



TESTIMONY OF JAMES W. ZIGLAR

COMMISSIONER

IMMIGRATION AND NATURALIZATION SERVICE

BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY

SUBCOMITTEE ON IMMIGRATION AND CLAIMS

**ROOM 2141, RAYBURN HOUSE OFFICE BUILDING
MARCH 19, 2002, 4:00 P.M.**

Mr. Chairman:

I appreciate your calling this hearing today so that we might have the chance to discuss the latest example of why INS needs reform. While we may differ on the details of that reform, I know we both share a desire for INS to quickly and effectively respond to the security needs of the United States as well as quickly and effectively respond to the processing of naturalization petitions, changes in status, and other adjudications functions. Reorganization of INS is necessary to provide clearer lines of decision-making and specific accountability. We need to update antiquated technology systems and overly bureaucratic processes that exist at INS that directly caused the recent mailings of the return I-20s to Huffman Aviation International.

When I started this job about 7 months ago -- one month before September 11 -- I found that I inherited an information technology system, or more correctly, systems, that were big on information and small on technology. I found too much reliance on manual data entry, much of which had to be boxed and shipped to outside contractors. I found a lack of real-time data and a lack of readily accessible electronic information for accurate and timely reporting. I found that INS lacked interconnectivity among its own systems as well as with those of other law enforcement agencies, and found that enterprise architecture was still on the drawing board. I also found that the INS lacked a full-time Chief Information Officer who could be responsible for and analyze the best solutions to the agency's IT shortcomings. While some improvements have taken place in recent years, you and I both know that the pace of improvement has been well behind any reasonable definition of the Service's needs.

It has become all too clear that, over time, the processes and procedures involved in approving naturalization petitions, changes in status, and in other adjudications functions have become far too bureaucratic, involving too many steps -- many of which add no real value to the final outcome.

The incident of the return of the I-20s to Huffman Aviation International is a perfect example of the system that existed when I arrived at INS. First, before I begin a recitation of the events and of the processes of that system, I think it is useful to clear up some confusion. Contrary to some reports, the INS did not just recently approve the applications for Mohammed Atta and Marwan Al-Shehhi to change their nonimmigrant status in order to engage in flight training. Simply put, Huffman Aviation International was receiving their file copies of paperwork they originally prepared on behalf of Atta and Al-Shehhi. No new visas were issued and no new decisions were reflected in the documents sent to them.

The process for foreign student applications begins with the I-20 form: a document that schools, certified to accept foreign students, give to prospective students to enable the students to apply to the U.S. government for a student visa or student status.

If the student is outside the United States, he submits the I-20 to a U.S. consulate abroad as part of an application package to obtain a student visa. If the student is already lawfully in the United States in another nonimmigrant status, he applies to the INS for a change of status to that of student, and submits the I-20 as part of a package of documents. If this application is approved, the student is sent a Notice of Action (Form I-797), which he uses to show the school that he has been approved for student status. There are two copies of the I-20 -- one for the student and one for the school. The student's copy of the I-20 form is returned to the student with the Form I-797. The INS Service Center sends the school's copy of the I-20 to an outside contractor to perform data entry to update our automated Student Schools System. When that is completed, the school's copy of the I-20 is returned to the school for its records. This is the return that took place last week with respect to Mohammed Atta's and Marwan Al-Shehhi's earlier approved requests to change status.

The papers sent to this flight school were documents that acknowledged the approval dates of July 17, 2001, and August 9, 2001, for Mohammed Atta and Marwan Al-Shehhi, respectively, to attend Huffman Aviation International. It is worth repeating that at the time the student status for Mohammed Atta and Marwan Al-Shehhi were approved, neither the INS nor the State Department had any adverse information indicating that the applications should be denied. It is also worth noting that the Aviation Security Act now requires that foreign nationals who seek to receive training on aircraft of substantial size must undergo a background records check before they can begin training. Sound intelligence information is necessary to ensure the accuracy of that background records check.

The I-20s in question were sent to an outside contractor in late September for data entry. The contract in effect at that time, which was negotiated in 1996, required that the I-20s be entered into a database system and microfiched within 5 days, and returned to the school for its records after holding them 180 days. The data from these particular I-20 forms was entered into the database on October 5, 2001, and then later mailed, arriving at Huffman Aviation International in March 2002. As the result of September 11, a new contract, with a different contractor, was signed on October 23, 2001, requiring that the I-20s be returned to the school within 30 days after processing. I have been told that, because of a backlog transferred from the previous contractor after a bid protest, the I-20s in question were processed under the terms of the previous contract, which allowed the contractor to extend the time period for mailing to 180 days. I would like to note that it does not appear that either contractor did anything in error. However, I would say that the INS procedures and the terms of this contract were clearly not the most effective or desirable.

