United States Department of State
and the Broadcasting Board of Governors
Office of Inspector General

Review of the Department of State's Terrorist Watch List Nomination Process

Report Number OIG-SIA-08-01, November 2007

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Office of Inspector General

PREFACE

This report was prepared by the Office of Inspector General (OIG) pursuant to the Inspector General Act of 1978, as amended, and Section 209 of the Foreign Service Act of 1980, as amended. This report is based upon a review which was done as part of a collaborative effort headed by the Office of the Director of National Intelligence. It is one of a series of audit, inspection, investigative, and special reports prepared by the OIG periodically as part of its responsibility to promote effective management, accountability, and positive change in the Department of State and the Broadcasting Board of Governors.

This report is the result of an assessment of the strengths and weaknesses of the Department's terrorist watch list nominating process. It is based on interviews with employees and officials of relevant agencies and institutions, direct observation, and a review of applicable documents.

The findings therein have been developed on the basis of the best knowledge available to the OIG and, as appropriate, have been discussed in draft with those responsible for corrective action.

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EXECUTIVE SUMMARY

This review found the Department of State's (Department) program for watch-listing suspected terrorists, i.e., the Visas Viper program, on the whole to be functioning well. Every overseas diplomatic post is required to have a Visas Viper committee that meets and reports to the Department and the National Counterterrorism Center (NCTC) at least monthly regarding known or suspected terrorists.[1] In response to an Office of Inspector General (OIG) survey questionnaire sent to all diplomatic and consular posts,[2] 96 percent of the respondents[3] (222 posts) reported having a Visas Viper committee and 94 percent of the respondents (217 posts) reported meeting and reporting to the Department monthly.

Although the Visas Viper program was found on the whole to be functioning well, this review identified several key findings:

• The three sources of Visas Viper policy and procedural guidance (the Bureau of Consular Affairs website, periodic All-Diplomatic-And-Consular posts (ALDAC) cables, and 9 Foreign Affairs Manual (FAM) 40.37) contain policy and procedural guidance information that is not current and is not consistent with actual practice.

• The law enforcement and liaison agency representatives at some U.S. diplomatic missions do not understand their agency's policies regarding when and by whom individuals who are the subjects of ongoing law enforcement and liaison activities should be watch-listed.

• Inter-agency guidance does not address the requirement for watch list nominations to include a No Fly/Selectee recommendation. Consequently, among Visas Viper nominations there is a lack of consistency regarding No Fly/Selectee recommendations—some posts include No Fly/Selectee recommendations with their nominations, others do not.

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[1]9 FAM 40.37 N4.1, *Visas Viper Committees*

[2]The questionnaire, which was sent by ALDAC cable (07 State 53682), can be found in Appendix A.

[3]OIG received 214 questionnaire responses representing 232 (94 percent) of the Department's 247 overseas posts. The number of responding posts was more than the number of responses received because some embassies responded for the entire mission, combining the responses of the embassy and its consulates into one response.

- Visas Viper committees desire more feedback on their watch list nominations, particularly those nominations that are delayed or not forwarded for consideration for watchlisting due to inaccurate or insufficient information.

- Visas Viper policy guidance contains no information concerning file retention, hence there is considerable variation in the lengths of time posts are retaining source information concerning their nominations.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objectives of this review were to ascertain, both within agencies and across the Intelligence Community (IC) whether:

1. Processes and standards for nominating individuals to the consolidated watch list are consistent (both within agencies and across the IC), articulated in policy or other guidance, and understood by nominators;

2. Quality control processes are in place to help ensure nominations are accurate, understandable, updated with new information, and include all individuals who should be placed on the watch list based upon information available to the agencies;

3. Responsibility for watch list nominations is clear, effective, and understood;

4. Nominators receive adequate training, guidance, or information on the nomination process;

5. Agencies maintain records of their nominations to the NCTC (and to the Terrorist Screening Center (TSC), in the case of the Federal Bureau of Investigation (FBI)), including the source of the nomination and what information was provided; and

6. Organizations with terrorism, counterterrorism, and domestic counterterrorism information in their possession, custody, or control appropriately participate in the nomination process.

