

INTERNATIONAL RELATIONS AND SECURITY NETWORK

OPEN DOORS AND SECURE BORDERS: US STUDENT VISA POLICY IN THE POST 9/11 WORLD



INTERNATIONAL RELATIONS AND SECURITY NETWORK

OPEN DOORS AND SECURE BORDERS: US STUDENT VISA POLICY IN THE POST 9/11 WORLD

Dr. Allan E. Goodman

President and CEO

Institute of International Education





TABLE OF CONTENTS

Historical Note	2
Before 9/11.....	3
Congress Acts	4
Higher Education and The State Department Respond	6
What Could Have Been Done Differently?.....	8
Endnotes	9
About the Author.....	11

On 25 September 2000, the US consulate in Jeddah, Saudi Arabia, received a non-immigrant visa application from Hani Hanjour. It listed his occupation as “student,” indicated that the purpose of his trip to the US was “study,” and that “my father and my [sic]” would furnish financial support. The adjudicating consular official approved Hanjour for an F-1 visa, valid for 12 months and affording multiple entry/exit to the United States. A few weeks earlier, Hanjour’s request for a three-year visa for the purpose of “visit” and on which a consular official noted “going to flight training school wants to change status when he finds a school” was refused. In 1997, Hanjour did receive a 12 month visa to study English and the consular official at the time noted “wants to go to flight school.”

The consulate made a mistake when the visa was issued to Hanjour by giving him a tourist/business visa, but this was corrected by the Immigration and Naturalization Service in December 2000 when he arrived at the Greater Cincinnati-Northern Kentucky International Airport.¹

On the morning of 11 September 2001, Hanjour was aboard American Airlines Flight 77 and, after helping to hijack the aircraft, flew it into the Pentagon.

All of the 19 persons known to be responsible for the attacks on 9/11 entered the US on valid visas. Eighteen of the hijackers received some 21 visas between them for visits for business or pleasure; “none of these ... applications had been completely filled out”² and only two may have been interviewed. A “visa express” program (allowing applicants to submit their forms to designated travel agencies) was in effect for Saudi nationals and less than 3 per cent of all applicants in the kingdom were subject to being interviewed before 9/11. In March 2002, the Immigration and Naturalization Service mailed to officials at the Huffman Aviation School a notice that Mohamed Atta and Marwan Alshehah, the hijackers and dead pilots of the planes that crashed into the World Trade Center towers, had been granted student visas to permit their “continued attendance at this school”.

On 27 September 2001, Senator Dianne Feinstein (D-CA) called a press conference and declared that: “Today, there is little scrutiny given to those who claim to be foreign students seeking to study in the United States. In fact, the foreign student visa program is one of the most unregulated and exploited visa categories. I believe that we need a temporary six month moratorium on the student

visa program to give the INS time to remedy the many problems in the system.”³

The focus of this case study is on policymaking in the aftermath of terrorist attacks. It involves one of the most complex and politicized areas facing US officials as well as the higher education community. The aim of the study is to facilitate a discussion not only of what was done, but what could have been done differently with a view of distilling any lessons that – in the face of continuing challenges – would improve the present policies and procedures of the United States government regarding the issuance of non-immigrant student visas.

HISTORICAL NOTE

The Institute of International Education has been involved in the debate over student visa policy since its founding in 1919. Congress enacted the Emergency Quota Act of 1921 to stem the flow of immigrants through quotas (set at 3 per cent of the number of foreign-born persons of the same nationality as recorded in the 1910 census) and lowered the limits (to 2 per cent based on the 1890 census) with the National Origins Act of 1924. Neither of the laws made provisions to permit persons to enter the United States who intended to study rather than seek permanent settlement. In order to get in, a student or scholar had to be included under the quota for their country. But since these were quite restrictive and the demand was high, “some foreign students were detained at Ellis Island for deportation because their quota from their countries had been exceeded.”⁴

Dr. Stephen P. Duggan, the then-president of the Institute, brought the matter to the attention of both the Commissioner General of Immigration in Washington and the Commissioner in charge of Ellis Island and reached “an understanding... whereby a foreign student complying in all other respects with the immigration law will be admitted... even though the quota of the country from which the student comes has been exceeded.”⁴ The students had to post a US\$500 bond to assure that they would leave the US when their studies were completed and were obliged to provide “a statement from the college or university... in which he is studying, certifying that he has completed the year’s work and that he intends to continue his studies in that institution in the next year”⁵ and submit this to the immigration authorities. The students governed by this arrangement were technically paroled into the care of the Institute which accepted responsibility “for keeping track of such students so that the immigration official may be put into communication with them at any time.”⁶ Duggan also found that the Institute needed to play a continuing role in helping immigration officials who were not skilled in reading academic correspondence and transcripts from foreign countries to determine who were bona fide students.

