

114TH CONGRESS  
1ST SESSION

# S. 1507

To amend section 217 of the Immigration and Nationality Act to modify the visa waiver program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 4, 2015

Ms. MIKULSKI (for herself and Mr. KIRK) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend section 217 of the Immigration and Nationality Act to modify the visa waiver program, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Visa Waiver Program  
5       Enhanced Security and Reform Act”.

6       **SEC. 2. VISA WAIVER PROGRAM ENHANCED SECURITY AND**  
7       **REFORM.**

8       (a) DEFINITIONS.—Section 217(c)(1) of the Immi-  
9       gration and Nationality Act (8 U.S.C. 1187(c)(1)) is  
10      amended to read as follows:

1           “(1) AUTHORITY TO DESIGNATE; DEFINI-  
2 TIONS.—

3           “(A) AUTHORITY TO DESIGNATE.—The  
4 Secretary of Homeland Security, in consultation  
5 with the Secretary of State, may designate any  
6 country as a program country if that country  
7 meets the requirements under paragraph (2).

8           “(B) DEFINITIONS.—In this subsection:

9           “(i) APPROPRIATE CONGRESSIONAL  
10 COMMITTEES.—The term ‘appropriate con-  
11 gressional committees’ means—

12                   “(I) the Committee on Foreign  
13 Relations of the Senate;

14                   “(II) the Committee on Home-  
15 land Security and Governmental Af-  
16 fairs of the Senate;

17                   “(III) the Committee on the Ju-  
18 diciary of the Senate;

19                   “(IV) the Committee on Foreign  
20 Affairs of the House of Representa-  
21 tives;

22                   “(V) the Committee on Home-  
23 land Security of the House of Rep-  
24 resentatives; and

1           “(VI) the Committee on the Ju-  
2           diciary of the House of Representa-  
3           tives.

4           “(ii) OVERSTAY RATE.—

5           “(I) INITIAL DESIGNATION.—The  
6           term ‘overstay rate’ means, with re-  
7           spect to a country being considered  
8           for designation in the program, the  
9           ratio between—

10           “(aa) the number of nation-  
11           als of that country who were ad-  
12           mitted to the United States on  
13           the basis of a nonimmigrant visa  
14           under section 101(a)(15)(B)  
15           whose periods of authorized stay  
16           ended during a fiscal year but  
17           who remained unlawfully in the  
18           United States beyond such peri-  
19           ods; and

20           “(bb) the number of nation-  
21           als of that country who were ad-  
22           mitted to the United States on  
23           the basis of a nonimmigrant visa  
24           under section 101(a)(15)(B)

1                   whose periods of authorized stay  
2                   ended during that fiscal year.

3                   “(II) CONTINUING DESIGNA-  
4                   TION.—The term ‘overstay rate’  
5                   means, for each fiscal year after ini-  
6                   tial designation under this section  
7                   with respect to a country, the ratio  
8                   between—

9                   “(aa) the number of nation-  
10                  als of that country who were ad-  
11                  mitted to the United States  
12                  under this section or on the basis  
13                  of a nonimmigrant visa under  
14                  section 101(a)(15)(B) whose pe-  
15                  riods of authorized stay ended  
16                  during a fiscal year but who re-  
17                  mained unlawfully in the United  
18                  States beyond such periods; and

19                  “(bb) the number of nation-  
20                  als of that country who were ad-  
21                  mitted to the United States  
22                  under this section or on the basis  
23                  of a nonimmigrant visa under  
24                  section 101(a)(15)(B) whose pe-

1                   riods of authorized stay ended  
2                   during that fiscal year.

3                   “(III) COMPUTATION OF OVER-  
4                   STAY RATE.—In determining the over-  
5                   stay rate for a country, the Secretary  
6                   of Homeland Security may utilize in-  
7                   formation from any available data-  
8                   bases to ensure the accuracy of such  
9                   rate.

10                  “(iii) PROGRAM COUNTRY.—The term  
11                  ‘program country’ means a country des-  
12                  ignated as a program country under sub-  
13                  paragraph (A).”.

