

**International Students and Visiting Scholars: Trends, Barriers, and Implications
for American Universities and U.S. Foreign Policy**

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Before the
House Committee on Foreign Affairs
Subcommittee on International Organizations, Human Rights and Oversight and the

House Committee on Education and Labor
Subcommittee on Higher Education, Lifelong Learning and Competitiveness

Washington, DC
June 29, 2007

Thank you, Mr. Delahunt, Mr. Hinojosa, Mr. Rohrabacher and Mr. Keller for the opportunity to appear before the subcommittee to discuss trends in the admission of foreign students and scholars and the implications for the United States.

The latest statistics suggest that foreign student enrollment and exchange program participation remains very strong after a slight drop-off in recent years. However, the government agencies administering student and exchange visas still lack robust information and compliance systems that would help ensure program integrity, minimize the contribution to illegal immigration, and prevent the entry of terrorists, all of which are still severe problems. The exchange visitor programs represent an important form of public diplomacy that could play a key role in improving America's image worldwide and fostering greater international understanding of American values and institutions. They must be reoriented toward academic exchanges and public diplomacy goals rather than continue as de facto work programs that now serve mainly the narrow interests of program sponsors, decrease opportunities for American workers, and often spoil rather than enhance the view young foreign visitors have of America. The most appropriate way to increase the enrollment of foreign students, if that is determined to be a worthy national goal, is for U.S. educational institutions to improve their outreach and recruiting efforts and do their best to make sure that all foreign visitors have a positive experience. Policymakers should reject proposals that might increase visa issuances and/or foreign student enrollment but present security risks and might dampen opportunities for American students and workers.

Trends in Foreign Student Visa Issuances and Enrollment: Crisis or New Reality?

A decline in the number of student visas issued by the U.S. State Department since 2001 set off alarm bells in the higher education industry. Colleges, universities and their associations have since undertaken an intense lobbying and public relations campaign to draw attention to the declines and urge the government to take action. The industry quickly dropped its opposition to SEVIS (Student and Exchange Visitor Information System), the student and exchange visitor tracking system that had been proposed in the wake of the first World Trade Center attack in 1993 and enacted in 1996.¹

However, the schools and universities have strenuously objected to post 9/11 regulations that required those foreign visitors who are required to obtain a visa for travel to the United States (about half) to undergo a personal interview as part of the application process.² Interviews of prospective foreign visitors had become the exception rather than the rule in the years preceding the September 11 attacks, as part of the State Department's now-discredited "re-invention" to emphasize customer service in the visa process.³ It is widely accepted that lax visa policies greatly facilitated the entry of the 9/11 hijackers.⁴ One of them, Hani Hanjour, was issued a student visa, but never showed up for class. His initial visa applications were properly refused, but he was able to dupe (or wear down) the consular officer by returning with paperwork to attend an English language program.

The restoration of the interview requirement was not initially accompanied by increases in consular staff or new workload management techniques. Security-conscious embassies around the world soon became bogged down, and a process that had in many consulates been same-day service soon required advance planning by applicants, as well as higher fees. News media reported horror stories of students forced to arrive late for classes or stranded back home (though arguably this had as much to do with visa reciprocity issues than new security policies) and of respected scholars denied entry to the United States for lectures and conferences due to visa difficulties.

These stories were not made up – the State Department did change its policies to respond to a national disaster and new security threats, and the visa process did become more time-consuming and expensive. But it is hard to make the case that visa policies alone, or even in large share, are responsible for causing the drop in either student visa issuances or foreign student enrollment in U.S. educational institutions. Therefore, policymakers should tread carefully in considering changes to post-9/11 visa policies in response to entreaties from the higher education industry.

¹ Illegal Immigration Reform and Responsibility Act (IIRIRA) of 1996, Public Law 104-208. IIRIRA was later amended by another immigration-related law, the Enhanced Border Security and Visa Entry Reform Act (EBSVERA) of 2002, Public Law 107-173.

