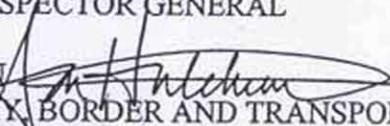




Homeland Security

DATE: MAY 27, 2004

MEMORANDUM FOR: CLARK KENT ERVIN
INSPECTOR GENERAL
OFFICE OF THE INSPECTOR GENERAL

FROM: ASA HUTCHINSON 
UNDERSECRETARY, BORDER AND TRANSPORTATION
SECURITY DIRECTORATE

RE: OFFICE OF THE INSPECTOR GENERAL'S ISP DRAFT REPORT
NO. 10 ENTITLED "AN EVALUATION OF THE SECURITY
IMPLICATIONS OF THE VISA WAIVER PROGRAM

This office has reviewed the Office of the Inspector General's (OIG) ISP Draft Report No.10 entitled "An Evaluation of the Security Implications of the Visa Waiver Program." While my office finds the report to be generally accurate when it describes the program, its history, and related legislation, the section of the report that addresses the status of the statutory designated country reviews is severely outdated and was outdated, as we discussed before publication, at the time of the report.

The Border and Transportation Security Directorate (BTS) has taken responsibility for the Visa Waiver Program (VWP) country review process and reconvened the VWP Interagency Working Group (IWG) originally convened by the Department of Justice's Executive Office of National Security (EONS) prior to the creation of the Department of Homeland Security (DHS) and the transfer of responsibility for the program to the Secretary of Homeland Security. The IWG held its first meeting in early March specifically to develop the plan for the VWP country assessments. In testimony submitted to the House Judiciary Committee on April 21, 2004, Secretary Ridge stated that DHS is committed to having these reviews completed by October.

In addition, the report recommends that DHS expand the US-VISIT program to cover visa waiver travelers and seek legislation to delay the visa waiver biometric passport deadline. Before publication of the report, DHS announced the visa waiver program enrollment expansion will occur on September 30, 2004 and has endorsed legislation to extend the passport deadline.

This office has the following comments on the OIG recommendations:

Recommendation 1: Designate a VWP program manager with clearly defined responsibilities and authorities.

Response: BTS has taken responsibility for the VWP country review process and will work with component agencies to define and assign other VWP programmatic responsibilities. Over the past three months, the BTS program manager has organized the IWG to establish country protocols, organize assessment trips, and develop budget and personnel plans. These plans have been closely monitored by me and other DHS senior leadership including A/S Verdery and D/S Loy.

Recommendation 2: Develop a plan to conduct the mandated VWP annual reports.

Response: As part of the program management, BTS will work with component agencies to define and assign responsibility for the preparation of the annual "visa waiver overstay" reports.

Recommendation 3: Develop protocols and a plan to conduct biennial country reviews.

Response: BTS has taken responsibility for the VWP country review process and reconvened the VWP Interagency Working Group (IWG) originally convened by the Department of Justice's Executive Office of National Security (EONS) prior to the creation of the Department of Homeland Security (DHS) and the transfer of responsibility for the program to the Secretary of Homeland Security. The IWG held its first meeting in early March specifically to develop the plan for the VWP country assessments. The protocol is being finalized. DHS is committed to having these reviews completed by October.

Recommendation 4: Provide funding to support the conduct of the country reviews.

Response: DHS is committed to the successful completion the first round of reviews by October and is identifying funding for the project. As BTS completes its policy analysis of the country reviews it will work with the appropriate bureau to ensure long-term funding.

Recommendation 5: Develop a process for reviewing the probationary designation of Belgium, so that a decision can be rendered prior to May 15, 2004.

Response: The interim rule dated February 28, 2003 and published in the Federal Register states that the Department of Justice, in consultation with the Department of State, determined that "...Belgium will be allowed to continue participating in the VWP on a provisional basis for one year, with another evaluation to be conducted at that time..." Belgium is not automatically terminated from the program after one year. The review of Belgium is included in the schedule for reviews to be completed by October.

Recommendation 6: Develop a process comprehensively to check all lost and stolen passport (LASP) data provided by VWP governments against entry and exit data in U.S. systems.