14                  (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
15                  Section 217 of the Immigration and Nationality Act (8  
16                  U.S.C. 1187), as amended by subsection (a), is further  
17                  amended—

18                   (1) by striking “Attorney General” each place  
19                   the term appears (except in subsection (c)(11)(B))  
20                   and inserting “Secretary of Homeland Security”;  
21                   and

22                   (2) in subsection (c)—

23                   (A) in paragraph (2)(C)(iii), by striking  
24                   “Committee on the Judiciary and the Com-  
25                   mittee on International Relations of the House

1 of Representatives and the Committee on the  
2 Judiciary and the Committee on Foreign Rela-  
3 tions of the Senate” and inserting “appropriate  
4 congressional committees”;

5 (B) in paragraph (5)(A)(i)(III), by striking  
6 “Committee on the Judiciary, the Committee on  
7 Foreign Affairs, and the Committee on Home-  
8 land Security, of the House of Representatives  
9 and the Committee on the Judiciary, the Com-  
10 mittee on Foreign Relations, and the Com-  
11 mittee on Homeland Security and Govern-  
12 mental Affairs of the Senate” and inserting  
13 “appropriate congressional committees”; and

14 (C) in paragraph (7), by striking subpara-  
15 graph (E).

16 (c) DESIGNATION OF PROGRAM COUNTRIES BASED  
17 ON OVERSTAY RATES.—

18 (1) IN GENERAL.—Section 217(c)(2)(A) of the  
19 Immigration and Nationality Act (8 U.S.C.  
20 1187(c)(2)(A)) is amended to read as follows:

21 “(A) GENERAL NUMERICAL LIMITA-  
22 TIONS.—

23 “(i) LOW NONIMMIGRANT VISA RE-  
24 FUSAL RATE.—The percentage of nationals  
25 of that country refused nonimmigrant visas

1 under section 101(a)(15)(B) during the  
2 previous full fiscal year was not more than  
3 3 percent of the total number of nationals  
4 of that country who were granted or re-  
5 fused nonimmigrant visas under such sec-  
6 tion during such year.

7 “(ii) LOW NONIMMIGRANT OVERSTAY  
8 RATE.—The overstay rate for that country  
9 was not more than 3 percent during the  
10 previous fiscal year.”.

11 (2) QUALIFICATION CRITERIA.—Section  
12 217(c)(3) of such Act (8 U.S.C. 1187(c)(3)) is  
13 amended to read as follows:

14 “(3) QUALIFICATION CRITERIA.—After designa-  
15 tion as a program country under section 217(c)(2),  
16 a country may not continue to be designated as a  
17 program country unless the Secretary of Homeland  
18 Security, in consultation with the Secretary of State,  
19 determines, pursuant to the requirements under  
20 paragraph (5), that the designation will be contin-  
21 ued.”.

22 (3) INITIAL PERIOD.—Section 217(c) of such  
23 Act (8 U.S.C. 1187(c)), as amended by this section,  
24 is further amended by striking paragraph (4).

1           (4) CONTINUING DESIGNATION.—Section  
2 217(c)(5)(A)(i)(II) of such Act (8 U.S.C.  
3 1187(c)(5)(A)(i)(II)) is amended to read as follows:

4                           “(II) shall determine,  
5                           based upon the results of an  
6                           evaluation under subclause  
7                           (I), whether any such des-  
8                           ignation under subsection  
9                           (d) or (f), or probation  
10                          under subsection (f), ought  
11                          to be continued or termi-  
12                          nated;”.

13           (5) COMPUTATION OF VISA REFUSAL RATES;  
14 JUDICIAL REVIEW.—Section 217(c)(6) of such Act  
15 (8 U.S.C. 1187(c)(6)) is amended to read as follows:

16                       “(6) COMPUTATION OF VISA REFUSAL RATES  
17 AND JUDICIAL REVIEW.—

18                       “(A) COMPUTATION OF VISA REFUSAL  
19 RATES.—For purposes of determining the eligi-  
20 bility of a country to be designated as a pro-  
21 gram country, the calculation of visa refusal  
22 rates shall not include any visa refusals which  
23 incorporate any procedures based on, or are  
24 otherwise based on, race, sex, or disability, un-



1 less otherwise specifically authorized by law or  
2 regulation.

3 “(B) JUDICIAL REVIEW.—No court shall  
4 have jurisdiction under this section to review  
5 any visa refusal, the Secretary of State’s com-  
6 putation of a visa refusal rate, the Secretary of  
7 Homeland Security’s computation of an over-  
8 stay rate, or the designation or nondesignation  
9 of a country as a program country.”.

10 (6) VISA WAIVER INFORMATION.—Section  
11 217(c)(7) of such Act (8 U.S.C. 1187(c)(7)) is  
12 amended—

13 (A) by striking subparagraphs (B), (C),  
14 and (D); and

15 (B) by striking “WAIVER INFORMATION.—  
16 ” and all that follows through “In refusing”  
17 and inserting “WAIVER INFORMATION.—In re-  
18 fusing”.

