his desire" to bar the entry of Muslims into the United States. Therefore, the court concluded that, in light of the President's official statements, the Proclamation likely violates the Establishment Clause as it "fails to demonstrate a primarily secular purpose," and also goes against the basic principle that government is not to act with religious animus.<sup>44</sup>

On February 23, 2018, Fourth Circuit challengers filed a petition for a writ of certiorari seeking for the Supreme Court to consolidate their case with the Court's ongoing review of the Ninth Circuit decision. These petitioners requested that the Court additionally consider their argument that the

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<sup>43</sup>*Trump v. Hawaii*, 138 S. Ct. 923 (2018).

<sup>44</sup>*Int'l Refugee Assistance Project v. Trump*, 883 F.3d 233, 269 (4th Cir. 2018) (opinion authored by the Chief Judge). In a concurring opinion also by the Chief Judge, but based on statutory grounds, it was concluded that the President lacks "congressionally delegated authority to enact modern-day analogs of the repealed Chinese Exclusion Act or nationality-based quota system." 883 F.3d at 274 (Gregory, C.J., concurring).

preliminary injunction should not have been limited to individuals with a bona fide relationship to a person or entity in the United States. On February 26, 2018, the Supreme Court granted Fourth Circuit petitioners' motion to expedite consideration of their certiorari petition.<sup>45</sup>

On April 10, 2018, the President issued a proclamation announcing that because Chad has improved its identity-management and information sharing practices sufficiently to meet U.S. baseline security standards, nationals of Chad will again be able to receive visas for travel to the United States.<sup>46</sup>

On June 26, 2018, the Supreme Court held that the President lawfully exercised the broad discretion granted to him under INA § 212(f) (presidential suspension of, or imposition of restrictions on, alien entry), by issuing Proclamation No. 9645, which established nationality-based visa entry restrictions applicable to categories of foreign nationals from eight (now seven) countries for an indefinite period.<sup>47</sup> In addition, while three individual plaintiffs had standing to bring an Establishment Clause challenge to entry restrictions prohibiting their relatives from coming to the United States, the Court found the Proclamation to be legitimate on its face as a way to prevent entry of certain foreign nationals where the government determines there is insufficient information for visa vetting.

As a result of the Supreme Court's June 26, 2018, decision, which held that the establishment of nationality-based entry restrictions is a lawful exercise of the President's broad discretion in matters of immigration and national security, the visa entry restrictions imposed on categories of foreign nationals from certain countries pursuant to Presidential Proclamation 9645 continue to be fully implemented, as they have been since the Supreme Court's December 4, 2017, orders staying the lower courts' injunctions.

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<sup>45</sup>*Int'l Refugee Assistance Project v. Trump*, No. 17-1194, 2018 U.S. LEXIS 1513 (2018).

<sup>46</sup>Maintaining Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats, Proclamation No. 9723, 83 Fed. Reg. 15,937 (Apr. 13, 2018) (issued Apr. 10).

<sup>47</sup>*Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

### Executive Order 13815

On October 24, 2017, the same day the 120-day suspension of refugee admissions under EO 13780 expired, the President signed EO 13815, Resuming the United States Refugee Admissions program With Enhanced Vetting Capabilities, which resumed USRAP and directed that special measures be applied to certain categories of refugees posing potential threats to the security and welfare of the United States.<sup>48</sup> On December 23, 2017, the Washington federal district court issued a nationwide preliminary injunction on aspects of EO 13815 (and its accompanying memorandum), thus prohibiting the administration from: (1) temporarily suspending admission of refugees from 11 previously identified countries of concern, and reallocating resources from the processing of their applications during the 90-day review period (except for those lacking a bona fide relationship with a person or entity in the United States); and (2) indefinitely barring admission of, and application processing for, all following-to-join refugees.<sup>49</sup>

On January 5, 2018, the Washington federal district court denied the government's motion for reconsideration of the court's December 23,

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<sup>48</sup>Exec. Order No. 13815, 82 Fed. Reg. 50,055 (Oct. 27, 2017) (issued Oct. 24). On October 23, the Secretaries of State and Homeland Security, and Director of National Intelligence recommended that the President resume USRAP, subject to certain conditions, including additional review processes for nationals of, and stateless persons who last habitually resided in, 11 particular countries previously identified as posing a higher risk to the United States, which the administration did not publicly name at this time; and implementation of adequate screening mechanisms similar to the processes employed for principal refugees before admission of following-to-join refugees may restart. See Joint DHS, DNI & State Memorandum to the President: Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities (Oct. 23, 2017), available at [https://www.dhs.gov/sites/default/files/publications/17\\_1023\\_S1\\_Refugee-Admissions-Program.pdf](https://www.dhs.gov/sites/default/files/publications/17_1023_S1_Refugee-Admissions-Program.pdf) (last visited May 11, 2018). See also Presidential Determination on Refugee Admissions for Fiscal Year 2018, Pres. Det. No. 2017-13, 82 Fed. Reg. 49,083 (Oct. 23, 2017) (issued Sept. 29) (the President determined that admission of up to 45,000 refugees during fiscal year 2018 is justified by humanitarian concerns or is otherwise in the national interest); 8 U.S.C. § 1157(a). In accordance with a memorandum issued by the President on June 14, 2017, the temporary suspension of USRAP under EO 13780 expired on October 24, 2017, 120 days after the effective date of June 26, 2017, the day that the Supreme Court partially lifted injunctions preventing implementation of USRAP realignment. See 82 Fed. Reg. 27,965 (June 19, 2017).