Some 6,500 students immediately took advantage of these new arrangements and by the end of the 1920s, nearly 10,000 foreign students were enrolled in the colleges and universities of the United States.⁷

BEFORE 9/11

In the 2001-2002 academic year, over 580,000 international students on F- (academic student) and J- (officially-sponsored exchange visitors) visas were enrolled in approximately 3,000 accredited US colleges and universities. They constituted then and now only a small fraction of the more than 500 million persons who enter the United States each year. Of that number, approximately 35 million cross US borders in possession of a visa, which allows the person to whom it was issued to travel to a US port of entry. Actual entry into United States' territory is granted (or not) by the immigration officer at the border.

Since 1982, and because so many Iranian students were believed to have been involved in the seizure of the US Embassy in Teheran and the taking of hundreds of US diplomats hostage, the INS required host colleges and universities to monitor international students and report "not more frequently than once a term or session" to Washington. Starting with 1983, INS regulations required colleges and universities to collect data on international students' place and date of birth, citizenship, street address, academic status, date of commencement of studies, degree program and field of study, practical training (start and end dates), termination date (if applicable) and reason, I-20 form and application, and the number of credits completed each year.⁸ The Service was also to have sent to each school a list of all students in their records said to be attending the school so that the INS and host campus lists could be compared and any discrepancies reported to the INS. This was done for several years but stopped by 1988, when the Service asked that all records be kept on campus and be available for inspection as needed. As one official put it in an interview, "we had no place to store all that paper and, in any case, no one who could actually read it all." INS records also listed some 72,000 for-profit "schools" teaching flight training, hospitality, golf and tennis, beautician education, and English language training that had been given the authority to issue student visa forms.

For nearly a decade, Congress had been trying to mandate the creation of an electronic tracking system to monitor the activities of international students. The bombing of the World Trade Center in 1993 – in which one of the terrorists had entered the US on a student visa although they never

enrolled in a school⁹ – led to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). That act (in Section 641) called for the US Attorney General to "develop a program to collect information from universities and exchange visitor programs," including data on the "identification and address of the alien, the visa status..., the current academic status of alien... [and] information regarding the alien's being convicted of a crime that leads to disciplinary action." It also called for the "information... to be collected electronically" and provided that "the Attorney General may require institutions to collect fees from affected aliens and forward the fees to the Attorney General." The system to be developed, the Coordinated Interagency Partnership Regulating International Students, became known as CIPRIS and was opposed by many groups in higher education. As the Executive Committee and Board of NAFSA: Association of International Educators, argued on behalf of itself and other organizations, the implementation of CIPRIS would send "an unwelcoming message to students and exchange visitors by singling them out for monitoring," require "costly overhauls of university information systems," and deter many applicants because of the cumbersome process through which an international student would have to pay a US\$95 fee before even applying for a visa.

9/11 changed attitudes toward many things.

On 20 September 2001, NAFSA issued a statement noting that while the organization "has been a leading opponent of the national foreign student tracking system known as CIPRIS... the time for debate... is over, and the time to devise a coordinated response to terrorism has arrived." The statement went on to say that: "Accordingly, we will no longer oppose the foreign student tracking system that is being implemented by the INS."

