

been found to sponsor terrorism was added for the additional reason that such nationals have become subject to heightened standards of review before visa issuance.

Analysis of Comments

The proposed rule was published with a request for comments on March 11, 2002 (67CFR45). The comment period closed May 7. The Department received roughly 300 comments, half or more of which were verbatim in full or in part with a sample proposed response that circulated through the foreign student community. Most of the first half of the letters (see "other factors noted, below") quoted the sample proposed response in full; many used only one or two paragraphs from it. The Department therefore is responding to the comments collectively, by subject matter.

Ineffectiveness and Unfairness; Inconvenience

The sample proposed response and many of the letters drawing upon it claimed the following:

1. The amended requirement would not deter the entry of terrorists because, in the new circumstances, any terrorists already in the United States would simply stay here, rather than going to a neighboring country for a new visa. Moreover, they would supply false information if they did go abroad and applied for a visa.

2. This unfairly penalizes the innocent while doing nothing against evil-doers.

3. It is "not in compliance with U.S. fundamental interests—handicapping the mutual beneficial culture, economic and personnel exchanges between the U.S. and other countries."

Other Factors Noted

The majority of the other half of letters included one or more of the above viewpoints in addition to the following:

Most of their homes (in their homelands) are very far from a U.S. consulate and it takes much longer to obtain a visa there than in Canada or Mexico. (All, or almost all, of the commenters were from China, India or the Philippines.) Thus, if they cannot apply for a visa in Canada or Mexico without risking their re-admission in case of delays, they will simply have to forego any trips home to see their families. Some closed with the suggestion that, moreover, if they weren't limited to single-entry, six-month visas, they wouldn't need the automatic revalidation so why do we

not simply give them more favorable visas to begin with.

They resent the implication that they, as lawful temporary (but long-term) residents (nonimmigrant students and workers) are a threat to the United States.

They have to travel abroad for "x" reasons (international meeting, study, research, business) and will not have time to get a visa while at the meeting or whatever. This means that if they have not obtained a reentry visa in Mexico or Canada before keeping that commitment, they will have to forego the activity for which they wish to travel abroad (finishing their studies/research abroad, presenting their paper, etc.), or simply go home thereafter, rather than finishing their employment/degree here. The latter course will also risk the loss of their apartments, cars, etc., that they will have left here while on that foreign trip. Left implicit was the idea that if the prior rule applied, they would obtain another visa in Canada/Mexico before travelling to wherever else and not have to face such a harrowing choice.

Department's Response

Although sympathetic to the concerns of the commenters, the Department must note that the privilege of automatic revalidation, instituted some years ago as a convenience both to the travelers and to our consular posts, is just that—a privilege. It is not a right. It is intended primarily to recognize that persons lawfully in the United States may have occasion to cross into and out of Canada or Mexico for brief, casual visits or even in direct transit between one part of the United States and another. In cases involving aliens who are within their authorized stay in the United States but whose visas have expired, it is not always practicable for them to apply for and obtain a new visa to reenter the United after such a departure. Thus a provision was made to consider their visas automatically revalidated for purposes of facilitating such brief trips. Automatic revalidation also became a vehicle for aliens whose visas had expired and who wanted to travel to more distant countries not within the scope of the automatic revalidation regulation (e.g., in Asia or Europe). Under the old automatic revalidation regulation, such aliens could leave the United States temporarily and apply for a new visa in a country such as Mexico or Canada that was covered by the automatic revalidation regulation. This was not the original intent of the regulation, however.

These are difficult and different times, and certain conveniences must be foregone. We are preserving the availability of automatic revalidation for its original fundamental purpose, which is to recognize and facilitate short-term cross-border travel. By eliminating the possibility of automatic revalidation for persons who apply for a visa while outside the United States, we are merely eliminating a use of the regulation that was not central to its purpose. At the same time, however, we are reflecting the new security environment, in which visa processing times are longer and favorable outcomes are significantly less certain.

For those whose complaint was that they wouldn't need that automatic revalidation provision if we would issue them more than 6 month/one entry visas in the first place, we can only note that such matters are governed by reciprocity as well as national security considerations. The question of longer validity periods or multiple versus single entry visas does not even arise if an alien's government does not issue longer validity, multiple entry visas to U.S. citizens for the same purpose of entry.

Preclearance Suggestion

A few letters took a different approach. They suggested that all of the above problems could be resolved if the need for special screening could be met by applying for preclearance (in a timely fashion) before going to Canada or Mexico. That is, use some mechanism for such intending traveler/visa applicants to get security cleared here in the United States in advance of their trip to Canada or Mexico to apply for the visa.

Department's Response

The Department concluded that this proposal is not practicable for a number of reasons, such as the absence of any mechanism in the United States for processing such requests in advance and the lack of resources to establish one. More important is the fact that the time frame for responses to clearance requests is too fluid for realistically estimating when to begin such a process. Therefore it cannot be implemented.

Regulatory Analysis and Notices

Since the final rule is unchanged from the interim rule, and because none of the public comments have called them into question, the Department reiterates the regulatory analysis and notices published in 67 FR 45 on March 7, 2002.