<sup>49</sup>*Doe v. Trump*, 288 F. Supp. 3d 1045 (W.D. Wash. 2017). "Following-to-join refugees" are qualifying family members for whom the principal refugee has petitioned to accord derivative refugee status allowing such eligible family to join the principal applicant in the United States.

2017, order temporarily halting enforcement of refugee entry restrictions that were to be implemented as part of the resumption of USRAP under the EO.<sup>50</sup> Specifically, the government “ask[ed] the court to ‘modify its preliminary injunction to exclude from coverage refugee applicants who seek to establish a [bona fide relationship] on the sole ground that they have received a formal assurance from a resettlement agency.’” In denying the government’s motion for reconsideration, the court relied on the September 7, 2017, decision of the Ninth Circuit which, among other things, rejected the notion that refugees with formal assurances from U.S.-based resettlement agencies do not meet the Supreme Court’s bona fide relationship standard. The court treated this Ninth Circuit ruling as binding precedent given that the Supreme Court’s indefinite stay of September 12 neither vacated the Ninth Circuit’s decision, nor provided any underlying reason(s) that would allow another court to discern its rationale. On January 9, 2018, the Washington federal district court also denied the government’s emergency motion for a stay of the court’s December 23, 2017, preliminary injunction, pending appeal to the Ninth Circuit.<sup>51</sup>

On January 31, 2018, DHS announced additional security measures to prevent exploitation of USRAP. Specifically, these security measures include additional screening for certain nationals of high-risk countries, a more risk-based approach to administering USRAP, and a periodic review and update of the refugee high-risk countries list and selection criteria.

Therefore, as of June 2018, while the administration has announced additional security measures to strengthen the integrity of USRAP, the Washington federal district court’s December 23, 2017, preliminary injunction of EO 13815 continues to: (1) prohibit implementation of the temporary suspension of admission, and reallocation of resources from processing applications, of refugees from 11 previously identified countries of concern; and (2) forbid enforcement of the indefinite bar on entry of following-to-join refugees.

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<sup>50</sup>*Doe v. Trump*, 284 F. Supp. 3d 1182 (W.D. Wash. 2018).

<sup>51</sup>*Doe v. Trump*, 284 F. Supp. 3d 1172 (W.D. Wash. 2018). The government filed its Notice of Appeal to the Ninth Circuit (No. 18-35015) on January 4, 2018. See *Doe v. Trump*, No. 2:17-00187JLR, Notice of Appeal, ECF No. 99 (W.D. Wash. 2018).

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# Appendix IV: GAO Contact and Staff Acknowledgements

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## GAO Contact

Rebecca Gambler, (202) 512-8777 or [GamblerR@gao.gov](mailto:GamblerR@gao.gov)

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## Staff Acknowledgements

In addition to the contact named above, Kathryn Bernet (Assistant Director), Colleen Corcoran, Eric Hauswirth, Thomas Lombardi, Amanda Miller, Sasan J. “Jon” Najmi, Erin O’Brien, Garrett Riba, and Dina Shorafa made significant contributions to this report.

# Appendix V: Accessible Data

## Data Tables

**Accessible Data for Nonimmigrant Visa Adjudications, Fiscal Years 2012 through 2017**

Fiscal year	Issuances	Refusals	Percentage refused
2012	8.9258	1.41746	13.7
2013	9.16297	1.55993	14.5
2014	9.93172	1.796	15.3
2015	10.8912	2.41977	18.2
2016	10.3812	2.95448	22.2
2017	9.68163	2.77392	22.3

**Accessible Data for Figure 2: Nonimmigrant Visa (NIV) Adjudications, Fiscal Years 2012 through 2017**

Fiscal year	Adjudications in millions
2012	10.3433
2013	10.7229
2014	11.7277
2015	13.3109
2016	13.3356
2017	12.4556

**Accessible Data for Figure 3: Nonimmigrant Visas (NIV) Adjudications by Month, Fiscal Years 2012 through 2017**

n/a Month	Fiscal year					
	2012	2013	2014	2015	2016	2017
October	721.344	802.774	887.062	964.248	982.223	999.751
November	742.617	771.837	813.283	857.782	961.462	1069.46
December	818.119	786.673	907.807	1069.94	1118.65	1150.44
January	705.85	772.296	824.991	946.531	898.498	1012.28

n/a	Fiscal year					
Month	2012	2013	2014	2015	2016	2017
February	758.851	709.74	779.385	917.615	900.987	869.255
March	949.682	868.328	985.03	1198.27	1170	1116.3
April	895.93	1000.91	1066.49	1243.22	1215.03	943.706
May	1004.39	1040.83	1070.22	1108.46	1233.47	1099.61
June	1079.47	1062.46	1214.42	1268.33	1395.26	1143.31
July	1000.73	1115.84	1071.67	1477.03	1192.86	1117.97
August	927.71	964.937	1142.4	1192.82	1233.01	1089.04
September	738.568	826.277	964.975	1066.71	1034.19	844.426