CONGRESS ACTS

Within weeks of the 9/11 attacks, Congress passed two sweeping laws that tightened visa policies and urged the creation of procedures to close the gaps exploited by the 9/11 terrorists. Known as the “Patriot Act” or “USA Patriot Act” (because the word “patriot” could be made by using the first letters of each word in the law’s official title), the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 became law on 26 October 2000. It permits the government to deny admission and visas to the US to any person (and their spouse and child) who used their “position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization [Section 411]. The act also called for “full implementation and expansion of foreign student visa monitoring program” [section 416]; the Student and Exchange Visitor Information System known as SEVIS had to become operational by 30 January 2003. The system required the schools to collect much of the same data on international students “that institutions have been required to collect and maintain for F/M and J non-immigrants under existing law and regulation for some time,”¹⁰ adding port and date of entry data.

Congress passed the Enhanced Border Security and Visa Entry Reform Act of 2002 in May of that year. This law called for much more extensive review of visa applicants by the Attorney General and Secretary of State and much greater monitoring of student activities once admitted into the US. The law also required the student and the school to report timely and detailed data on their residence, progress toward an academic degree, and any change in their status.

A series of other regulatory measures also complicated the visa application process. At the start of 2002, the State Department began identifying applicants who appeared to be “high risk” on departmental lists, and forwarded their names to the FBI to be compared (manually at first) against the files maintained by that agency and other databases. Under this procedure (known as the “Visa Condor” program), if an applicant’s name registered a “hit” in any of these systems, the consular official had to file a request for an additional security advisory opinion. The net effect was to delay any decision for one to three months or more. If the applicant were proposing to study or conduct research in certain scientific fields (identified on

a “Technology Alert List” that was established during the Cold War and considerably expanded in August 2002 but not made public), further vetting and approvals were required. When applicants were also likely to be exposed to technologies US officials and agencies regarded as “sensitive” under the “Visa Mantis” program, applicants were notified that their documentation would have to undergo further review by multiple intelligence and national security agencies and that, if eventually granted, the visa would have to be reviewed and renewed annually. While the number of visa applications subjected to this review was small (less than 3 per cent, according to State Department officials),¹¹ the perception was that large numbers of applicants were affected and delayed. In February 2002, the State Department also began requiring all male visa applicants between the ages of 16 and 45 to fill out a special form asking for detailed information about military service, experience with nuclear, chemical, and biological materials, participation in armed conflicts, and knowledge or training received dealing with firearms or explosives.

August 2002 saw the introduction of “special registration” procedures, including the taking of fingerprints and a photograph, for certain non-immigrants. The Attorney General was able to set the criteria for who should be so treated, but was not obliged to make its terms public.¹² While this “National Security Entry-Exit Registration System” (NSEERS) was suspended in December 2003, a new US-VISIT program was created to register (and fingerprint and photograph) all incoming visitors.

The new laws and evolving procedures had direct impact on issues that were sensitive within the higher education community. The first concerned the right of privacy. Federal officials were now able to have access to students’ records and other personal information that previously had been protected by the Family Education Records and Privacy Act (which the Patriot Act amended). Such access no longer depended on the student giving consent, nor was it subject to judicial review. The Patriot Act also gave federal officials the right to wiretap, seize digital and telephone communications, and monitor a student’s computer if there were a suspicion that the student or their equipment were being used to support or commit terrorism.

Second, the new procedures appeared to many outside the United States as cumbersome at best

and potentially hostile toward certain groups of students. By the summer of 2003, the Department of State required virtually all applicants for nonimmigrant visas between the ages of 14 and 79 to appear before a consular officer for an interview.¹³ For many, this was perceived as a considerable hardship, since travel to the interview was expensive and the limited number of consular officials at most posts meant that one might have to wait for many weeks or months just to get an appointment. The interview itself was normally limited to five to six minutes and involved asking such questions as “Why are you going to the United States” and “What are you planning to do there?” The interviews were designed as much to gauge body language and eye contact for evasiveness as they were for content. The process made students feel uncomfortable. And because they were so short – given how long it took to get an appointment and how costly travel to an embassy or consulate proved to be for many – growing numbers of students (and their professors) were suspicious about the reason for the interview in the first place.

The INS was also required to re-certify which schools could legally issue the paperwork that students needed as part of their visa application. Before 9/11, nearly 80,000 schools – ranging from accredited colleges and universities to proprietary and technical schools offering flight training, sports instruction, and beauty and hospitality courses – were able to do this. In the wake of 9/11, more than half were found by government investigators to no longer exist or to have been post office boxes and a way for persons to enter the US and disappear into the illegal economy as day laborers, waiters, beauticians, and terrorists. The field investigation units of the INS were severely understaffed to carry out their investigations in any meaningful way, adding further delay in some school’s ability to issue appropriate paperwork.