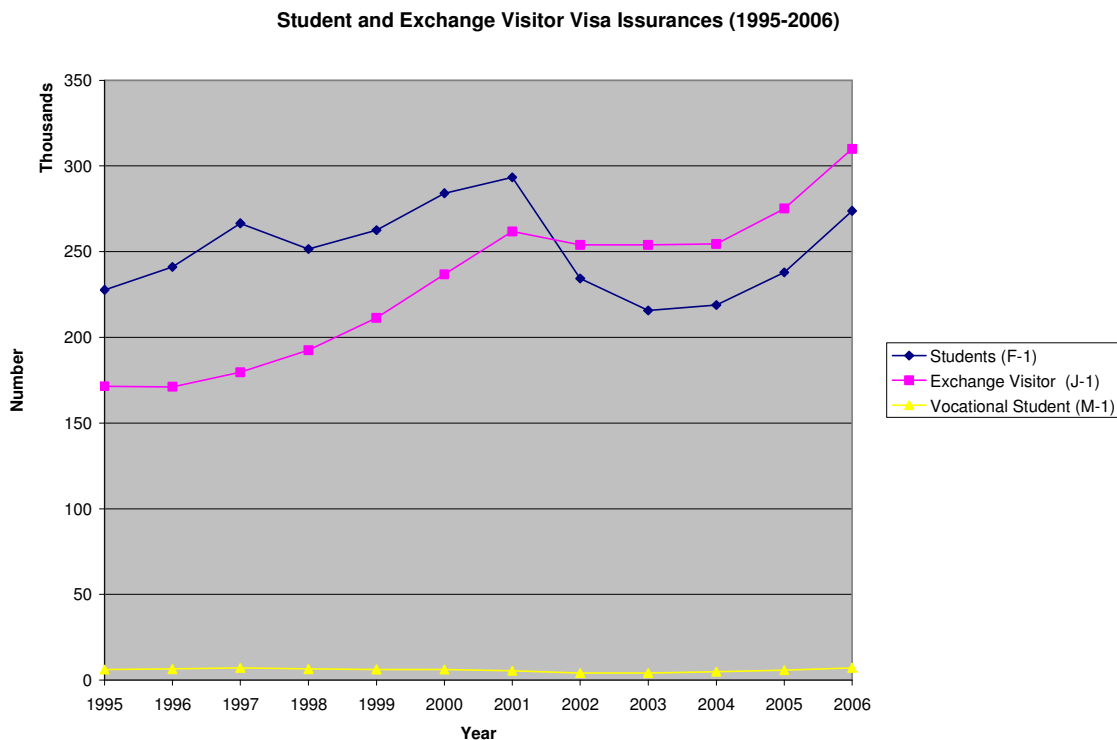
² See *Promoting Secure Borders and Open Doors: A National-Interest-Based Security Policy for Students and Scholars*, NAFSA: Association of International Educators, at <http://www.nafsa.org/File/visarecsoc1306.pdf>.

³ See *Shortcuts to Immigration: The 'Temporary' Visa System is Broken*, by Jessica M. Vaughan, Center for Immigration Studies, January, 2003, at <http://www.cis.org/articles/2003/back103.html>.

⁴ See *9/11 and Terrorist Travel: A Staff Report of the National Commission on Terrorist Attacks Upon the United States*, Hillsboro Press, 2004.

The data on foreign student visa issuances and enrollment tell a more nuanced story. At last count, the United States was hosting nearly one million active foreign students, exchange visitors and dependents.⁵ That is a huge number of visitors by any measure. Figure One shows foreign student and exchange visitor visa issuances since 1995. It is true that student visa issuances did drop noticeably (25%) from 2001 to 2004, before beginning to rebound the next year. However, the decrease in visa issuances registers as only a slight decline (2%) in foreign student enrollment in U.S. colleges and universities, as illustrated in Figure Two.

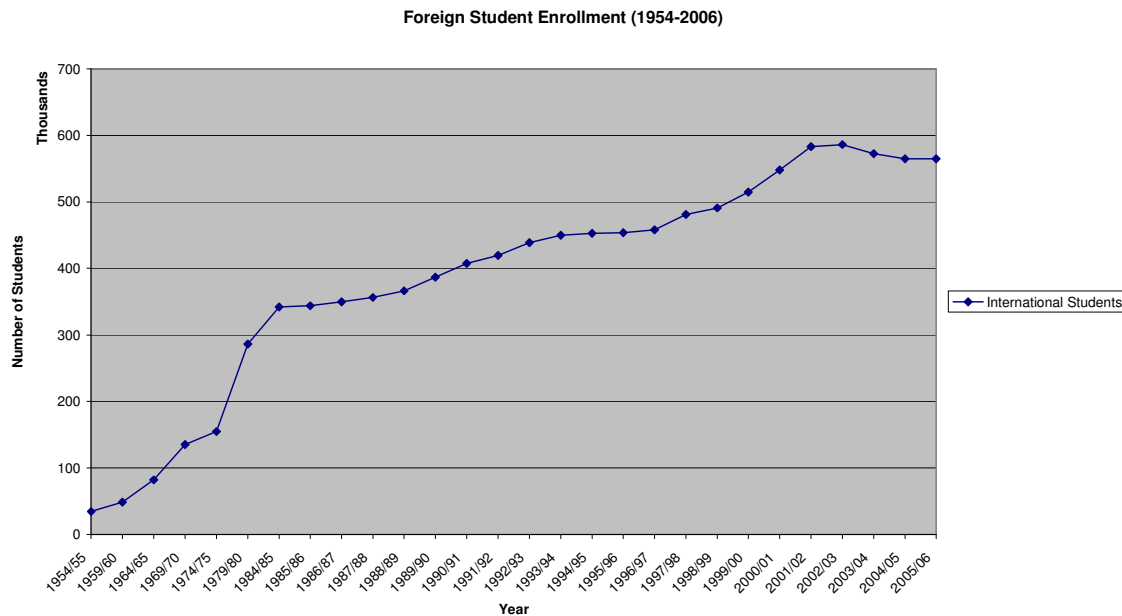
Figure 1



Source: U.S. Department of State, Visa Statistics web page, at http://www.travel.state.gov/visa/frvi/statistics/statistics_1476.html.