This review was conducted through: 1) interviews with Department, NCTC, and TSC personnel; 2) a survey questionnaire sent by cable to all diplomatic and consular posts. (see Appendix A); and 3) reviews of Department and federal policies, legislation, and memoranda of agreement and understanding.

This review was conducted in Washington from March 19 to September 27, 2007, by OIG Security and Intelligence Advisor, Marilyn M. Wanner, and Deputy Security and Intelligence Advisor, Thomas C. Allsbury.

BACKGROUND

The Department's program for watch-listing suspected terrorists began in 1987 with the creation of a database of suspected terrorists, which was given the name TIPOFF. TIPOFF was created by the Department's Bureau of Intelligence and Research (INR) as a method of maintaining lookout or watch list records of suspected terrorists. To operate as a watch list, declassified TIPOFF records were exported to the Consular Lookout and Support System (CLASS), which is the Department's tool for vetting foreign individuals applying for a visa to the United States. Consular officers adjudicating visa applications overseas are required to check each applicant's name against those in CLASS before issuing a visa.

Although TIPOFF resulted in a substantial transfer of terrorist-related information into CLASS, an investigation following the 1993 World Trade Center bombing revealed the lack of a systematic procedure for routinely and consistently entering the names of suspected terrorists into CLASS. To correct this deficiency, the Visas Viper program was created in 1993. Under the Visas Viper program all elements of every overseas U.S. mission having access to terrorist-related information are required to work together to identify and develop information on known or suspected terrorists and report this information telegraphically directly to the Department and the TIPOFF staff.

Following the terrorist attacks of September 11, 2001, the President, Congress, and others recognized the need to consolidate the multiple databases of suspected terrorists that were in use at the time. As a result, the Terrorist Threat Integration Center (TTIC), now NCTC, was created. In September 2003, TTIC assumed the responsibility for establishing and maintaining a single repository for international terrorist information. In November 2003, the Department transferred TIPOFF to TTIC as the foundation for this repository. The TIPOFF database served as TTIC's (later NCTC's) primary terrorist identities database until May 2005 when it was upgraded and renamed the Terrorist Identities Datamart Environment (TIDE).

In September 2003, pursuant to Homeland Security Presidential Directive (HSPD)-6, TSC was created to consolidate the U.S. government's approach to terrorist screening and provide for the appropriate and lawful use of terrorist information in screening processes. TSC's database of known or suspected terrorists is the Terrorist Screening Database (TSDB). TSDB is fed from two primary sources—it receives international terrorist information from NCTC and domestic terrorist information from the FBI. TSDB in turn feeds multiple databases of end-users of terrorist watch list information including CLASS.

FINDINGS

Overview

This review found the Department's terrorist watch list nomination process, which operates through the Visas Viper program, on the whole to be functioning well. In accordance with Department regulation (9 FAM 40.37 N4.1, Visas Viper Committees) and federal statute (8 U.S.C. 1733), overseas diplomatic posts are required to have a Visas Viper committee that meets and reports to the Department and the NCTC at least monthly regarding known or suspected terrorists.[4] In response to an OIG survey questionnaire sent to all diplomatic and consular posts, 96 percent of the respondents (222 posts) to the questionnaire reported having a Visas Viper committee and 94 percent (217 posts) reported meeting and reporting to the Department monthly.

Of the ten overseas posts that reported not having a Visas Viper committee, five are one-person American Presence Posts,[5] three are consulates that stated they report their watch list nominations through their respective embassies' Visas Viper committee, and two stated that their Visas Viper committee meetings had lapsed because of personnel turnovers. An additional five posts reported not meeting and reporting to the Department monthly. Of these, four reported meeting, but not every month; and one provided no explanation.

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[4] 9 FAM 40.37 N4.1 requires every overseas post to meet and report monthly, whereas 8 U.S.C. 1733 requires every overseas mission to meet and report monthly. 2 FAM 111.2 describes a mission as an embassy or legation maintained to conduct normal diplomatic relations. A post is described as any Foreign Service establishment maintained by the United States abroad.
[5] As described in 2 FAM 133, *American Presence Posts* (APP), APPs are small (usually one or two American officers), special purpose posts with limited capabilities, focused on narrow objectives.