Once admitted to a school, and especially after the student arrived in the United States, the new laws require the host campus or institutions to computerize their foreign student records and report to the government via SEVIS on dozens of events in the students’ careers (such as change of residence or major field of study, change of status from full to part-time or withdrawal). SEVIS compliance was an unfunded federal mandate

and plagued with difficulties from the outset. The INS was unable to tell academic institutions for many months exactly how the interface with the government’s computers would work and, once operational, encountered numerous technical problems.

All of these measures – while defensible in the fight against terrorism – caused most education officials to predict that fewer international students would want to come to America and that the nation would begin to lose its market share generally and access to highly talented students in the fields of science and engineering in particular.

HIGHER EDUCATION AND THE STATE DEPARTMENT RESPOND

International students accounted for approximately 3 per cent of total enrollment in US colleges and universities in the 2001-2002 academic year. Half of all international students enrolled at just 125 schools; over a thousand colleges in the US at the time had fewer than 50 international students. In principle, all American higher education has a stake in keeping our academic doors open and many schools – regardless of actual foreign student enrollment numbers – point to the importance of an international outlook and diversity in student body in their admissions and recruitment literature. Research universities are also highly dependent on the flow of talent from abroad in graduate programs in science and engineering; since fewer and fewer US citizens are majoring in these fields, the graduate student from abroad is one of the prime ways that enable many departments to teach introductory courses and conduct advanced research. And since over two-thirds of all international students pay their own way, many campuses find that international recruitment contributes substantially to revenues. On a national basis, the tuition, fees, and living costs that international students pay total close to US\$13 billion per year. This has made education the fifth largest export of services for some time, according to the Department of Commerce.

In the weeks after 9/11, President Bush and then-Secretary State Colin Powell reached out to more than 100 world leaders to join them in the fight against terrorism. More than half, it turned out, had studied in the United States. Like others with a stake in international education, the State Department was affected by the changing legal environment and policy debate in the wake of 9/11. The creation of a new Department of Homeland Security (DHS) in March 2003, ended a major debate (which State lost) over which department would control the visa process.

DHS – as the newest and largest civilian government department – faced many start-up challenges. The most important, of course, was preventing another act of terrorism inside the United States. This involved overhauling the nation's air transportation security system, developing ways to improve security for other forms of mass transport, coordinating with hundreds of federal and state

intelligence and police organizations, creating an effective system of national alerts, and helping America cope with a rash of attacks involving the use of anthrax and other biological warfare agents. Assuring the continuing flow of international students into the US was, as Secretary Tom Ridge observed in a speech to the Association of American Universities, important because “we know that your foreign students are indispensable to America's continued leadership in science and medicine and in technology.”¹⁴ But compared to the other challenges facing the DHS, fixing the visa system, speeding up the decision process, and improving customer relations at ports of entry did not receive high priority.

Consequently, the academic community kept waiting for the proverbial shoe to drop and for there to be a substantial decline in international students. By the fall of 2002, many campuses reported that students from abroad were experiencing considerable delays in getting visa interviews, decisions, and the actual documents themselves. Current students who had to return home for family and other personal business, or a simple vacation, were reporting difficulty in getting approval to re-enter the US.¹⁵ Some 56,000 fewer students took the TOEFL examination in 2003, moreover, and this amounted to an 8 per cent drop over the number taking the exam in 2000. The Council of Graduate Schools, which represents 450 of the nation's graduate schools and 95 per cent of all PhD degree-granting institutions, surveyed their members in the spring of 2004 to gauge trends in applications and reported a drop of 28 per cent among the leading research universities. Higher education associations were alarmed at these indicators and developments, and issued a series of statements (such as those reproduced in the Appendix) calling for improvements in the way visas were processed and international students and scholars treated by consular officials.