Response: BTS concurs with the recommendation. Procedures will be developed to check the lost and stolen passport data against U.S. entry and exit system data. Together with our colleagues in the Department of State and our foreign counterparts, DHS is addressing security challenges posed by lost and stolen passports. In most cases, countries are able to identify the misuse of their own lost or stolen travel documents when presented at their own borders; however, without a system for international sharing of this data, to date it has not been possible to access this data from other countries.

DHS and the Department of State are promoting technological advancements that would allow foreign governments to electronically share lost and stolen passport information. DHS is participating in discussions within the G-8 to develop a comprehensive, international regime for sharing real time information on lost or stolen passports. Additionally, the ICAO New Technologies Working Group has undertaken research into an electronic global data interchange of lost, stolen and invalid passports, so that a query of country and passport number can be submitted to a central database of lost and stolen passports.

Recently, the Department of State announced a new program where the U.S. will join other countries in providing current information on issued passports that have been reported lost or stolen to the Interpol's lost and stolen document database, which is available to border authorities worldwide.

According to the Department of State, issued U.S. passports reported lost or stolen are immediately invalidated, added to an electronic database, and may not be used for travel. Only the passport number, country of issuance and document type will be provided to Interpol. To protect the passport holder's privacy, the name and biographical data from the passport will not be given to Interpol. Should a hit occur against the Interpol database, the hit will be verified with U.S. authorities before action is taken against the bearer of such a passport. DHS supports these efforts and views them important steps forward as we seek new and better ways of detecting fraud and securing our borders and protecting travelers.

Recommendation 7: Develop procedures to collect and analyze data concerning the fraudulent use of VWP passports.

Response: BTS concurs with the recommendation. BTS component agencies will work together to develop procedures to collect and analyze fraudulent VWP passport usage data. The VWP countries under review have been requested to provide the US with the data for the past 10 years. We expect to receive the information by the end of the current site visit schedule in July and will evaluate and monitor the information and the process for its continued timely submission.

Recommendation 8: Include in the country review protocols provisions to review document manufacturing and issuing security practices.

Response: The interagency protocol already contains a provision for the review of document manufacturing and issuing security practices. For example, country site visits will include meetings with appropriate representatives of the entities (companies and government bureaus) responsible for the design, printing, manufacture, and security of the nominee country's passports and national identification cards (documents used to secure the passport).

Recommendation 9: Coordinate with the Department of State to establish a standard operating procedure for the systematic and proactive collection of LASP information.

Response: BTS agrees with the recommendation. The USG is working in a variety of bilateral and multilateral fora to improve the collection of this information and is participating in talks about the dissemination of this information through INTERPOL.

Recommendation 10: Require that inventory control numbers and passport numbers be queried in lookout systems.

Response: While BTS agrees with this recommendation in principal, there are practical problems which must be resolved. Unless the carriers are required to provide both numbers through APIS, the CBP officer at the port of entry would have to do two separate queries, thereby increasing the time to complete an inspection.

Recommendation 11: Review current policies that allow the return of fraudulent travel documents to those who presented them when they are sent back to their countries of origin.

Response: BTS agrees with this recommendation. While Annex 9 of the International Civil Aviation organization (ICAO) Chicago Convention addresses this and outlines the steps to take so that documents are not returned to the individual, these issues must be continued to be addressed and additional procedures developed if necessary.

Recommendation 12: Require, as soon as US-VISIT capabilities permit, that VWP travelers be screened by US-VISIT procedures.

Response: VWP travelers will begin to be included in US-VISIT at air and seaports as of July. They will also be included in US-VISIT at land ports of entry in accordance with the current plan for US-VISIT expansion.

Recommendation 13: Develop and recommend legislation to grant DHS waiver authority for VWP countries that cannot comply with the biometric passport deadline.

Response: Secretary Ridge and Secretary Powell have written to Congress to recommend that the Visa Waiver Biometric passport deadline be extended, and have testified on this topic before the House Judiciary Committee.

Recommendation 14: Provide additional training in passport fraud detection for POE inspectors.

Response: BTS concurs with this recommendation. CBP will review and supplement, if necessary, training to detect fraudulent documents and other fraud at POEs.