⁵ “SEVIS By the Numbers,” quarterly report of the Student and Exchange Visitor Program office of DHS, found at http://www.ice.gov/doclib/sevis/pdf/quarterly_report_mar07.pdf.

Figure 2



Source: Institute for International Education, *Open Doors 2006*, at <http://www.opendoors.iienetwork.org/>.

There are several possible explanations for the fact that a significant drop in issuances may not translate into a similar drop in enrollment. First, not all F-1 visa issuances are for college and university students. They also may be issued for elementary and secondary education or for short-term language programs, such as the one used to terrorist Hanjour. To my knowledge, there is no data available that would show if issuances dropped for any particular type of student, or across the board.

Second, in the process of reviewing all of the institutions permitted to host foreign students that was part of the SEVIS implementation over this same time period, immigration officials may have weeded out a number of sketchy institutions who sponsored marginal if not fraudulent foreign student applications that may have escaped the attention of consular officers. It is also likely that some consulates unilaterally increased scrutiny of student visa applications, and all non-immigrant visa applications in the wake of 9/11, resulting in better adjudications and perhaps more refusals.

In addition, as noted by numerous studies and reports, there are other factors besides U.S. visa policies that affect the level of foreign student enrollment, and these may have played a greater role in the fluctuations of the numbers. Some countries that have historically sent large numbers of foreign students to America, such as China and Korea, have greatly increased the quality and quantity of programs available at home.

Other countries, such as Australia, Canada, and the United Kingdom have challenged the U.S. market share and aggressively courted students from abroad.⁶

Also, conditions in sending countries seem to play a role. An examination of region by region student visa issuances reveals that issuances in regions such as Asia and Europe have rebounded to pre-2001 levels, but other regions remain at levels well below. U.S. consuls in Latin America, for example, are issuing student visas at half the pace of pre-9/11. This may have more to do with political and economic conditions and foreign relations than visa policies or interview wait times.

A blue ribbon panel of academics convened by the National Academies of Science assembled a blue ribbon panel conducted an extensive study of international graduate students and scholars in science and engineering (S&E) that looked at visa issuance and enrollment trends, among other issues.⁷ They found that post-9/11 visa policies did make the visa application process harder for students and scholars and cause anxiety, but that subsequent improvements made by the State Department and the institutions themselves had had a very positive effect on both perceptions and enrollment outcomes. From the report: “Large drops in international applications in the 3 years after 9-11 caused considerable concern in the university community, but their effects on numbers of first-time enrollments of international S&E graduate students were modest.”⁸ Also: “Exogenous factors, many of which predate 9-11, affect the flows of international graduate students and postdoctoral scholars. Other countries are expanding their technologic and educational capacities and creating more opportunities for participation by international students. The natural expansion of education in the rest of the world increases the potential supply of talent for the United States and at the same time increases competition for the best graduate students and postdoctoral scholars. Economic conditions – including the availability of university-sponsored financial support and employment opportunities – can affect student mobility, as can geopolitical events, such as war and political instability.”⁹

The report points to a whole host of other factors that affect enrollment: the booming U.S. economy in the late 1990s, the lure of jobs in the U.S. dot.com industry (apparently viewed overseas as easier to get following graduation from a US school) and the doubling of the NIH budget (which increased opportunities for biomedical scientists), followed by an economic recession. Later – “there is no evidence that the quality of graduate students or the staffing level of laboratories has slipped [during the decline in enrollment].”¹⁰

⁶ See “The Race to Attract International Students,” by Abdul Kargbo and Margie Yeager, at http://www.educationsector.org/analysis/analysis_list.htm?attrib_id=12264.

⁷ Committee on Policy Implications of International Graduate Students and Postdoctoral Scholars in the United States, Committee on Science, Engineering and Public Policy, Board on Higher Education and Workforce Policy and Global Affairs, *Policy Implications of International Graduate Students and Postdoctoral Scholars in the United States*, The National Academies, 2005.

⁸ Ibid, p.9.

⁹ Ibid, p.9.

¹⁰ Ibid, p. 138.