The State Department also expressed concern and through the Secretary indicated that, “we are working hard to further reduce delays and improve service.” Powell went on to explain that, “when a foreign student goes elsewhere to school we lose not only the student, but his entire family,

including siblings, who might have followed in their brother's or sister's footsteps. When scientists hold conferences in other countries, we lose their brainpower for our institutions."¹⁶ The officials in charge of the US consular service noted a few months later, in a cable to all posts that the Department did not "want to lose even one qualified student."¹⁷

On 15 November 2004 at the National Press Club in Washington, the Institute of International Education released its annual "Open Doors" census for the 2003-2004 academic year. The press statement began as follows: "International Student Enrollments Declined by 2.4 per cent in 2003-2004." The year marked the first time since 1971-1972 that the number of international students enrolled in US higher educational institutions had decreased. While the actual decline was small, many higher education leaders feared it was the beginning of a trend that would have profound consequences not only for their institutions, but also for the future ability of the US to maintain its scientific edge and leadership as a knowledge-based economy and society.

WHAT COULD HAVE BEEN DONE DIFFERENTLY?

Achieving secure borders and maintaining open academic doors became considerably more difficult in the wake of 9/11 for all countries. But as the world's leading and most popular educational destination, attention focused on the measures undertaken by the US and the noticeable difficulty that prospective students from every type of society encountered. Ameliorating these difficulties was not a top priority as the country turned to fight a war against terror, nor was it the mission or responsibility of any one government agency. DHS's mandate (not to mention the training of many of its officials and border inspectors) did not include diplomacy, nor did its primary mission involve assuring that international students would continue to select the US as the destination of choice for higher education. The principal actors with a stake and voice in open doors were the Department of State and the higher education community.

- How should each have responded in the immediate aftermath of 9/11?
- What could each have done better to explain the policy changes and mandates embodied in the Patriot and Border Security Acts?
- In what ways could a public diplomacy campaign that encompassed both secure borders and open doors have been conducted?
- And is there a better overall way to achieve border security in the post-9/11 era?


There are many vantage points from which to discuss these questions. The appendices to this case study provide examples of how this was done by key officials and organizations involved in the process of creating the post-9/11 policy and political environment. Each had to balance the immediate need for enhanced security with the practical reality that the nation's immigration and visa issuance system were riddled problems, compounded by gaps in data and shortages of personnel. Knowing who posed what kind of threat was also difficult. Even in regions and countries where US policy toward Iraq (and many other conflicts) was not popular, few today would turn down the chance to study and perhaps even stay in the US. But one of the most profound paradoxes of 9/11, as the Nobel Laureate V. S. Naipaul's told a New York audience

that November 2001, was that the US faced "a war declared on you by people who passionately want one thing: a green card."¹⁸ Potential warriors almost certainly continue to cross America's borders.

In the immediate aftermath of 9/11, the concern that student visa denials and delays would reduce the flow of the world's best and brightest students to US colleges and universities had to be weighed against the worry that another attack was being planned by persons who would find their way onto US soil and might just do so in possession of a valid student visa. It still does.

