

CRS Report for Congress

Received through the CRS Web

Immigration: Visa Waiver Pilot Program

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Summary

The Visa Waiver Pilot Program (VWPP) allows aliens traveling from certain designated countries to come to the United States as temporary visitors without having the immigration documents normally required to enter the United States. Some maintain it fosters international travel to the United States and eases the workload of the consular offices abroad. Others observe that it by-passes the most important screening step of who is permitted to enter the United States, cautioning that it may inadvertently stimulate immigration violations. The program was scheduled to expire on September 30, 1997, but temporary extensions were included in both Continuing Resolutions. The Commerce, Justice, State, and Judiciary (CJS) FY1998 appropriations act (P.L. 105-119) contains an extension through April 30, 1998. Bills to formally extend the program have passed the Senate (S. 1178) and have been reported by the House Committee on the Judiciary (H.R. 2578). H.R. 2578 is expected to come to the House floor before the April recess.

Program Features

Nonimmigrants (i.e., aliens legally in the United States for a specific purpose and a temporary period of time) as a general rule must present valid travel documents to enter the United States. Not presenting valid documents or having no documents at all are grounds for inadmissibility, as specified in the Immigration and Nationality Act. Travel documents consist of a passport and either a nonimmigrant visa or — in the case of Canadians or Mexicans — a border crossing card. Aliens seeking to visit the United States obtain their nonimmigrant visa at consular offices abroad.

The VWPP authorizes the Attorney General to waive the visa documentary requirements for aliens traveling from certain countries as temporary visitors for business or temporary visitors for pleasure (tourists), typically referred to as “B visas” because of the letter denoting the subsection of the law. Nationals from participating countries

simply complete an admission form before their arrival and are admitted for up to 90 days.¹

Although the VWPP greatly eases the documentary requirements for nationals from participating countries, it has important restrictions. Normally aliens entering with a B visa may petition to extend their length of stay in the United States or may petition to change to another nonimmigrant or immigrant status. Aliens entering through the VWPP may only be authorized to extend their stay for emergency reasons and are not permitted to change status. An alien entering through the VWPP who violates the terms of admission becomes deportable without any judicial recourse or review (except in asylum cases).

Issues

How VWPP Countries Are Selected. In addition to extending reciprocal privileges to U.S. citizens, countries must meet the following qualifications to participate: have a low nonimmigrant visa refusal rate for 2 years (averaging no more than 2% over both years and not exceeding 2.5% in any one year); have or be developing a machine readable passport program; and, not compromising U.S. law enforcement interests. Countries must maintain a low visa refusal rate to continue in the program.

Some maintain the nonimmigrant visa refusal rate is too arbitrary because it is based on decisions made by consular officers rather than by the actual behavior of the nonimmigrants; instead, some say a country's rate of nonimmigrants who violate the terms of their visas offers a better criteria for participation. Others point out that the latter data are imperfect and currently exist only as *estimates of visa overstays*.²

When the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208) reauthorized the VWPP, it created a new probationary status for VWPP countries that had not maintained a low visa refusal rate. Countries on probation are determined by a formula based on a disqualification rate of 2%-3.5%.³ Probationary countries with a disqualification rate less than 2% over a period not to exceed 3 years may remain VWPP countries. The new law also diminished the role of the Department of State in selection of countries, replacing language that said the Attorney General and the Secretary of State make the determination jointly with language stating that the Attorney General makes the decision in consultation with the Secretary of State.

¹ Countries currently participating in the VWPP are: Andorra, Argentina, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, San Marino, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

² Problems that INS has in meeting VWPP data requirements are discussed in a recent report. See: U.S. Department of Justice, Office of Inspector General Report No. 1-97-08, *Immigration and Naturalization Service Monitoring of Nonimmigrant Overstays*, September 1997.

³ "Disqualification rate" is defined as the percentage of nationals from a country who applied for admission as a nonimmigrant who either violated the terms of the nonimmigrant visa, who were excluded from admission or who withdrew their application for admission as a nonimmigrant.

