

January 2003

U.S. Visa Policies and Scholarly Work
Proposed Resolution to 4S Council
Ad Hoc Committee on Immigration Policy and Scholarly Work
Gary Downey (chair), Hugh Gusterson, Jane Summerton

Motion to 4S Council: Approve the following resolution (a) conveying concern that recent changes in visa policies delaying approval of nonimmigrant visas have negative implications for scholarly work and Ph.D. training and (b) requesting policies that affirm the importance of the legitimate international movement of researchers and students.

Resolution on U.S. Visa Policies and Scholarly Work
Society for Social Studies of Science

Whereas, higher education and scholarly work throughout the world depend on the free flow of ideas and people on an international scale;

Whereas, the scope of research and education in social studies of science and technology is international and regularly requires scholars and students to enter and leave the United States for professional purposes;

Whereas, the Society for Social Studies of Science is an international organization whose non-U.S. representation has increased in the past decade from 33% to 44% of its membership, with 7% representing the Asia-Pacific region and 7% representing the Americas (non-U.S.);

Whereas, the Society for Social Studies of Science welcomes further non-U.S. members, including scholars and students of Arab-Muslim and Chinese descent and from the Indian subcontinent;

Whereas, Congressional passage of the Patriot Act of 2001 and Enhanced Border Security and Visa Entry Reform Act of 2002 have led the State Department to erect barriers to the free flow of scholars and students, including unnecessary increases in '214(b) refusals' (requiring applicants to prove they intend to return to their home country);

Whereas, many scholars and students are now experiencing unnecessary, and sometimes devastating, delays and denials in obtaining F, J, or M nonimmigrant visas;

Whereas, an unnecessary reduction in the free flow of students and scholars threatens to isolate the United States and its inhabitants from the international flow of ideas and people; and

Whereas, unnecessary visa delays and denials threaten to (a) weaken international conferences in the United States by deterring foreign scholars and students from attempting to attend; (b) deter foreign students in the United States from attending international conferences elsewhere and, hence, inhibit their legitimate efforts at professional development because they fear being stuck abroad; (c) isolate foreign students in the United States from their homes and families because they fear not being able to return to this country after departing for visits, and thus, paradoxically, actually increase the likelihood that they will not return to their countries at the end of their studies; and (d) prompt graduate programs to reduce foreign student enrollments to avoid

bureaucratic entanglements and, thus, impoverish higher education and scholarly experiences for all students in the United States;

Be it resolved that, the President of the Society for Social Studies of Science convey to White House staff, key members of Congress, Departments of State and of Homeland Security, Immigration and Naturalization Service, other associations of scholars and students, and members of the press our concern about the severe implications of unnecessary visa delays and denials, and our recommendations:

(1) That the State Department and INS develop and implement improved procedures to insure that nonimmigrant visas are expedited without delay for scholars and students seeking entry into the United States for legitimate purposes;

(2) That the State Department and INS improve the speed and efficiency of security reviews in order to restore the median rate of approval to below 30 days;

(3) That the State Department and INS develop and implement a procedure whereby foreign nationals in the United States who need to leave and re-enter the country can pursue and receive appropriate security clearances (when applicable) and initiate the processing of re-entry documents prior to their departure;

(4) That the U.S. Congress amend the Immigration and Nationality Act to replace the default expectation that an applicant intends to immigrate with a provision focused on determining if the applicant is qualified for the visa sought and actually plans to pursue the stated objectives; and

(5) That the State Department, INS, and participating security agencies direct all officials participating in the visa evaluation process to take special care not to stigmatize or in any way discriminate against scholars and students because of race, nationality, religion, or ethnicity.

(6) That the State Department systematically collect and publicly report on a monthly basis critical data from all U.S. consulates regarding the evaluation of nonimmigrant visa requests, indicating (a) the length of time elapsed between receipt of application and approval of each nonimmigrant visa (without revealing the identities of applicants); (b) the number and proportion of visas denied, with substantial justification for each denial; (c) the number and dates of security clearances obtained for approved visas; and (d) trends in the process of evaluating and approving nonimmigrant visas.

End of Resolution

Summary of Current Situation:

In July, 2001, prior to 9/11, the Immigration and Naturalization Service (INS) began implementing a new electronic database for foreign student applicants and exchange visitors seeking F (student), J (exchange), and M (vocational or non-academic program) nonimmigrant visas. Using a set of required fields, host institutions were to enter required data regarding applicants they admit before issuing the I-20 Form that the applicant must present to the consular officer and INS officer at the port of entry. This change was based on a completed 5-year study and test of a prototype. Implementation was not likely to be especially quick. 9/11 changed things.

Congressional passage of the Patriot Act of 2001 (“Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism”) and, later, the Enhanced Border Security and Visa Entry Reform Act of 2002 greatly influenced practices at the State Department, including its visa policies, as well as practices at the Justice Department and INS.

First, new procedures for visa applications began to evolve. In November 2001, the State Department announced that visa applications from 26 Arab/Muslim nations would undergo special FBI security checks, requiring “up to 20 days,” before receiving approval. These countries included Afghanistan, Algeria, Bahrain, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, United Arab Emirates, and Yemen.

