

HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS

TESTIMONY OF
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U.S. DEPARTMENT OF STATE AND
BROADCASTING BOARD OF GOVERNORS

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Chairman Hostettler, Representative Jackson-Lee, and Members of the Subcommittee:

I appreciate the opportunity to testify today regarding the Office of Inspector General's (OIG) work on the State Department's Diversity Visa program, which is administered by the Bureau of Consular Affairs (CA). As you likely know, the Senate confirmed me last month as the new Inspector General (IG). Although OIG has been without a permanent IG for the past two years, OIG has been a valuable contributor in reducing fraud in visa and passport applications and strengthening the nation's border security.

I have been briefed on OIG's work that resulted in a September 2003 report entitled *Diversity Visa Program* (ISP-CA-03-52). I also have been briefed on the testimony delivered on this subject in April 2004 by Ambassador Anne Patterson, who was OIG's Deputy Inspector General at the time, and on actions taken by CA to address OIG's recommendations.

In her testimony, Ambassador Patterson stated that OIG would examine how vulnerabilities in the program will be fully addressed. Although OIG has not conducted another comprehensive review focused on the Diversity Visa program, OIG monitors consular activities as part of tracking compliance with our report, conducting routine post inspections, and maintaining an ongoing dialogue with CA concerning Diversity Visa issues. When present at Diversity Visa posts, OIG observes and inquires about revisions in the program's implementation. For example, last month one of our consular inspectors visited the Kentucky Consular Center, where Diversity Visa applications are processed, in conjunction with a broader inspection of CA. Our 2003 report made eight recommendations, and today, I will review those recommendations and our understanding of how CA responded.

Background

In fiscal year 1995, Congress established the Diversity Visa program that authorized up to 50,000 immigrant visas annually to persons from countries that were underrepresented among the 400,000 to 500,000 immigrants coming to the United States each year. Most immigration to the United States is based on family relationships or employment. Diversity Visa applicants, however, can qualify based on education level and/or work experience. This program commonly is referred to as the "visa lottery" because the "winners" are selected through a computer-generated random drawing. If ultimately selected as a lottery winner, like other immigrant

applicants, they are subject to all grounds of ineligibility related to adverse medical conditions, criminal behavior, and other factors. If deemed eligible on those grounds, they need only to demonstrate that they have the equivalent of a U.S. high school education or possess two years of work experience in an occupation that requires at least two years of training or experience within the five-year period immediately prior to the application.

Originally, the Diversity Visa program was one of many immigrant visa functions assigned to the National Visa Center at Portsmouth, New Hampshire. In October 2000, Diversity Visa processing was moved to a newly remodeled site at Williamsburg, Kentucky, known as the Kentucky Consular Center. This alleviated overseas missions of many clerical and file storage responsibilities. In November 2003, CA introduced an electronic filing process for the Diversity Visa program, known as the E-DV program, requiring electronic applications to be sent through the Internet. This permits computer screening of all principal applicants, spouses, and children for violations of Diversity Visa application rules.

OIG's fieldwork for the September 2003 report was conducted when the Diversity Visa program was paper-based and applications were processed by hand. Therefore, the recommendations in the report were based on technologies and statistics that have been significantly modified – well before the introduction of program tools such as computer data mining to detect duplicate entries, improved facial recognition technology, the use of electronic Diversity Visa applications filed exclusively via the E-DV program, and the recent increase in the Diversity Visa fee levied on winners at a level that covers the full cost of the program.

Results in Brief

OIG's September 2003 report identified eight recommendations to strengthen the Diversity Visa program. Specifically, OIG recommended that CA:

- propose legislative changes to the Immigration and Nationality Act to bar aliens from states that sponsor terrorism from the Diversity Visa program;
- propose legislative changes to the Immigration and Nationality Act to bar permanently from future Diversity Visa lotteries all adults identified as filing multiple applications;
- issue standards for determining whether foreign high school educations are comparable to U.S. high school educations;
- prepare an annual report on regional and worldwide Diversity Visa trends and program issues;
- determine whether antifraud field investigations are useful in Diversity Visa cases;
- request authority to collect fees from all persons applying for the Diversity Visa program;
- determine how the Diversity Visa fee could be appropriately devoted to antifraud work at overseas missions; and
- conduct workload studies to determine whether a full-time visa officer position and a language-designated telephone inquiry position should be established at the Kentucky Consular Center.

OIG considers seven of the eight recommendations as closed or in the processes of closure. One that is open, related to multiple filings, is discussed below.

Findings and Recommendations

Aliens from States that Sponsor Terrorism

Section 306 of the Enhanced Border Security and Visa Act of 2002 (Public Law 107-173) generally prohibits issuance of nonimmigrant visas to aliens from states that sponsor terrorism unless the Secretary of State judges that such aliens pose no risk to national security. OIG noted that no parallel restriction exists for immigrant visas, including those resulting from the Diversity Visa program. To date, this legislative double standard persists.