The Bureau of Consular Affairs and consular sections overseas have made great strides to refine visa processing in order to accommodate student visa applicants.¹¹ At the same time, while refusal rates for student visas have declined, they remain high enough to remind us that student visas may still be in great demand as a back door immigration route, and many of the applicants world wide simply do not qualify to study here (See Table 1, below).

Table 1

Student and Exchange Visitor Refusal Rates, 2003-05

	2003	2004	2005
F-1	22.0	20.5	17.6
J-1	7.1	7.0	5.4
M-1	9.6	10.0	8.9

Source: U.S. Department of State, Visa Statistics web page:
http://www.travel.state.gov/visa/frvi/statistics/statistics_1476.html.

The decline in refusal rates, and the numerical difference in the number of visa issuances that the drop in refusal rates represents (about 14,000 over two years), is not large enough to have caused the uptick in overall issuances or enrollment. Rather, it appears that efforts undertaken on the part of schools have played a more significant role in the recent rebound of foreign student enrollment.

According to the *Open Doors* report, many institutions of higher education are taking steps to sustain foreign student enrollment levels that do not rely of the U.S. government to alter its policies, and are reaping rewards as a result. These include establishing new international programs or collaborations, devoting resources to overseas recruitment, hiring recruiting staff, and providing funding for marketing of programs.¹² Alternatively, some schools are establishing programs at schools overseas, or setting up distance learning programs, to deliver their curriculum in a more cost-effective way that also avoids the need for a U.S. visa.

¹¹ See testimony of Tony Edson, Deputy Assistant Secretary of State for Visa Services, before the Senate Committee on Commerce, Trade and Tourism, Subcommittee on Interstate Commerce, Trade and Tourism, March 20, 2007, at http://travel.state.gov/law/legal/testimony/testimony_3204.html.

¹² “New Survey Suggests Turnaround in International Student Enrollments at U.S. Colleges and Universities,” Institute for International Education, November 13, 2006, at <http://www.opendoors.iienetwork.org/>.

Trends in Exchange Visitor Visas

Exchange visitor visas are a different animal entirely. As shown in Figure 1, overall issuances in the J-1 category have been on an upward trajectory for many years, with only a slight decline after 2001. However, it is important to remember that foreign students and scholars make up a relatively small share of visitors under the J category. Increasingly, the program has been used for other types of exchanges, many of which are actually work programs rather than exchanges with the primary goal of fostering a cross-cultural experience. Problems with the J visa program have been well-documented by the Government Accountability Office, news media accounts and independent researchers.¹³ For example, child care workers, camp counselors, theme park workers, and doctors are all admitted for work under this broad visa category, as well as researchers, government officials and high school students in genuine exchange programs.

The State Department does not keep track of the number of J-1 visa holders who are participating in academic programs as opposed to government-sponsored visitors or worker programs. The Institute of International Education tracks the number of foreign scholars by visa status in its annual *Open Doors* report. In 2005-06, IIE found that there were 96,981 research and teaching visiting foreign scholars in the United States (see Figure 3). Approximately fifty-four percent (52,270) were J visa holders. Since J visa holders may stay in the United States for periods of time varying from a few weeks to three years, it is impossible to extrapolate accurately from this data how many of that year's nearly 310,000 J visa issuances were for scholars or other academic programs, but clearly it is a small share, probably less than 20 percent.

The same *Open Doors* data indicate that a decreasing share and number of foreign scholars are utilizing the J category in favor of the H-1B category. H-1B visas are available for U.S. employers who wish to hire a skilled worker from abroad. The category has an annual limit on issuances, but higher education employers (and sometimes their contractors) are exempt from that limit, and represent a growing share of H-1B visas overall. H-1B visas are controversial because they have been used by many employers to displace or avoid hiring U.S. workers in favor of foreign workers who will accept lower salaries.¹⁴ Employers in higher education may be gravitating to the H-1B category because academic guestworkers can stay for up to seven years or more and be sponsored for a green card, while J-1 exchange visitors must return to their home country after the duration of the exchange program, which may not exceed three years. The *Open Doors* data report that in the 1999-2000 academic year, 72 percent of international scholars were in J-1 status, versus 21 percent in H-1B. By the 2005-06 year, only 54 percent were using J-1, with 39 percent in H-1B. With the increase in overall numbers, the actual number of scholars using H-1B more than doubled, from about 15,300 to