ENDNOTES

- ¹ "Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool." US General Accounting Office Report, GAO-03-132NI, 21 October 2002: page 46.
- ² *Ibid.*, page 18.
- ³ "Senator Feinstein Urges Major Changes in US Student Visa Program." Senator Feinstein Official Homepage, Office of Senator Dianne Feinstein, 2 September 2005. <<http://feinstein.senate.gov/releases01/stvisas1.htm>>.
- ⁴ Third Annual Report of the Director, *Institute of International Education*, New York, 1922, page 7.
- ⁵ Third Annual Report of the Director, *Institute of International Education*, New York: 1922, page 8.
- ⁶ Fourth Annual Report of the Director, *Institute of International Education*, New York: 1923, page 3.
- ⁷ Tenth Annual Report of the Director, *Institute of International Education*, New York: 1929, page 18.
- ⁸ 8 CFR 214.3(g); TITLE 8 OF CODE OF FEDERAL REGULATIONS (8 CFR)/8 CFR PART 214 – nonimmigrant classes/Sec. 214.3 Approval of schools for enrollment of F and M nonimmigrants.
- ⁹ Williams, Dave. "1993 Bombing of the World Trade Center." *International Criminal Police Review*, 1998.
- ¹⁰ Immigration and Naturalization Service, Student and Exchange Visitor Program, *SEVIS-Smart*, Vol. 1, Issue 1, January 2002: page 3.
- ¹¹ US House of Representatives, Science Committee, "The Conflict Between Science and Security in Visa Policy: Status and Next Steps: Testimony before the Committee on Science," 108th Congress, 2nd session, 25 February 2004, page 1.
- ¹² 67 *Federal Register* 52584, 52592. 12 August 2002.
- ¹³ 68 *Federal Register* 40,127. 7 July 2003.
- ¹⁴ Department of Homeland Security, Office of the Press Secretary, Remarks by Secretary Ridge to the Association of American Universities, 14 April 2003, page 4.
- ¹⁵ Kate Zernike and Christopher Drew. "Student Visas; Efforts to Track Foreign Students Are Said to Lag." *The New York Times*, 28 January 2002.
Faiza Akhtar. "Foreign Students Are Feeling Less Welcomed." *The New York Times*, 7 April 2002.
Christopher Marquis. "INS Proposes New Limits on the Length of Visas." *The New York Times*, 9 April 2002.
The Associated Press. "Report Says System for Tracking Foreign Students Is Inadequate." *The New York Times*, 20 May 2002.
Raymond Bonner. "New Policy Delays Visas for Specified Muslim Men." *The New York Times*, 10 September 2002.
Michael Arnone. "As Deadline Nears for New Foreign-Student Monitoring System, Colleges Remain Uneasy." *The Chronicle of Higher Education*, 28 January 2003.
Michael Arnone. "Problems Continue to Plague Database that Tracks Foreign Students." *The Chronicle of Higher Education*, 4 April 2003.
Victor Johnson. "The Perils of Homeland Security: When We Hinder Foreign Students and Scholars, We Endanger Our National Security." *The Chronicle of Higher Education*, 11 April 2003.
Burton Bollag. "Wanted: Foreign Students." *The Chronicle of Higher Education*, 8 October 2004.
Sylvia H. Kless. "We Threaten National Security by Discouraging the Best and Brightest Students from Abroad." *The Chronicle of Higher Education*, 8 October 2005



Robin Wilson. "Settling for Less." *The Chronicle of Higher Education*, 8 October 2004.

Paul Mooney and Shailaja Neelakantan. "No Longer Dreaming of America." *The Chronicle of Higher Education*, 8 October 2004.

Kelly Field. "Fixing the Visa Quagmire." *The Chronicle of Higher Education*, 8 October 2004.

¹⁶ Colin L. Powell. "Secure Borders, Open Doors." *The Wall Street Journal*, 21 April 2004.

¹⁷ US Department of State Cable 261900, 4 December 2004.

¹⁸ Donadio Rachel. "The Irascible Prophet: V. S. Naipaul at Home." *New York Times Book Review*, 7 August 2005: page 8.

ABOUT THE AUTHOR



Dr. Goodman is the sixth President of IIE, the leading non-profit organization in the field of international educational exchange and development training. IIE administers the Fulbright program, sponsored by the US Department of State, and 200 other corporate, government, and privately-sponsored programs.

Previously, he was Executive Dean of the School of Foreign Service and Professor at Georgetown University. He is the author of books on international affairs published by Harvard, Princeton, and Yale University Presses and *Diversity in Governance*, published by the American Council on Education. Dr. Goodman also served as Presidential Briefing Coordinator for the Director of Central Intelligence and as Special Assistant to the Director of the National Foreign Assessment Center in the Carter Administration. He was the first American professor to lecture at the Foreign Affairs College of Beijing.

Dr. Goodman also helped create the first US academic exchange program with the Moscow Diplomatic Academy for the Association of Professional Schools of International Affairs and developed the diplomatic training program of the Foreign Ministry of Vietnam. Dr. Goodman has also served as a consultant to the Ford Foundation, the Woodrow Wilson National Fellowship Foundation, the United States Information Agency, and IBM. He is also a member of the Council on Foreign Relations. Dr. Goodman has a PhD in Government from Harvard, an MPA from the John F. Kennedy School of Government and a BSc from Northwestern University. He has been awarded honorary doctor of laws from Mount Ida and Ramapo Colleges and has received awards from Georgetown, Johns Hopkins, and Tufts universities.