OIG recommended that CA propose legislative changes to the Immigration and Nationality Act to bar aliens from states that sponsor terrorism from the Diversity Visa program. OIG continues to believe that the Diversity Visa program contains significant risks to national security from hostile intelligence officers, criminals, and terrorists attempting to use the program for entry into the United States as permanent residents. However, CA expressed concern with permanently disbarring aliens fleeing oppressive regimes of states that sponsor terrorism. For example, aliens fleeing oppression from Cuba, Libya, Syria, and Iran would be ineligible to apply for a visa via the Diversity Visa program if this recommendation were strictly implemented.

Under current conditions, consular procedures and heightened awareness generally provide greater safeguards against terrorists entering through the Diversity Visa process than in the past. Consular officers interview all Diversity Visa winners and check police and medical records once applicants begin the actual visa application process. CA now requires all immigrant and nonimmigrant visa applicants to be fingerprinted. This allows consular officers to run visa applicant fingerprints through U.S. databases of criminals and terrorists in about 15 minutes. It also means that if an applicant applies for a nonimmigrant visa using one name and later applies for a Diversity Visa under a different name, the fingerprint system will help to identify him as a fraudulent applicant. OIG closed this recommendation based on acceptable noncompliance.

Persons Filing Multiple Applications

OIG's review identified a significant number of duplicate applications in the Diversity Visa program based on a completely paper process at the time. OIG took issue with the unfair advantage that multiple filers had for becoming winners and their additional administrative burden. Despite program restrictions against duplicate submissions, CA detects thousands of duplicate filings each year. Currently, the penalty for duplicate entry is disqualification for the year that the duplicate submission was detected.

OIG recommended that CA propose changes to the Immigration and Nationality Act to bar permanently from future Diversity Visa lotteries all adults identified as filing multiple applications. Under Section 212(a)(6)(C) of the Immigration and Nationality Act persons are ineligible for a visa based on fraud or willful material misrepresentations. There is no legal precedent or legislative authority for finding an applicant ineligible based on a clerical review.

Therefore, CA raised concerns with the fairness and enforceability of the recommendation because it is difficult to prove that duplicate applications (1) were willful misrepresentations rather than inadvertent, and (2) were actually made by the applicant rather than by someone else to discredit or penalize the applicant.

This recommendation remains open between OIG and CA. OIG recommended this again in a more recent review concerning the Consular Fraud Prevention program.¹ OIG will continue to review this recommendation in light of improvements and new technologies.

Standards to Determine High School Equivalency

OIG recognized that the worldwide managerial direction for the Diversity Visa program needed tightening for adjudicating visa eligibility based on educational requirements. At the time of our review, some posts indicated that they had not evaluated local school systems to determine their equivalency to a U.S. high school degree and could not locate any Department cable or e-mail guidance on educational determinations. Embassies and consulates responsible for adjudicating third-country national applications described documents as unreliable and nearly impossible to check. Officers did not know third-country documents quite as well as their host country documents and typically could not determine the reliability of those documents.

OIG recommended that CA issue standards for determining whether foreign high school educations are comparable to U.S. high school educations. In 2004, CA began purchasing and distributing copies of the handbook, *Foreign Educational Credentials Required for Consideration of Admission to Universities and Colleges in the United States*. At that time, CA indicated that all Diversity Visa-issuing posts abroad would eventually receive this reference book, which translates and standardizes foreign educational credentials. Recently, CA distributed the reference books to all Diversity Visa-issuing posts. OIG considers this recommendation as resolved and intends to close it once formal instructions for using the books are established.

Annual Report on Diversity Visa Trends

In reviewing the work at several posts, OIG identified challenges that consular officers face in adjudicating applications. At the time of OIG's fieldwork, all missions were asked to comment on the Diversity Visa program, if relevant, in their annual Consular Package submissions. OIG observed that consular officers reported data. However, CA did not prepare and disseminate analyses on the Diversity Visa regional and worldwide trends. For example, although the Consular Package's annual statistics report provided useful issuance information by nationality and eligibility, this data was not reviewed and summarized for managing the program.

OIG recommended that CA prepare an annual report on regional and worldwide Diversity Visa trends and program issues. As a result, CA issued summary reports in September 2004 and February 2005; therefore, OIG closed this recommendation.

¹ See OIG report, *Management Review of Visa and Passport Fraud Prevention Programs* (ISP-CA-05-52), issued in November 2004.