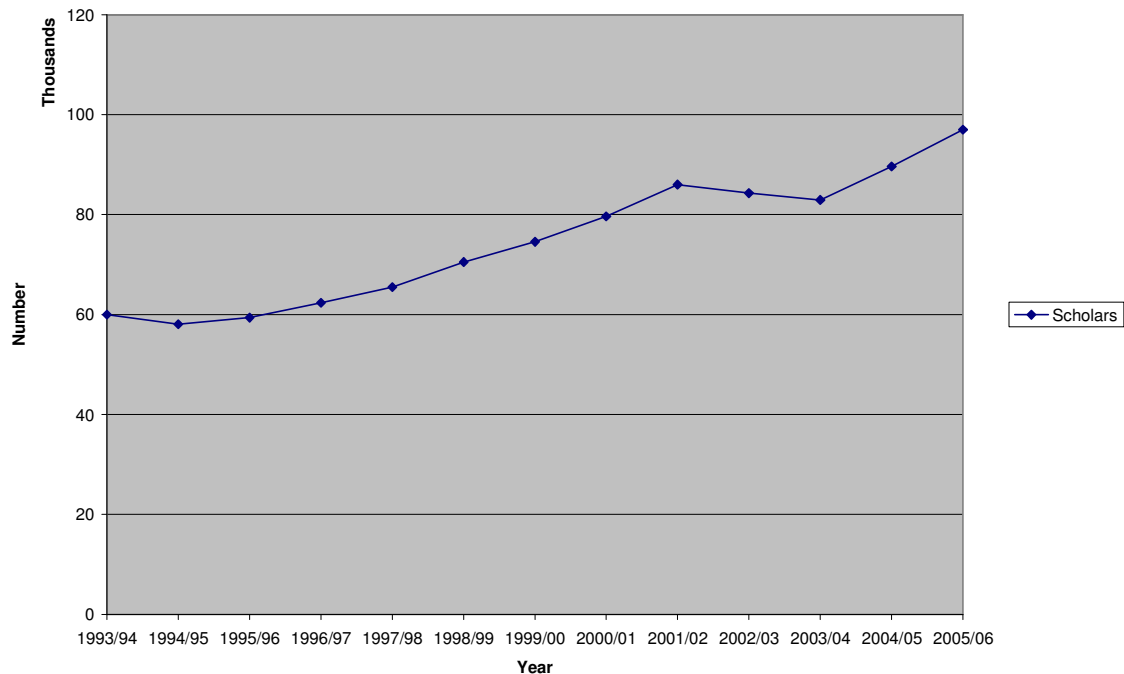
¹³ See Vaughan letter to Stanley Colvin, State Department Bureau of Cultural and Educational Exchanges, April 28, 2006 at <http://www.cis.org/articles/2006/jmvttestimony042806.html> and *Stronger Action Needed to Improve Oversight and Assess Risks of the Summer Work Travel and Trainee Categories of the Exchange Visitor Program*, GAO Report GAO-06-106, October, 2005 at www.gao.gov.

¹⁴ See *Low Wages for Low Skills: Wages and Skill Levels for H-1B Computer Workers*, by John Miano, Center for Immigration Studies, April 2007, at <http://www.cis.org/articles/2007/back407.html>.

37,400. The J-1 actual numbers decreased from 53,700 to 52,400 over the same time period. It is important for lawmakers to remember that institutions of higher education have interests to pursue with respect to visa policy that may be as much related to their position as employers as they are to their educational mission.

Figure 3

Visiting Foreign Scholars



Source: *Open Doors, 2006*

Policy Implications

Economic Contributions of Foreign Students Arguable. There is no serious debate that foreign students and scholars who are attached to genuine academic programs and comply with the terms of their admission are welcome in this country. There is debate as to the true extent of the tangible economic and academic contribution they make. The task of the U.S. government is to carefully balance public diplomacy goals and the pursuit of excellence in education and the free exchange of ideas with the security and economic needs of the United States and its citizens. It is perfectly legitimate for the higher education industry to pursue its economic interests such as market share and financial viability, just like any business would, but these interests should not be confused with the national or public interest.

The higher education industry claims that foreign students and their families contribute about \$13 billion annually to the U.S. economy. It is widely assumed that because the law requires foreign students to show they can support their education in order to qualify for the visa, they are a net boon to the economy. However, this analysis may be simplistic, relying on generalizations about the actual tuition paid by foreign students and minimizing the cost of U.S. government subsidies to all students in public and private schools. For example, according to the Institute for International Education, 11 percent of foreign undergraduate students and 47 percent of foreign graduate students are supported “primarily” by the host college or university.¹⁵ This support may come in the form of scholarships, tuition waivers, employment, or fellowships. Meanwhile, all college and university students are subsidized by taxpayers. Leading immigration economist George Borjas reports that one estimate puts the average per-student subsidy at \$6,400 in private universities and \$9,200 in public universities, totaling several billion dollars per year.¹⁶

Borjas also points out that foreign students are an important part of the campus workforce: “Wages and salaries in this sector are around \$50 billion annually. If the huge influx of foreign student workers lowered wages by only five percent, the payroll savings would be around \$2 billion each year, transferring a significant amount of wealth from workers to management in that industry.”¹⁷

Foreign students also compete with U.S. students for employment opportunities. At some schools, they have first dibs on campus jobs, including the heavily subsidized work-study program, under the dubious rationale that U.S. students have greater options and access to financial aid and off-campus employment. Many foreign students stay on after graduation to work for a year, which is provided for in the law and known as Optional Practical Training (OPT). The job is supposed to relate to the student’s field of study, but there is little indication that graduates are engaging in true training rather than regular employment. I am unaware of any analysis ever undertaken of the economic or labor market impact of this provision. At the very least the provision serves to encourage foreign students to stay on beyond their studies and become more rooted in this country, rather than returning home. The “training” period can also serve as a bridge to longer term employment under the H-1B program.