19 (7) WAIVER AUTHORITY.—Section 217(c)(8) of  
20 such Act (8 U.S.C. 1187(c)(8)) is amended to read  
21 as follows:

22 “(8) WAIVER AUTHORITY.—The Secretary of  
23 Homeland Security, in consultation with the Sec-  
24 retary of State, may waive the application of para-  
25 graph (2)(A)(i) for a country if—

1           “(A) the country meets all other require-  
2           ments of paragraph (2);

3           “(B) the Secretary of Homeland Security  
4           determines that the totality of the country’s se-  
5           curity risk mitigation measures provide assur-  
6           ance that the country’s participation in the pro-  
7           gram would not compromise the law enforce-  
8           ment, security interests, or enforcement of the  
9           immigration laws of the United States;

10          “(C) there has been a general downward  
11          trend in the percentage of nationals of the  
12          country refused nonimmigrant visas under sec-  
13          tion 101(a)(15)(B);

14          “(D) the country consistently cooperated  
15          with the Government of the United States on  
16          counterterrorism initiatives, information shar-  
17          ing, preventing terrorist travel, and extradition  
18          to the United States of individuals (including  
19          the country’s own nationals) who commit  
20          crimes that violate United States law before the  
21          date of its designation as a program country,  
22          and the Secretary of Homeland Security and  
23          the Secretary of State assess that such coopera-  
24          tion is likely to continue; and

1           “(E) the percentage of nationals of the  
2 country refused a nonimmigrant visa under sec-  
3 tion 101(a)(15)(B) during the previous full fis-  
4 cal year was not more than 10 percent of the  
5 total number of nationals of that country who  
6 were granted or refused such nonimmigrant  
7 visas.”.

8           (d) TERMINATION OF DESIGNATION; PROBATION.—  
9 Section 217(f) of the Immigration and Nationality Act (8  
10 U.S.C. 1187(f)) is amended to read as follows:

11           “(f) TERMINATION OF DESIGNATION; PROBATION.—

12           “(1) DEFINITIONS.—In this subsection:

13           “(A) PROBATIONARY PERIOD.—The term  
14 ‘probationary period’ means the fiscal year in  
15 which a probationary country is placed in pro-  
16 bationary status under this subsection.

17           “(B) PROGRAM COUNTRY.—The term ‘pro-  
18 gram country’ has the meaning given that term  
19 in subsection (c)(1)(B).

20           “(2) DETERMINATION, NOTICE, AND INITIAL  
21 PROBATIONARY PERIOD.—

22           “(A) DETERMINATION OF PROBATIONARY  
23 STATUS AND NOTICE OF NONCOMPLIANCE.—As  
24 part of each program country’s periodic evalua-  
25 tion required by subsection (c)(5)(A), the Sec-

1           retary of Homeland Security shall determine  
2           whether a program country is in compliance  
3           with the program requirements under subpara-  
4           graphs (A)(ii) through (F) of subsection (c)(2).

5           “(B) INITIAL PROBATIONARY PERIOD.—If  
6           the Secretary of Homeland Security determines  
7           that a program country is not in compliance  
8           with the program requirements under subpara-  
9           graphs (A)(ii) through (F) of subsection (c)(2),  
10          the Secretary of Homeland Security shall place  
11          the program country in probationary status for  
12          the fiscal year following the fiscal year in which  
13          the periodic evaluation is completed.

14          “(3) ACTIONS AT THE END OF THE INITIAL  
15          PROBATIONARY PERIOD.—At the end of the initial  
16          probationary period of a country under paragraph  
17          (2)(B), the Secretary of Homeland Security shall  
18          take one of the following actions:

19                 “(A) COMPLIANCE DURING INITIAL PROBA-  
20                 TIONARY PERIOD.—If the Secretary determines  
21                 that all instances of noncompliance with the  
22                 program requirements under subparagraphs  
23                 (A)(ii) through (F) of subsection (c)(2) that  
24                 were identified in the latest periodic evaluation  
25                 have been remedied by the end of the initial

1           probationary period, the Secretary shall end the  
2           country’s probationary period.