Antifraud Field Investigations

Fraud is an ongoing major program issue. Antifraud activities are generally dominated by nonimmigrant visa fraud cases. Our 2003 review determined that many embassies and consulates with significant Diversity Visa issues did not routinely refer problem cases to their antifraud units. In fact, although every mission has a designated Fraud Prevention Officer, some missions have no separate antifraud units. CA was unable to document a strategy for overcoming the fact that certain countries' records, including school records, are under such poor control that their passports, identity documents, and vital records are unreliable for visa purposes, despite complaints of several embassies.

OIG recommended that CA determine whether antifraud field investigations are useful in Diversity Visa cases. CA responded by canvassing the top ten Diversity Visa posts in the summer of 2004 to collect information on Diversity Visa fraud prevention strategies. Based on this survey, CA prepared and sent to the field in October 2004 excellent guidance on Diversity Visa fraud prevention strategies and tools. Therefore, this recommendation is closed.

Making the Diversity Visa Program Self-Financing

Unlike other visa applications, the current Diversity Visa processing fee is collected only from applicants selected as winners. Millions of applicants, therefore, pay nothing to participate in the program, and traditionally, the U.S. government has paid all costs not covered by the Diversity Visa fee. Under the paper-based Diversity Visa system, CA determined that charging a small fee for registration was impractical, not cost effective, and not likely to serve as an adequate deterrent against multiple registrations.

Due to program costs significantly exceeding revenues, OIG recommended that CA request authority to collect processing fees from all persons applying for the Diversity Visa program. In response, CA revised the Diversity Visa surcharge, effective March 8, 2005, from \$100 to \$375. This processing surcharge is imposed on winners of the Diversity Visa program. Although only charged to winners, the fee will be sufficient to cover all program costs. In view of this, OIG is closing this recommendation.

Diversity Visa Fraud Prevention

At the time of our 2003 review, OIG determined that CA could do a better job identifying all costs associated with the Diversity Visa program from overseas posts, especially with regard to the cost of its fraud prevention efforts. OIG recommended that CA determine how the Diversity Visa fee could be appropriately devoted to antifraud work at overseas missions.

In fiscal year 2004, the budget for the Diversity Visa Program was \$4.287 million, of which just over \$1 million was attributed to anti-fraud activities worldwide. To underscore the importance of the Diversity Visa program, in future allocations, CA intends to emphasize the need to include fraud expenses in their Diversity Visa funding requests as a separate item. OIG considers this recommendation as fully implemented and, therefore, closed.

Expertise for Strengthening the Diversity Visa Administrative Processing

When OIG began its review of the Diversity Visa program, there was no antifraud officer position at the Kentucky Consular Center. This lack of expertise made reviewing applications for fraud implications overwhelming, especially under the old paper-based system. Moreover, the Kentucky Consular Center had been receiving inquiries from Diversity Visa applicants to discuss their applications. As a result, OIG recommended that CA conduct workload studies to determine whether a full-time visa officer position and a language-designated telephone inquiry position should be established at the Kentucky Consular Center.

In response, CA established and hired a fraud prevention manager and two assistants for the Kentucky Consular Center, thus eliminating the need for a full-time visa officer. OIG believes that Diversity Visa fees can fund these positions. However, with regard to the language-designated telephone inquiry position, CA determined that no predominating language exists among Diversity Visa applicants, other than English. CA believes that the Public Inquiries division sufficiently handles stateside inquiries received by telephone, letter, and e-mail as well as providing Diversity Visa information on the Department's web site. Posts abroad handle case-specific inquiries. Therefore, CA believes that language staffing either at the Kentucky Consular Center or at the National Visa Center is unnecessary. In light of these actions, OIG closed the recommendation.

Conclusions

During her visit last month to the Kentucky Consular Center, our consular inspector determined that, with the online filing of Diversity Visa applications now in its second year, all Diversity Visa enrollment applications are checked for duplicates using anti-fraud technology. Duplicates found at this step are disqualified. Winning entries selected from the remaining applications are checked for duplicate enrollment using facial recognition technology and bio-data comparison. However, the potential for fraud does not end with identifying duplicates. The Kentucky Consular Center flags fraud indicators for adjudicating officers to address when winning applications are further processed in the field. Although E-DV has not stopped duplicate filing, it has made identifying duplicate applications easier and helped the adjudicating officers have more effective interviews. As a result, CA is able to identify an increasing number of duplicates. OIG believes that continued advances in technology will increase detection of duplicates but will not stop duplicate electronic filings.

In closing, OIG believes that in the process of complying with the recommendations of our 2003 report, CA has strengthened the Diversity Visa program. OIG will continue to monitor the program, as we inspect CA's management of consular operations and individual posts abroad, to oversee and assist the Department in improving both border security and program management.

Thank you Mr. Chairman. I welcome your questions and those of other members.