In addition to the economic considerations, there are a variety of security and law enforcement concerns associated with the foreign student visa program. Many young people around the globe are lured to the United States by the prospect of employment, upward mobility, and quality of life. Without family ties or an offer of employment, there are few legal ways for them to qualify for a green card, so many seek non-immigrant visas to obtain entry with the intention of overstaying. It is often difficult for young people to qualify for a regular visitor’s visa, as they typically lack the compelling

¹⁵ *Open Doors 2006*, “International Students by Primary Source of Funds,” at <http://opendoors.iienetwork.org/?p=89193>.

¹⁶ Gordon Winston, former provost of Williams College, quoted in George J. Borjas, “Rethinking Foreign Students,” *National Review Online*, June 2, 2002, at www.nationalreview.com.

¹⁷ Borjas, loc cit.

ties to their homeland that are required by law. The student visa offers an attractive option, provided they can convince the consular officer that they have sufficient credible financial support for their educational program. In addition to helping overcome the age hurdle, the visa usually is issued for the duration of the academic program plus OPT, which can be five years total.

Surveys have shown that a sizeable share of foreign students intend to stay permanently in the United States after their studies are completed. The proportion of foreign PhD recipients who stay on for at least two years after completing their degree has gone up from 49 percent in 1989 to 71 percent in 2001. Stay rates for graduate students appear to vary by country. One study found that 96 percent of Chinese graduate students stayed, 86 percent of Indians, and 21 percent of Koreans.¹⁸

Lack of credible financial support is the most common reason for student visa applications to be denied. In recent years, the Bureau of Consular Affairs has discouraged consular officers from assessing “immigrant intent” or ties to the homeland with respect to student visa applicants, although this assessment is a statutory requirement.¹⁹ For many years it was standard practice for consular officers to consider the type of academic program when adjudicating a student visa. Applicants seeking visas to attend well-recognized four-year and graduate programs who could show adequate financial support from a credible source (parents and/or savings, not distant wealthy relatives or neighbors) were routinely approved. Some foreign students cut costs by obtain in-state tuition rates by using the address of relatives, and some institutions allow this.

Community Colleges. Applicants seeking admission to attend community colleges, language schools, vocational programs, or other less rigorous or intensive programs were scrutinized more carefully, because these institutions are less selective and often serve a student population that is more likely to be part-time, less tied to the institution and academic program, and more likely to drift off into the work force. This assessment has nothing to do with the quality or value of these institutions and their students, and everything to do with discouraging use of the student visa as a back door route to U.S. residence and preventing illegal immigration. The Bureau has discouraged this practice as well, as part of an effort to boost foreign student enrollment in community colleges.

In January, 2006, Undersecretary for Public Diplomacy and Public Affairs Karen Hughes announced the goal of doubling foreign student enrollment at community colleges. The goal is “to provide educational and exchange opportunities to a broader and more diverse segment of young people overseas that have the motivation and talent to succeed in a U.S. educational institution, but need resources and perhaps additional

¹⁸ These studies were cited in the National Academy of Sciences report on pages 49-51.

¹⁹ See State Department cable 00180015, September, 2005, available at http://travel.state.gov/visa/laws/telegrams/telegrams_2734.html.

preparation to enter a U.S. academic program.”²⁰ This initiative is troubling for several reasons. First, the admission of large numbers of foreign students to community colleges around the country would represent a dramatic departure from the long-established mission of community colleges to serve the needs of non-traditional students, those who lack the resources or time to commit to a four-year program, and those seeking vocational or non-degree programs. Many of the courses are remedial and serve to prepare students for eventual admission to four-year programs.

Community colleges are heavily subsidized by local taxpayers in order to make the programs accessible to members of the community and contribute to their self-sufficiency and upward mobility. It is unclear if residents of these communities would support extending these subsidies to foreign students, who traditionally have been expected to pay their own way. In addition, it makes little sense to provide job training, often supplemented by local internships, to foreign students, who are unlikely to qualify to eventually work here afterwards, and may possibly displace members of the community in those same programs.

If the Department of State considers these programs to meet foreign policy, public diplomacy or development assistance goals, it should instead conduct them under the auspices of an exchange program, not under the student visa program, with the stricter regulations on curriculum, duration of stay and requirements that the participant return home after studies are complete.