**Accessible Data for Figure 4: Adjudications of Nonimmigrant Visa (NIV) Applications by Visa Group, Fiscal Years 2012 through 2017**

Fiscal year	Tourists & business visitors	Students & exchange visitors	Temporary workers	Other
2012	8.17976	1.01044	0.592298	0.560768
2013	8.47517	1.05031	0.65094	0.546489
2014	9.30492	1.14034	0.708814	0.573649
2015	10.7145	1.23001	0.77994	0.586448
2016	10.7545	1.10665	0.856087	0.618359
2017	9.96816	0.992855	0.884667	0.609871

Category	2017 percentages
Tourist and business visitor	80
Student and exchange visitors	8
Temporary workers	7
Transit and crewmembers	3
Foreign officials and employees	1
Treaty trader and investors	<1
Fiancé(e)s and spouses	<1
Miscellaneous	<1

**Accessible Data for Figure 5: Nonimmigrant Visa (NIV) Adjudications by Visa Group, Fiscal Years 2012 through 2017**

Fiscal year	Tourist and business visitors	Student and exchange visitors	Temporary workers	Other visa groups
2012	8.17976	1.01044	0.592298	0.560768
2013	8.47517	1.05031	0.65094	0.546489
2014	9.30492	1.14034	0.708814	0.573649
2015	10.7145	1.23001	0.77994	0.586448
2016	10.7545	1.10665	0.856087	0.618359
2017	9.96816	0.992855	0.884667	0.609871

**Accessible Data for Figure 6: Top 20 Countries of Nationality for Nonimmigrant Visa (NIV) Adjudications, Fiscal Year 2017**

Country	Adjudications in thousands
China	2,022.15
Mexico	1,750.12
India	1,276.61
Brazil	669.142
Colombia	455.208
Argentina	374.313
Nigeria	327.413
Dominican Republic	319.511
Philippines	284.149
Ecuador	245.71
Russia	230.274
Israel	188.527
Vietnam	184.838
Jamaica	150.19
Peru	132.102
Turkey	124.4
Pakistan	116.345
Poland	115.871
Haiti	112.376
United Kingdom	104.975

**Accessible Data for Figure 7: Adjudicated Nonimmigrant Visas (NIV) by Location of Application, Fiscal Years 2012 through 2017**

Fiscal year	Bureau of Western Hemisphere Affairs	Bureau of East Asian and Pacific Affairs	Bureau of European and Eurasian Affairs	Bureau of South and Central Asian Affairs	Bureau of Near Eastern Affairs	Bureau of African Affairs	Other
2012	48.8	22.3	11.3	7.9	5.7	3.8	0.1
2013	47.4	22.2	11.6	8.3	6.1	4.1	0.1
2014	45.8	23.2	10.9	9.3	6.4	4.4	0.1
2015	41.9	28	9.7	10.1	6	4.2	0.2
2016	40.4	26.5	10.7	10.8	6.3	5.2	0.2
2017	41.7	24.1	11.4	11.2	6	5.5	0.2

**Accessible Data for Figure 8: Issued and Refused Nonimmigrant Visas (NIV) and Refusal Rate, Fiscal Years 2012 through 2017**

Fiscal year	Issuances	Refusals	Percentage refused
2012	8.9258	1.41746	13.7
2013	9.16297	1.55993	14.5
2014	9.93172	1.796	15.3
2015	10.8912	2.41977	18.2
2016	10.3812	2.95448	22.2
2017	9.68163	2.77392	22.3

**Accessible Data for Figure 9: Refusal Rates by Nonimmigrant Visa (NIV) Group, Fiscal Years 2012 through 2017**

Fiscal year	Tourist and business visitors	Students and exchange visitors	Temporary workers	Transit and crewmembers	Foreign officials and employees	Treaty trader and investors	Fiancé(e)s and spouses	Miscellaneous
2012	14.98	13.28	6.32	4.23	2.3	6.21	1.04	11.4
2013	16.41	11.62	4.86	2.91	2.24	6.01	0.58	6.3
2014	17.46	11.16	4.52	1.7	1.61	7.22	0.47	5.97
2015	20.57	13.48	4.35	2.5	1.94	6.16	0.48	8.17
2016	24.94	19.31	4.65	2.6	2.74	6.76	0.52	8.13
2017	25.44	18	4.32	3.13	2.64	8.19	0.81	10.78

**Accessible Data for Figure 10: Nonimmigrant Visa Refusal Reasons, Fiscal Year 2017**

<b>Refusal reason</b>	<b>Percentage</b>
Ineligible nonimmigrant	93.8
Inadequate documentation	4.1
Immigration related	1.5
Crime related	0.5
Presidential directive-related	0.05
Terrorism and other security related	0.05
Health related	0.01
Miscellaneous	0.01

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