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SUPPLEMENTARY INFORMATION:**What Are the TWOV and ITI Programs?**

The Transit Without Visa (TWOV) and International-to-International (ITI) programs were established under authority now vested with the Secretary of Homeland Security (and since delegated to the Commissioner, Customs and Border Protection (CBP)) in 8 U.S.C. 1182(d)(4) and 1223, among other authorities. *See also*, 6 U.S.C. 251(5) (transfer of former Immigration and Naturalization Service (INS) inspection functions to DHS); Department of Homeland Security Reorganization Plan of January 30, 2003, (transfer of former INS inspection functions to Commissioner of Customs, renamed Bureau of Customs and Border Protection), H.R. Doc. 108-32 (2003).

The TWOV and ITI programs allow aliens to transit through the United States without a nonimmigrant visa while en route from one foreign country to a second foreign country with one or more stops in the United States. Air carriers who enter into the TWOV or both the TWOV and ITI agreements, depending on the circumstances, transport these aliens to the United States.

What Is the Authority for Participation in the TWOV and ITI Program?

Section 212(d)(4)(C) of the Immigration and Nationality Act (Act) provides authority for the Secretary of Homeland Security acting jointly with the Secretary of State to waive nonimmigrant visa requirements for aliens who are proceeding in immediate and continuous transit through the United States and are using a carrier which has entered into a contract authorized under section 233(c) of the Act. The required contract for participation in the TWOV program is an Immediate and Continuous Transit Agreement, Form I-426 (known as a TWOV Agreement). The required contracts for participation in the ITI program are (1) a TWOV Agreement and (2) an Immediate and Continuous Transit Agreement with provisions for use of an In-Transit Lounge (known as an ITI Agreement).

Why Is DHS Suspending the Immediate and Continuous Transit Provisions?

In light of the importance of preventing terrorist acts, and as set forth

in Executive Order No. 13284 of January 23, 2003, 68 FR 4075, that grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001, pose an immediate threat of further attacks on United States nationals or the United States and constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, it is necessary to suspend the TWOV and ITI programs to protect the security interests of the United States. By this interim rule, the Secretaries of State and Homeland Security will immediately suspend the TWOV and ITI programs while they evaluate the security risks involved in these programs over the next 60 days.

The provisions for aliens eligible for the TWOV program preclude prescreening of passengers prior to their arrival at a port of entry in the United States, by permitting the waiver of nonimmigrant visa requirements for such persons. Accordingly, such provisions shall be suspended immediately to safeguard the interests of the United States by controlling the entry or attempted entry of persons transiting through the United States. Suspension of these provisions will require aliens in immediate and continuous transit to be in possession of valid nonimmigrant visas unless such a requirement is otherwise waived. DHS has established procedures for the handling of passengers in transit to the United States when this rule takes effect and will be working with carriers to minimize disruption.

The suspension of these regulations does not preclude the use of ITI lounges for any other authorized purpose. Foreign government officials may continue to transit the United States pursuant to 8 CFR 212.1(f)(3). During the 60 day review period, DHS will be working with the airlines, airports, foreign governments, and others to develop plans that will ensure security, as well as reviewing comments submitted in conjunction this interim rule.

DHS and the Department of State have received specific, credible intelligence, including from intelligence and law enforcement sources, including the Central Intelligence Agency (CIA) and Federal Bureau of Investigation (FBI), that certain terrorist organizations have identified this exemption from the normal visa issuance procedures as a means to gain access to the United States, or to gain access to aircraft en route to or from the United States, to cause damage to infrastructure, injury,

or loss of life in the United States or on board aircraft en route to or from the United States.

Due to this credible security threat, it is necessary to implement certain measures to restrict the transit of aliens through the United States. The waiver of visa requirements for aliens in the TWOV program precludes prescreening of passengers prior to their arrival at a port of entry in the United States. Accordingly, such provisions are suspended immediately to safeguard the national security interest of the United States by restricting the transit of such persons.

The Secretaries of State and Homeland Security may waive passport and visa requirements for certain categories of non-immigrants jointly. These regulations are promulgated jointly with the Secretary of State.

Comments

Consideration will be given to any written comments timely submitted. The shortened comment period of 45 days is necessary to receive and consider comments prior to DHS reevaluation of this suspension in 60 days.

Administrative Procedures Act

The immediate implementation of this rule as an interim rule, with a 45-day provision for post-promulgation public comments, is based on findings of "good cause" pursuant to 5 U.S.C. 553(b) and 553(d)(3). Making the effective date of this rule on the date of signature is necessary for the national security of the United States and to prevent the TWOV and ITI programs from being used to conduct terrorist acts against the United States.

DHS has received credible intelligence that certain terrorist organizations have identified this exemption from the normal visa issuance procedures as a means to gain access to the United States or an aircraft en route to the United States to cause serious damage, injury, or death in the United States. Due to this credible security threat, it is necessary to implement measures immediately to control the entry of persons arriving in the United States.

For these reasons, there is substantial basis for concern that prior publication of a proposed rule for public comment, and the requirement for a 30-day delayed effective date after publication of a final rule, would leave the United States seriously and unnecessarily vulnerable to a specific terrorist threat against persons in the United States during the period of time before the final rule could become effective after