As you know, this current system for foreign student applications is being replaced with the new automated Student Exchange and Visitor Information System, known as SEVIS. INS will begin deploying this system in July. SEVIS is an internet-based system and once the system is fully deployed schools will receive quick electronic notification of student approvals, eliminating most of the paper elements in the current foreign student process.

This Committee has also asked questions about the process that allowed Mohammed Atta to come to this country as a visitor and then to attend flight school. The following facts have been determined and may prove helpful:

Mohammed Atta entered this country on June 3, 2000, as a visitor and on September 19, 2000, requested to change his status from a visitor to that of a student. While that change of status was pending before the INS, he started taking classes, which was allowed under INS regulations at that time.

Atta then departed the U.S. in early January 2001, and returned on January 10. Given the sheer volume of inspections and the amount of time that has passed, the Inspectors who spoke to Mohammed Atta on January 10, 2001, do not remember the specific inspection. However, a limited record, based on the Inspectors' notes, does exist of that inspection.

According to that record, Mohammed Atta arrived at Miami International Airport via American Airlines flight 69 from Madrid. Upon inspection, Atta presented Egyptian passport number 1617066. The notes from the primary inspector indicate that Atta had in his possession a Form I-20, which, as noted earlier, is the form issued to foreign students by schools authorized to accept such students. They also reflect that Atta had indicated to the inspector that he had been attending flight school for five or six months. As I mentioned before, current rules permit nonimmigrants with change of status applications pending to attend school while awaiting adjudication of the application. INS is considering changing these regulations so that student status must be approved before an individual can begin a course of study. Also, our backlog reduction plan is being accelerated so that no more than 30 days average processing time will be needed for these applications.

In light of the information given to the primary Inspector, and the fact that Atta was carrying an unexpired B-1/B-2 visa, Atta was referred to secondary inspection to determine admissibility. The notes from the secondary inspection indicate that a query to the CLAIMS system (INS' benefits processing database) was made, which confirmed that Atta had previously submitted an application to change status to M-1 student. The notes also indicate that no grounds for removal were found.

As noted, the record indicates that at the time of the January 10 admission, the Inspector was aware that Atta had applied for a change of status to M-1 student. He also was aware that Atta was not at that time the subject of any lookout or watch list. If Atta's inspection presented issues that needed additional information or further scrutiny, that should have caused the inspector to defer the inspection or deny admission. But, we cannot know today all of the information that was then before the inspector. Therefore, a fair judgment would be that one cannot determine in hindsight, positively or negatively, that the Inspector's decision was not the correct one based on the information available to him at that time. But we do know that the Inspector conducted a thorough check and had no information that Atta was a potential terrorist. Certainly a different decision would have been reached had such intelligence information been available to the Inspector.

Atta's final entry was on July 19, 2001. In the meantime, his application for change of status to student had been approved two days before, on July 17. However, he was not admitted in that status, but instead had been admitted as a visitor. We do not know today what he told the Inspector at the time of that entry.

Mr. Chairman, I would like to present to the Committee today a series of measures that INS is considering to rectify gaps in current processes and policies related to student and visitor visas. The changes fall into two areas: regulatory and administrative.

First, we are considering regulatory changes to tighten up the Student Visa Program. For example, we are considering a regulatory change that would result in most holders of visitors' visas [as distinguished from Visa Waiver Program entrants] being admitted for a period of 30 days. Currently, visitors are generally admitted for a period of six months.

We are also considering changing our regulations to prevent a person who has entered under some other status from beginning a course of study before their request for a change of status to student is approved, as happened in the cases of Mohammed Atta and Marwan Al-Shehhi. Both of them had entered as visitors. In addition, we are looking at the overall process by which visitors can change from tourist to student visa status to consider if there are additional changes that can or should be made.

INS has reduced the processing time for student change of status applications to 30 days at two Service Centers and will reduce the processing time to 30 days or less at the remaining two.

To prevent the possibility of a long gap in sending a return copy of the I-20, INS will immediately revise the process through which the I-20s are sent to the schools, so that the I-20 is returned promptly when the individual is authorized to enter into student status. Once SEVIS is fully implemented, schools will be electronically notified when a decision is made.