Security and Law Enforcement Concerns. Student visas are a security and law enforcement concern because they contribute to illegal immigration and all its associated fiscal, economic and social costs; because they may facilitate the transfer of sensitive technology, knowledge or skills; and because they can and have provided cover for terrorist or other criminal activity, whether the individual remains in status or overstays.

In the wake of the first World Trade Center bombing in 1993, amid growing awareness of security threats from abroad, and out of alarm that the United States government had no idea how many foreign students and scholars were in the country, nor any idea of their field of study or purpose for being here, a technology-based tracking system for foreign students and scholars was legislated, created and tested. The higher education industry objected strenuously to the creation of this program, mainly because they feared the new \$100 fee that would be levied on students would discourage them from choosing U.S. schools (Many foreign students, however, say it is negligible compared to what they are already spending on tuition, living expenses, student activity and technology fees, and travel. In recent years some institutions have opted to pay the fee for the students as an incentive). After 9/11, Congress made it mandatory that all institutions hosting foreign students or exchange visitors participate in what came to be known as SEVIS (Student and Exchange Visitor Information System). SEVIS has been

²⁰ Department of State Community College Initiative, at http://www.aacc.nche.edu/Content/NavigationMenu/AboutAACC/Board/Board_Updates/DOS_CC_Initiative.pdf.

fully operational since early 2003. The system tracks the admission, visa issuance, arrival and program status of all students and exchange visitors.

While widespread use of SEVIS for visa compliance purposes has been limited by resources and system capability, the program has demonstrated its utility. For example, as part of the initial implementation, educational institutions which had been granted permission to admit foreign students were visited and their programs reviewed through site visits, rather than paperwork submissions, as had been the case before.

In addition, SEVIS has generated tens of thousands of leads for immigration enforcement investigations, many of which have resulted in arrests and perhaps even removals.²¹ DHS and the State Department still have no way to determine more precisely how many foreign students and exchange visitors have overstayed their visa or violated their status, despite a long-standing direct order from Congress for DHS to produce these estimates.²²

In the absence of a coordinated strategy from either State or DHS to address the overstays, some consulates have tried to assess their post-specific overstay problems by conducting surveys or with the help of relatively new passenger information databases run by DHS. The GAO has reported that some of these studies revealed exchange visitor overstay rates of 26-29 percent.²³ The State Department has not made any of its studies public, but some officials will confirm off the record that student visa overstay rates are believed to be significant for many countries, as is true for other categories as well. In the absence of strong interior enforcement, universal electronic screening of eligibility for employment, or meaningful penalties for violating the terms of a visa, there is no real deterrent to overstaying a student visa, since the likelihood of apprehension and removal is very small. DHS has previously estimated that overstays stand only a two percent chance of apprehension.²⁴

Representatives of the higher education industry have downplayed the compliance and security issues associated with student visas. "This tiny, tiny, infinitesimal minority of people who happen to be here on a student visa are being painted as some kind of unique threat," stated Victor Johnson, spokesperson for one of the leading higher education advocacy groups, soon after 9/11.²⁵

Law enforcement agencies disagree. As far back as 1996, then-FBI Director Louis Freeh warned Congress: "Some foreign governments task foreign students specifically to acquire information on a variety of economic and technical subjects. In some instances, countries recruit students before they come to the United States to study and task them to send any technological information they acquire back to their home

²¹ See CEU report.

²² Public Law 105-173.

²³ GAO report on exchange visitors, GAO-06-106, op cit.

²⁴ Testimony of Nancy Kingsbury, GAO, "Homeland Security: Overstay Tracking Is a Key Component of a Layered Defense," before the House Immigration sub-committee, October 16, 2003, found at <http://www.gao.gov/new.items/d04170t.pdf>.

²⁵ Johnson, quoted in the *Chronicle of Higher Education*, October 26, 2001.

country. . . . Upon completion of their studies, some foreign students are then encouraged to seek employment with U.S. firms to steal proprietary information. . . . In 1989, the FBI conducted interviews of individuals who admitted to having been recruitments of a foreign intelligence service. Two of the individuals stated that they were recruited by the intelligence service just prior to their departure to study in the United States. These individuals worked at the behest of the intelligence agency while studying in the United States. Upon completion of their studies, both obtained positions with U.S. firms and continued their espionage activities, then directed at their employers, on behalf of the intelligence agency. The individuals each operated at the behest of that agency for 20 years.