The Border Security Act required that applicants from countries defined as state sponsors of terrorism (North Korea, Cuba, Syria, Sudan, Iran, Iraq, and Libya) had to complete an additional application form and appear for an interview with a consular officer.

Beginning Summer 2002, U.S. consular officials in these and other countries, especially China, no longer automatically issued visas to applicants if electronic queries to security agencies did not come back within 30 days with positive security alerts. Concerned that they were now legally liable if they granted visas to terrorists, officials began waiting for actual security clearances.

During Fall 2002, many individual cases of delays and denials were reported in the press, but few hard numbers are available. A main reason for this is that it is difficult to collect information from people who don’t come. Lois Petersen of the National Academy of Sciences reported that at the October 2002 World Space Congress in Houston, 102 scientists were unable to attend because of visa delays. An email request from NAS for examples of delays yielded “several dozen” reports of delays and denials. The admissions office at Virginia Tech reported that 5-10 students, mostly from China, were delayed in returning to the United States after going home for visits. A December 2002 statement from the presidents of the national academies indicates that those who have been prevented from coming into the United States includes “scholars asked to speak at major conferences, distinguished professors invited to teach at our universities, and even foreign associates of our Academies.”

The best source of data is a recent survey of 77 universities by NAFSA/Association of International Educators (formerly National Association of Foreign Student Advisers) and American Association of Universities, requesting information about delays/denials for students and scholars. The results indicated 486 students missing start dates in Fall 2002 due to delays compared to 208 in Fall 2001. They reported 1,043 students denied visas in 2002 compared to 759 in 2001. The majority of the delays/denials were from China or Muslim/Arab countries. Of the total, 63% were male, 37% female. At the same time, the total number of foreign students enrolled increased from 57,631 in 2001 to 58,986 in 2002. The number of foreign scholars on American campuses fell from 10,061 in Fall 2001 to 9,788 in Fall 2002.

Most of the affected scientists, researchers, and students tend to be from the physical and biological sciences, or other areas deemed to be of elevated security risk.

Most reporters exploring the issue of visa delays/denials suggest an increased waiting period of from 30 days or less to 3 months or more.

Delays and denials are typically explained as “214(b) refusals,” which means that applicants have not successfully proven that they intend to return to their home country. This section of the Immigration and Nationality Act states, “Every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for admission,

that he is entitled to a nonimmigrant status.”

One significant uncertainty in this new evolving review process is whether or not, or when, the State Department will achieve a system that reduces the waiting period back under one month. Another is what sorts of data will warrant classifying someone as a security risk.

Second, the Border Security Act mandated that INS have its new electronic database, the SEVIS system (Student and Exchange Visitor Information System) in place by January 30, 2003. It actually also required the State Department to implement a transitional system by September 11, 2002. Host institutions are now applying for participation in SEVIS. Virginia Tech, for example, was approved on January 7.

According to a Virginia Tech admissions officer, the SEVIS system may have significant implications for the Fall 2003 class of students. The more extensive data entry required by the SEVIS system increases the time required for reviewing an approved application and issuing an immigration Form I-20 from 5 minutes to 30 minutes per application. Concentrated usage during weekday hours may produce additional delays.

Third, the Justice Department is implementing a required registration system for all male, noncitizens over the age of 16 from the 26 countries listed above. All must report to an INS office to be photographed, fingerprinted, and interviewed. Any who fail to report face expulsion.

For Further Information

2001 Patriot Act:

http://www.eff.org/Privacy/Surveillance/Terrorism_militias/20011025_hr3162_usa_patriot_bill.html

State Department Press Release: “State Department Initiates New Visa Approval System”:

<http://usinfo.state.gov/topical/global/immigration/02091601.htm>

Information Updates from Bacon and Dear law firm

“Updated Information re: visa applications”:

<http://www.baconanddear.com/news/Updated-Info-on-Visa-App.php>

“Nonimmigrant visa processing becoming more and more difficult”:

http://www.baconanddear.com/news/More_on_NIV.php

Statement from Presidents of the National Academies: “Current Visa Restrictions Interfere with U.S. Science and Engineering Contributions to Important National Needs”

<http://www4.nationalacademies.org/news.nsf/0a254cd9b53e0bc585256777004e74d3/e061a6d4c13ed9ec85256ca70072dce5?OpenDocument>

Resources from NAFSA/Association of International Educators

General background information on SEVIS

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sevnames.pdf>

<http://www.nafsa.org/content/ProfessionalandEducationalResources/ImmigrationAdvisingResources/sevpbkgdindex.htm>

Additional background information

<http://www.nafsa.org/content/PublicPolicy/stf/inamericasinterest.htm>

<http://www.nafsa.org/content/publicpolicy/NAFSAontheIssues/DHS03.htm>

<http://www.nafsa.org/content/publicpolicy/NAFSAontheIssues/roleofintled03.html>

<http://www.nafsa.org/Template.cfm?Section=PublicPolicy&NavMenuID=50>