All applications filed at Service Centers, including student status applications, are now checked against the Interagency Border Inspection System (IBIS).

INS now will send a cover letter to the school with the school's copy of the I-20, which will remind the school of its obligation to notify INS if a student fails to attend classes, and it will give the school a process to follow in providing such notice.

One thing we need to remember – the student process had become so lax and lengthy because the focus of immigration policies prior to September 11 was not on security but on facilitating the students and the schools that they attended. The focus has changed and our process has changed as well.

I would also like to state that this episode should not reflect negatively on the tremendous job and hard work that the employees of INS have done in response to the tragic events of September 11. Deputy Attorney General Larry Thompson recently underscored something I have stated numerous times: “Since September 11th, INS special agents, intelligence analysts, detention officers, and others have worked closely with FBI-led counterterrorism task forces to track down and apprehend those responsible for the attacks. They have generated, and pursued, thousands of leads, resulting in the arrest of more than 700 aliens for a variety of administrative and criminal charges. They have worked with officials from the Treasury Department’s Office of Foreign Asset Control to identify and freeze the assets of terrorist organizations and their front groups. INS detention and deportation officers and attorneys have played a critical role in supporting the nationwide enforcement effort. Border Patrol agents and immigration inspectors have been working just as diligently to strengthen security at our ports and along our borders.”

Mr. Chairman, within 36 hours of the September 11 attacks, 317 Border Patrol agents were deployed to nine international airports, where they played a vital role in strengthening security and restoring travelers’ confidence in the safety of flying. In addition, our Forensic Document Laboratory examined passports recovered from the crash sites, and it continues to receive requests from the FBI, the Joint Terrorism Task Force and others to analyze documents linked to known and suspected terrorists. It was the Forensic Document Laboratory’s Fingerprint Unit that confirmed the true identity of Richard Reid, the “Shoe Bomber,” who attempted to blow up a jetliner as it was in flight from Paris to Miami in December.

In addition, since September 11, the INS has undertaken numerous initiatives to enhance security.

- I have directed every component of INS to review their processes and systems with an eye to strict enforcement of our immigration laws, particularly as they relate to the security of our borders. In this war on terrorism, the INS is a front line agency, whether those battles are fought on our enforcement side or our benefits side. Since September 11, ports of entry have been on a Threat Level One alert – the highest state of alert; Border Patrol agents have been assigned to major airports and land ports; and our adjudications process has been changed to ensure that applications are checked against terrorist watch lists.
- Shortly after the terrorist attacks, INS began Operation Tarmac, an initiative designed to ensure that employees who have access to secure areas of airports and other critical security infrastructures are legally in this country, authorized to work, and pose no threat to the American people. This is a huge undertaking; as an example, the Los Angeles and San Francisco Airports alone account for 65,000 employees. To date, INS has conducted investigations at Dulles, Baltimore-Washington International, Atlanta, Boston, Newark, Detroit, Denver, Salt Lake City, San Francisco and Dallas-Fort Worth. More than 100 individuals have been arrested on various charges, including immigration violations and criminal fraud or misrepresentation charges.
- After September 11, INS began conducting the Absconder Apprehension Initiative, designed to ensure that aliens against whom Final Orders of Removal have been entered do indeed leave the country. The initiative consists of entering the names of all aliens who have violated federal criminal law by failing to depart as ordered into the NCIC system. State and local law enforcement officers will be able to detain offenders under their own authority because of the federal crime. To date, 1,751

leads have been sent to INS field offices, which have resulted in 149 arrests. Of those 149 arrests, 77 were priority cases involving aliens with criminal convictions or other law enforcement interest. INS has also been careful to ensure that only aliens who have violated criminal law are entered into NCIC under this initiative. Rigorous review is in place at our Law Enforcement Support Center where each individual file is checked and verified before entry into the system.