“Other FBI investigations have identified that some foreign governments exploit existing non-government affiliated organizations or create new ones, such as friendship societies, international exchange organizations, import-export companies and other entities that have frequent contact with foreigners, to gather intelligence and to station intelligence collectors. They conceal government involvement in these organizations and present them as purely private entities in order to cover their intelligence operations. These organizations spot and assess potential foreign intelligence recruits with whom they have contact. Such organizations also lobby U.S. government officials to change policies the foreign government considers unfavorable.”²⁶

A September 2005 report by my organization written by Janice L. Kephart, former counsel to the National 9/11 Commission, and one of the authors of the 9/11 Commission’s *Staff Report on Terrorist Travel*, detailed the histories of 94 international terrorists who operated in the U.S. from the 1990s until 2004.²⁷ It found that 18 terrorists had student visas and another four had applications approved to study in the United States.

Privatization of Foreign Student and Exchange Programs

The Sub-committees have indicated interest in the lessons learned from private efforts to bring foreign students and scholars to America. The data on foreign student enrollment trends suggests strongly that the efforts of schools and universities to recruit and improve the experiences of foreign students and scholars have had a significant impact on the recent rebound in enrollment, at least as much of an effect as government efforts to improve the visa application process. This effort will help American educational institutions overcome global trends in the higher education market that are beyond the reach of U.S. government policy.

²⁶ Testimony of Louis J. Freeh, FBI Director, February 28, 1996 before the Senate Select Committee on Intelligence, and the Senate Committee on the Judiciary, Subcommittee on Terrorism, Technology and Government Information, hearing on economic espionage, found at http://fas.org/irp/congress/1996_hr/s960228f.htm.

²⁷ Center for Immigration Studies, *Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel*, by Janice L. Kephart, September 2005, available at <http://www.cis.org/articles/2005/kephart.html>.

At the same time policymakers must be careful to avoid the mistakes that have been made by over-privatization and under-regulation of the exchange visitor program, which has morphed from an important tool for public diplomacy into a work program. Lawmakers must insist that any student visa program changes keep the national interest paramount, and reflect a public diplomacy strategy, rather than the narrow interests of the higher education industry. Otherwise, we will continue to see abuses of the visa program, such as diploma mills who profit from collecting tuition from foreign students while delivering a sub-standard educational program, and continued use of the student visa as a stepping stone to permanent residency, legal or not. To the extent that the government fails to maintain the integrity of the student visa program, the image of the United States suffers, as visitors take home bad experiences or come to believe that our laws are unenforced and therefore meaningless.

Policy Recommendations

1. Preserve the requirement that all student, scholar and exchange visitor applicants be interviewed. The interview is as important to the visa process as personal contact is to a doctor diagnosing an illness.²⁸ It is not foolproof, but there is simply no other way to ascertain an applicant's credibility or qualifications for the visa, not to mention language skills. Together with robust fraud prevention programs that devote staff and resources to investigations and training, the interview process is essential to the integrity of all visa programs.
2. If institutions are concerned about the level of foreign student enrollment, they must take steps to address problems themselves, not rely on the government to relax security standards that affect the security of all. The IIE *Open Doors* surveys found that after the initial declines in enrollment, many schools took steps to step up recruitment, improve the educational experience for foreign students, provide more financial support, etc. In addition, schools should be encouraged to try opening overseas campuses and distance learning, especially for language programs rather than relying on foreign students coming here. Community colleges, in particular, should avoid becoming dependent on foreign student enrollment, which could become a distraction from their core mission to meet the needs of adult learners in the community who are not candidates for traditional four-year programs.
3. It could be risky to attempt to artificially or arbitrarily reduce student visa and exchange visitor refusal rates, at least without undertaking a thorough risk assessment that includes analysis of overstay data and trends. The report should be made public so as to build confidence that the policy changes are based on the national interest and not pressure from the higher education industry.
4. DHS needs to upgrade and improve SEVIS so that it is more useful for law enforcement and program quality control purposes. This should include a regular review of I-20 granting institutions, which has not been done since the initial implementation. DHS should be required to report on a regular basis the an analysis of overstay data and

²⁸ See Vaughan, *Shortcuts to Immigration* for more on the importance of visa interviews.

enforcement actions generated by SEVIS, in the absence of general overstay reporting, which is required by law, but has not been done.

5. The State Department and DHS should assess the Optional Practical Training provision to determine its value and utility. At the very least, the rules should be written so that it is used as an actual training program, not just employment, in the same way the exchange training programs are regulated.
6. The Visa Waiver program should not be expanded before the Exit recording function of US-VISIT has been fully implemented; nor should criteria for inclusion in the program be loosened in any way before this occurs. The development of secure document is no substitute or proxy for all of the other qualifying criteria, such as low refusal rates, reciprocity and security capabilities of the sending country.
7. Preserve the requirement that foreign students must be able to finance the proposed program of study without working.
8. The exchange visitor program should be reoriented to focus more on public diplomacy priorities and less on work programs. The lack of strategic vision for the program has resulted in it being driven by the interests of organizations that have a financial interest in program expansion and lax oversight. More resources should be provided for compliance efforts.

Respectfully submitted,

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