3           “(B) NONCOMPLIANCE DURING INITIAL  
4           PROBATIONARY PERIOD.—If the Secretary de-  
5           termines that any instance of noncompliance  
6           with the program requirements under subpara-  
7           graphs (A)(ii) through (F) of subsection (c)(2)  
8           that were identified in the latest periodic eval-  
9           uation has not been remedied by the end of the  
10          initial probationary period—

11           “(i) the Secretary may terminate the  
12          country’s participation in the program; or

13           “(ii) on an annual basis, the Secretary  
14          may continue the country’s probationary  
15          status if the Secretary, in consultation  
16          with the Secretary of State, determines  
17          that the country’s continued participation  
18          in the program is in the national interest  
19          of the United States.

20          “(4) ACTIONS AT THE END OF ADDITIONAL  
21          PROBATIONARY PERIODS.—At the end of all proba-  
22          tionary periods granted to a country pursuant to  
23          paragraph (3)(B)(ii), the Secretary shall take one of  
24          the following actions:

1           “(A) COMPLIANCE DURING ADDITIONAL  
2 PERIOD.—The Secretary shall end the country’s  
3 probationary status if the Secretary determines  
4 during the latest periodic evaluation required by  
5 subsection (c)(5)(A) that the country is in com-  
6 pliance with the program requirements under  
7 subparagraphs (A)(ii) through (F) of subsection  
8 (c)(2).

9           “(B) NONCOMPLIANCE DURING ADDI-  
10 TIONAL PERIODS.—The Secretary shall termi-  
11 nate the country’s participation in the program  
12 if the Secretary determines during the latest  
13 periodic evaluation required by subsection  
14 (c)(5)(A) that the program country continues to  
15 be in noncompliance with the program require-  
16 ments under subparagraphs (A)(ii) through (F)  
17 of subsection (c)(2).

18           “(5) EFFECTIVE DATE.—The termination of a  
19 country’s participation in the program under para-  
20 graph (3)(B) or (4)(B) shall take effect on the first  
21 day of the first fiscal year following the fiscal year  
22 in which the Secretary determines that such partici-  
23 pation shall be terminated. Until such date, nation-  
24 als of the country shall remain eligible for a waiver  
25 under subsection (a).

1           “(6) TREATMENT OF NATIONALS AFTER TERMI-  
2           NATION.—For purposes of this subsection and sub-  
3           section (d)—

4                   “(A) nationals of a country whose designa-  
5                   tion is terminated under paragraph (3) or (4)  
6                   shall remain eligible for a waiver under sub-  
7                   section (a) until the effective date of such ter-  
8                   mination; and

9                   “(B) a waiver under this section that is  
10                  provided to such a national for a period de-  
11                  scribed in subsection (a)(1) shall not, by such  
12                  termination, be deemed to have been rescinded  
13                  or otherwise rendered invalid, if the waiver is  
14                  granted prior to such termination.

15           “(7) CONSULTATIVE ROLE OF THE SECRETARY  
16           OF STATE.—In this subsection, references to sub-  
17           paragraphs (A)(ii) through (F) of subsection (c)(2)  
18           and subsection (c)(5)(A) carry with them the con-  
19           sultative role of the Secretary of State as provided  
20           in those provisions.”.

21           (e) REVIEW OF OVERSTAY TRACKING METHOD-  
22           OLOGY.—Not later than 180 days after the date of the  
23           enactment of this Act, the Comptroller General of the  
24           United States shall conduct a review of the methods used  
25           by the Secretary of Homeland Security—

1           (1) to track aliens entering and exiting the  
2           United States; and

3           (2) to detect any such alien who stays longer  
4           than such alien's period of authorized admission.

5           (f) EVALUATION OF ELECTRONIC SYSTEM FOR  
6 TRAVEL AUTHORIZATION.—Not later than 90 days after  
7 the date of the enactment of this Act, the Secretary of  
8 Homeland Security shall submit to Congress—

9           (1) an evaluation of the security risks of aliens  
10          who enter the United States without an approved  
11          Electronic System for Travel Authorization  
12          verification; and

13          (2) a description of any improvements needed  
14          to minimize the number of aliens who enter the  
15          United States without the verification described in  
16          paragraph (1).

17          (g) SENSE OF CONGRESS ON PRIORITY FOR REVIEW  
18 OF PROGRAM COUNTRIES.—It is the sense of Congress  
19 that the Secretary of Homeland Security, in conducting  
20 evaluations of countries participating in the visa waiver  
21 program under section 217 of the Immigration and Na-  
22 tionality Act (8 U.S.C. 1187), as amended by this Act,  
23 should prioritize the reviews of countries in which cir-



1. circumstances indicate that such a review is necessary or de-
2. sirable.

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