Policy Guidance

Visas Viper Policy Guidance

The background, purpose, and operating procedures of the Visas Viper program are set forth in 9 FAM 40.37 N1 *"Visas Viper" Terrorist Reporting Program.* Also, from time to time, former INR TIPOFF staff at NCTC have drafted and sent comprehensive program operating procedures by cable to all diplomatic and consular posts. The two most recent cables were in 2005 (05 State 117399), which directs readers to "Visas Viper Program Revised Procedures for 2005," and a cable sent in 2003 (03 State 55649) on the same subject. In addition, a Visas Viper web page, accessible from the Bureau of Consular Affairs (CA) website, contains Visas Viper guidance and reference documents.

Ninety one percent (212 posts) of the respondents to OIG's survey questionnaire stated that they found the policy and process guidance for the Visas Viper program to be adequate. However, this review found some of the guidance not to be current. For example, 9 FAM 40.37 N12 Department Feedback, states that the Department will respond to all Visas Viper communications with the exception of routine monthly reports. It states that posts will be notified whether its Visas Viper nominee has been watch-listed. This is not being done, and personnel at NCTC, which has the most complete records, have reported that at present NCTC is unable to do this due to manpower constraints and current workload. In addition, the Department cable "Visas Viper Program Revised Procedures for 2005" states in paragraph 57 that each month the Visas Viper staff issues a cable summary of posts' submissions for the month. This practice was discontinued in June 2006. Although NCTC personnel have stated their intent to restart this process, this has not been done to date. According to Visa Vipers staff at NCTC, the reason that no comprehensive cable guidance has been issued since 2005 is because greater reliance is being put on the CA website as a source of policy and procedural guidance. But neither 9 FAM 40.37 nor any cable guidance directs users to the CA website.

Finding 1: The three locations of Visas Viper policy and procedural guidance (the Bureau of Consular Affairs website, periodic All-Diplomatic-And-Consular posts cables, and 9 Foreign Affairs Manual 40.37) contain policy, specific practices, and procedural guidance information that is not current and is not consistent with actual practice.

Law Enforcement and Liaison Activities

In the comments section of OIG's survey questionnaire, two posts asked about watch-listing individuals who are the subject of ongoing law enforcement and liaison activities. Specifically, they questioned when and by whom should these individuals be watch-listed. According to one of these posts, the representatives of the responsible agencies tended to rely on Washington to make the nomination rather than going through the post's Visas Viper committee, yet they were not aware of any definitive guidance on this issue.

The same issue appeared in a previous OIG report—*Memorandum Report, Visas Viper Program,* issued by OIG's former Office of Security and Intelligence Oversight (SIO), report number SIO-Z-03-09, published in December 2002. That report found that it was unclear to law enforcement officers in the field whether there was a process for watch- listing individuals who are the subjects of ongoing criminal investigations. The report recommended that the Department review with each law enforcement agency represented on Visas Viper committees their process for reporting Visas Viper information from ongoing criminal investigations. In the recommendation's compliance response from INR, INR stated that the Assistant Secretaries for INR and CA had issued a joint letter to the Washington offices of key non-Department Visas Viper committee members, which, among other things, requested that INR and CA be permitted to review these members' reporting processes to better understand how they might add to Visas Viper reporting. It is unclear whether these reviews were actually conducted.

Finding 2: The law enforcement and liaison agency representatives at some U.S. diplomatic missions do not understand their agency's policies regarding when and by whom individuals who are the subjects of ongoing law enforcement and liaison activities should be watch-listed.

No Fly and Selectee Lists

Among the screening databases supported by TSC are the Transportation Security Administration's (TSA) "No Fly" and "Selectee" lists. The No Fly list contains the names of individuals who are not permitted to board a commercial aircraft for travel to or within the United States. Persons in this category have been determined to represent a threat either to civil aviation or to the homeland. The Selectee list is comprised of persons who are members of a foreign or domestic terrorist organization and are associated with terrorist activity. Persons on the Selectee list must undergo additional security screening before boarding a commercial aircraft.