Consideration of Trade and Tourism. Those in the travel and tourism industry state that the VWPP has done a great deal to facilitate tourism to the United States. The example of Argentina is frequently used to illustrate this relationship; during the first year Argentina was in the VWPP, tourism from that country to the United States grew by 11.5%. Some cite Korea as a country that should be participating in VWPP because of the trade and tourism it offers and contend that this factor should be added to the criteria used to select participating countries. Other proponents of the VWPP, however, contend that the criteria should not be broadened to include tourism potential if the thresholds of refusal rates and visa overstay violations are weakened, arguing that these provisions are essential to safeguard and control our borders.

Temporary Status of the VWPP. Since its enactment in 1986, VWPP has been a temporary program. P.L. 104-208 reauthorized it through September 30, 1997. Supporters of the VWPP maintain that it improved relations with the participating countries because it reciprocates what they have long done — permitting U.S. travelers to visit their countries without visas. They also state there are financial benefits because it reduces the work load of the consular offices and because it increases commerce by facilitating international travel to the United States. The Department of State has long supported the extension of the VWPP.

Others are more cautious about the VWPP, fearing that it may foster nonimmigrant visa overstays and other immigration violations such as employment. They want to ensure that the Immigration and Naturalization Service (INS) has sufficient checks in place to deter these immigration violations before making the program permanent. INS acknowledges that it has found fraud in the program but supports its extension.

Legislation ⁴

The Senate passed legislation (S. 1178) to extend the program on September 26, 1997. The chair and ranking member of the Senate Committee on the Judiciary Subcommittee on Immigration, Senators Spencer Abraham and Ted Kennedy, introduced S. 1178 which would extend the program for 5 years, until September 30, 2002. The Senate bill also would increase the 2-year average visa refusal rate limit from 2% to 3% (and correspondingly the visa refusal rate threshold of 2.5% to 3.5% in any one year) for participation in the program.⁵ S. 1178 furthermore would require that the Attorney General make *precise numerical estimates* for each participating country's visa overstay rate and disqualification rate. Additionally, S. 1178 would strengthen the requirements for passport security by requiring that all VWPP countries have machine readable passports (not merely working toward having them) and that they have "highly" fraud-

⁴ Hearings were held on June 17, 1997, by House Committee on the Judiciary Subcommittee on Immigration and Claims and on July 17, 1997 by the Senate Committee on the Judiciary Subcommittee on Immigration. Other bills on the visa waiver program include H.R. 203, S. 974, H.R. 1880, H.R. 627, and S. 290.

⁵ According to the State Department's visa refusal rate statistics for FY1996 and FY1997, countries such as Uruguay, Singapore, South Africa and Taiwan may become eligible for the VWPP under current law. If the threshold is raised to 3.5%, countries such as Chile, Greece, Portugal and Zimbabwe may also be considered.

resistance passports. S. 1178, finally, would re-establish the lead role of the Secretary of State in selecting VWPP countries in consultation with the Attorney General.

The House Committee on the Judiciary Subcommittee on Immigration and Claims initially reported legislation (H.R. 2412) that would extend the VWPP for 2 years, until September 30, 1999. H.R. 2412, however, had other provisions pertaining to the extension of religious worker immigration that proved controversial and did not come to the House floor before the September 30, 1997 sunset.⁶ Meanwhile, Congress included a 23-day extension of the VWPP in the Continuing Resolution (H.J.Res. 94, P.L. 105-46). House Committee on the Judiciary Subcommittee on Immigration and Claims subsequently reported new legislation (H.R. 2578) that would extend the VWPP for 2 years, until September 30, 1999. It also would require the Attorney General to implement (no later than 180 days after enactment) a program to collect data on nonimmigrants who overstay the terms of their visas and to provide an annual report to Congress on nonimmigrant overstays. The House Committee on the Judiciary ordered H.R. 2578 reported on October 7, 1997. It is expected to come to the House floor before the April recess.

The second Continuing Resolution (H.J.Res. 97, P.L. 105-64) also contained an extension of the VWPP for the duration of the resolution. The conferees for H.R. 2267, the Commerce, Justice, State, and Judiciary (CJS) FY1998 appropriations act (P.L. 105-119), added a provision extending VWPP until April 30, 1998, and the program is currently operating under that authority.⁷

⁶ CRS Report 97-891, *Immigration: Religious Workers*, by Ruth Ellen Wasem.

⁷ §125 of H.R. 2267; H.Rept. 105-405.