The Department's most recent guidance regarding designations to the No Fly and Selectee lists is contained in paragraphs 51 and 52 of "Visas Viper Program Revised Procedures for 2005." It states that nominating agencies are required to provide a No Fly/Selectee recommendation with all terrorist watch list nominations. Therefore, according to this guidance, Visas Viper nominations should include a recommendation that the nominee be placed or not be placed on the No Fly or Selectee list. However, the current guidance established by the Homeland Security Deputies Committee, dated July 25, 2006, contains no requirement that nominating agencies recommend individuals to the No Fly or Selectee lists. Rather, according to this guidance, persons are placed on the No Fly or Selectee lists based upon the "totality of available information." It does not address whether a recommendation is required by the nominating agency. Among a sample of 37 Visas Viper nominations that were submitted during March 2007, 10 were found to have a No Fly/Selectee recommendation, the remaining 27 had no recommendation. In posts' comments to OIG's survey questionnaire, two posts asked for clearer guidance on the No Fly/Selectee process.

Finding 3: Current inter-agency guidance does not address the requirement for watch list nominations to include a No Fly/Selectee recommendation. Consequently, among Visas Viper nominations there is a lack of consistency regarding a No Fly/Selectee recommendation—some posts include No Fly/Selectee recommendations with their nominations, others do not.

Quality Assurance

Visas Viper Committee Quality Assurance

In response to OIG's survey question, "Does the post have a process for ensuring that nominations to the terrorist watch list are accurate and understandable, include all potential sources of information available to the post, and are updated with new information as it becomes available?" 62 percent of the respondents (144 posts) to the questionnaire stated "yes." However, the process for ensuring quality varied from post to post. The most frequently cited means for ensuring quality was the review and clearance of all nominating information by each member of the Visas Viper committee. Other means that were cited for ensuring quality were the review of nominating information by the post's Visas Viper Coordinator, by the committee chair, and by post's Consular Officer(s).

One possible explanation for some posts not having a formal quality assurance process is the absence of potential watch list nominees. Among those posts that reported submitting at least one watch list nomination in fiscal year 2006 (118 posts), 93 posts, or 79 percent, reported having a quality assurance program. However, among those posts that reported submitting no watch list nominations in fiscal year 2006 (108 posts), only 51 posts, or 47 percent, reported having a quality assurance program.[6]

Feedback on Nominations

The need for more feedback from Washington on posts' nominations was the most frequently made comment in the responses received to OIG's survey questionnaire. Of the 74 posts and missions that responded to the question "Does the post have any issues or concerns with the Visas Viper program? Are there ways it could be made better?"—20 posts expressed the need for more feedback regarding their Visas Viper nominations. As one post stated, some of its nominations subsequently appear in CLASS, others do not, and they don't understand why. Overseas posts' ability to provide nominations that meet the criteria for watch-listing could be improved through better understanding of those areas that were deficient in past nominations, thereby enabling them to correct these deficiencies in future nominations.

Finding 4: Visas Viper committees desire more feedback on their watch list nominations, particularly those nominations which are delayed or not forwarded because of inaccurate or insufficient information.

[6] Of the 232 respondents to OIG's survey questionnaire, six posts provided no information about the number of watch list nominations made in fiscal year 2006.

Participation in Watch List Nominations

In response to OIG's survey question, "Does everyone at post who potentially has access to terrorist-related information understand his or her responsibilities regarding Visas Viper and actively participate in the program?" 86 percent of the respondents (199 posts) to the questionnaire stated "yes." However, as some respondents pointed out, some agencies report their nominations through their own channels, which is permissible under Department regulations.[7]

Training and Guidance

In response to OIG's survey question, "Were any of the Visas Viper committee members trained or briefed on the program before arriving at post?" 72 percent of the respondents (166 posts) to the questionnaire stated "yes."

The principal training provider on the Visas Viper program is the Foreign Service Institute (FSI). Most Visas Viper training occurs in conjunction with consular officer training. FSI's "Basic Consular Course" (PC-530), the "Advanced Consular Course" (PC-532), and the "Advanced Consular Name Checking Techniques" (PC-126) course, include sessions on the Visas Viper program. According to the Director of the Consular Officer Training Program at FSI, the "Basic Consular Course" is required for every newly assigned consular officer.

In addition to the instruction given to consular officers, the Visas Viper program is described in the "Orientation to Overseas Consular and Duty Officer Responsibilities" (PC-105) course, which is given once a year to Bureau of Diplomatic Security (DS) Special Agents, and in the "Orientation for First-Tour Employees" (PN-115) course, which is given to non-Department employees who have been assigned to an overseas mission.

In addition to formal FSI training, CA's Deputy Assistant Secretary for Visa Services regularly speaks to the participants of FSI's Deputy Chief of Mission Seminar. The Visas Viper program is one of his topics.

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[7] 9 FAM 40.37 N9(b) "Visas Viper Reporting Channel," states that "Other agency terrorist reporting may use the VIPER channel or be sent through the agency's traditional reporting channel."

Supplementing the Department's formal Visas Viper training as noted above, policy and procedural guidance for the Visas Viper program can be found in 9 FAM 40.37 N1 *"Visas Viper Terrorist Reporting Program;"* on CA's website; and in periodic cables sent to all diplomatic and consular posts.

Record Keeping

Seventy-one percent of the respondents (164 posts) to OIG's survey questionnaire reported that the post maintains records of its Visas Viper nominations. However, the length of time that these records are being maintained showed considerable variation. Responses ranged from "nine months" to "indefinitely." Two respondents to OIG's survey questionnaire specifically asked for clearer guidance on file retention requirements. As one of them commented, on occasion other posts have contacted it regarding its watch list nominees, which has caused its Visas Viper committee to ponder the extent of the information it should maintain on its nominations. Neither 9 FAM 40.37, the CA Visas Viper website, nor past ALDAC guidance cables contain any information on post retention of watch-listing nominee information.

Finding 5: Visas Viper policy guidance contains no information concerning file retention, hence there is considerable variation in the length of time posts are retaining source information concerning their nominations.

~~SENSITIVE BUT UNCLASSIFIED~~

SUMMARY OF FINDINGS

Finding 1: The three locations of Visas Viper policy and procedural guidance (the Bureau of Consular Affairs website, periodic All-Diplomatic-And-Consular posts cables, and 9 Foreign Affairs Manual 40.37) contain policy, specific practices, and procedural guidance information that is not current and is not consistent with actual practice.

Finding 2: The law enforcement and liaison agency representatives at some U.S. diplomatic missions do not understand their agency's policies regarding when and by whom individuals who are the subjects of ongoing law enforcement and liaison activities should be watch-listed.

Finding 3: Current inter-agency guidance does not address the requirement for watch list nominations to include a No Fly/Selectee recommendation. Consequently, among Visas Viper nominations there is a lack of consistency regarding a No Fly/Selectee recommendation—some posts include No Fly/Selectee recommendations with their nominations, others do not.

Finding 4: Visas Viper committees desire more feedback on their watch list nominations, particularly those nominations that are delayed or not forwarded because of inaccurate or insufficient information.

Finding 5: Visas Viper policy guidance contains no information concerning file retention, hence there is considerable variation in the length of time posts are retaining source information concerning their nominations.

ABBREVIATIONS

ALDAC	All diplomatic and consular posts [cable]
CA	Bureau of Consular Affairs
CLASS	Consular Lookout and Support System
DCM	Deputy chief of mission
DS	Bureau of Diplomatic Security
FAM	Foreign Affairs Manual
FBI	Federal Bureau of Investigation
FSI	Foreign Service Institute
HSPD	Homeland Security Presidential Directive
INR	The Bureau of Intelligence and Research
NCTC	National Counterterrorism Center
OIG	Office of Inspector General
SIO	Office of Security and Intelligence Oversight
TIDE	Terrorist Identities Datamart Environment
TIG	Terrorist Identities Group
TIPOFF	[The name given to a Department database of terrorist suspects]
TSA	Transportation Security Administration
TSC	Terrorist Screening Center
TSDB	Terrorist Screening Database
TTIC	Terrorist Threat Integration Center
U.S.C.	Unites States Code

APPENDIX A

OIG Survey Questionnaire (07 State 53682)

UNCLASSIFIED
CABLE April 23, 2007

To: ALL DIPLOMATIC AND CONSULAR POSTS – ROUTINE

Origin: OIG

From: SECSTATE WASHDC (STATE 53682 – ROUTINE)

TAGS: ASEC, CMGT, CVIS, KVPR, PINR, PTER

Captions: None

Subject: OIG REVIEW OF DEPARTMENT TERRORIST WATCH-LISTING PROCESS

Ref: None

1. On March 19, 2007, the Intelligence Community Inspector General (ICIG) Forum agreed to a coordinated review among the ICIG member agencies of the processes for nominating individuals to the consolidated terrorist watch list. As part of this review, several Offices of Inspectors General (OIGs), including the Department of State, agreed to conduct their own reviews of the watch-listing process within their respective agencies.

2. OIG's review of the Department's watch-listing process, i.e., Visas Viper, began on March 19, 2007, and is expected to be completed on or about May 4, 2007. In addition to reviewing Department and federal policies and interviewing officials of the Department and National Counterterrorism Center (NCTC), OIG requests your comments concerning Visas Viper. Please e-mail your responses to the fol-

lowing questions, using either OpenNet or ClassNet, to the mailbox address "OIG 2007 Watch Listing Review," which can be found in the global address list on both systems.

(a) Does the post have a Visas Viper committee? If so, who chairs it?

(b) Does the post's Visas Viper committee meet and report to the Department monthly, as required by 8 U.S.C. 1733?

(c) What has been the post's source for policy guidance for the Visas Viper program?

(d) Has this guidance been adequate?

(e) Were any of the Visas Viper committee members trained or briefed on the Visas Viper program before arriving at post?

(f) Does everyone at post who potentially has access to terrorist-related information understand his or her responsibilities regarding Visas Viper and actively participate in the program?

(g) Does the post have a quality control process for the Visas Viper program, i.e., to ensure that nominations are accurate and understandable, all potential sources of information available to the post are being used, and nominee information is updated with new information as it becomes available?

(h) Does the Visas Viper committee maintain records of its nominations? If so, for how long?

(i) How many names did the post submit via the Visas Viper program in CY 2006?

(j) Does the post receive feedback on its nominations?

(k) Has the post's Visas Viper committee monitored CLASS for the appearance of individuals nominated by the post through the Visas Viper process? If so, how long has it taken from the time a person is nominated until that person's name appears in CLASS?

(l) Does the post have any issues or concerns with the Visas Viper program? Are there ways it could be made better?
RICE

APPENDIX B

8 USC 1733

Sec. 1733. Terrorist lookout committees

(a) Establishment

The Secretary of State shall require a terrorist lookout committee to be maintained within each United States mission to a foreign country.

(b) Purpose

The purpose of each committee established under subsection (a) of this section shall be -

(1) to utilize the cooperative resources of all elements of the United States mission in the country in which the consular post is located to identify known or potential terrorists and to develop information on those individuals;

(2) to ensure that such information is routinely and consistently brought to the attention of appropriate United States officials for use in administering the immigration laws of the United States; and

(3) to ensure that the names of known and suspected terrorists are entered into the appropriate lookout databases.

(c) Composition; chair

The Secretary shall establish rules governing the composition of such committees.

(d) Meetings

Each committee established under subsection (a) of this section shall meet at least monthly to share information pertaining to the committee's purpose as described in subsection (b)(2) of this section.

(e) Periodic reports to the Secretary of State

Each committee established under subsection (a) of this section shall submit monthly reports to the Secretary of State describing the committee's activities, whether or not information on known or suspected terrorists was developed during the month.

(f) Reports to Congress

The Secretary of State shall submit a report on a quarterly basis to the appropriate committees of Congress on the status of the committees established under subsection (a) of this section.

(g) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to implement this section.