- INS also has worked with the State Department to establish new initiatives to increase security. Today, INS Inspectors have access to visa data from the Consolidated Consular Database system and, as a result, can call up visa records for immigrants and nonimmigrants and photos of nonimmigrants as they arrive at ports of entry. This system helps to identify security and fraud risks.
- Under the direction of the Department of Justice, the INS and the FBI are integrating the "IDENT" and "IAFIS" fingerprint databases. As part of this process, the United States Marshals Service Federal Fugitive fingerprints were added to IDENT on August 15, 2001. By the end of 2001, this had resulted in the apprehension of 55 fugitives.
 - Building on this success, in December 2001, INS worked with the FBI to include FBI fingerprints of foreign nationals wanted by law enforcement. This effort has resulted in the identification of over 700 individuals wanted for offenses that include homicide, rape, drug crimes, and weapons violations.
- As previously discussed, with an appropriation of \$36.8 million, INS is moving from a paper system to an Internet-based system for the administration and tracking of foreign students, and will meet the Patriot Act deadline for implementing the system by January 1, 2003. In fact, we will plan to begin enrolling universities in the new SEVIS system this summer. Also related to enhancing security in the Student Visa process, INS is participating in an interagency working group on Student Visa issues.
- The INS has established a multi-agency Project Management Office to develop and implement an entry-exit system. For passengers entering the United States under the Visa Waiver Program, INS will deploy the entry-exit system at air and sea ports on October 1, 2002, and will deploy the system for all other air and sea passengers by December 31, 2003. INS is committed to meeting a timetable to implement the entry-exit system at all 300 air, sea, and land ports of entry in the United States by the end of 2004. Initial funding for this effort is provided in the President's FY 2003 budget. INS is working closely with other components of the Department of Justice, and with the U.S. Customs Service, the Department of State, the Department of Transportation, and the Office of Homeland Security on this important initiative.
- Since September 11, INS has been working with the State Department, the FBI and others to enhance refugee screening procedures, including additional fingerprint and database checks.
- As you know, to increase our presence on both the Northern and Southern borders we have entered into an agreement with the Department of Defense to obtain the help of approximately 800 National Guard personnel. Their role is to assist INS officers with such duties as cargo inspection, traffic management, and pedestrian control.
- In December, INS played a major role in the "Smart Border" Declaration signed by Homeland Security Director Tom Ridge and Canadian Minister of Foreign Affairs John Manley. Also, I have recently returned from a trip to Mexico with Governor

Ridge, where we discussed INS participation in bi-national cooperative security arrangements.

- The reduction of backlogs and the improvement of services by INS has long been a subject to which the Attorney General, the President, and I are strongly committed. I want to share some statistics that reflect significant improvements made in the delivery of services:
 - In 1999, the average wait for adjustment of status applications was 30 months. Today, it is down to 13 months.
 - We are now completing 75,000 adjustment of status applications a month, triple the number three years ago.
 - The average waiting time for the processing of naturalization applications, which was two years or longer in 1999, has been cut by more than half. I want to emphasize that our efforts to reduce backlogs will not compromise the national security. Our plans for reducing the backlog include quality control procedures to ensure that only deserving applicants receive immigration benefits.

Although I only began this job in August, I hoped to be further along by now with management changes at INS, particularly the restructuring of the agency. A few days ago, I made a number of important personnel changes in upper levels of management at INS. I will be making additional personnel and structural changes in the very near future that are critical to improving our performance. I have a fiduciary duty to the American people to fix this agency and I am determined to move ahead.

Following up on the President's commitment to reform INS, in November 2001, the Attorney General and I announced a major restructuring of the INS. The INS restructuring plan is a fundamental reform that splits service and enforcement into two distinct bureaus. It will clarify and improve the chain of command at INS and increase accountability.

The plan was presented in November, and includes numerous positive changes. Just recently, I moved forward on three management reforms: establishing the positions of Chief Financial Officer and Chief Information Officer, and creating an Office of Juvenile Affairs. I am pleased to announce that yesterday we received a letter from the House Commerce, Justice, State Appropriations Subcommittee concurring in INS moving forward with the restructuring plan.

In the meantime, I have undertaken a number of information technology initiatives, many of which I previously discussed. In addition to expediting the development of SEVIS, and expanding deployment of ENFORCE and IDENT, I have moved forward on key elements of the agency's Enterprise Architecture plan and established an inter-agency project office to develop and implement an entry-exit system. The emergency supplement provided \$39 million for information technology infrastructure. The FY 2003 budget requests an additional \$83 million for this effort and \$300 million for the entry-exit system. We look forward to Congress' support for these requests.

Mr. Chairman, all of us at INS want to improve operations and performance. I have seen significant actions and hard work undertaken by our people. The INS and the Department of Justice have moved forward on numerous important initiatives to enhance our Nation's security and we will continue to make improvements to enhance both our law enforcement and service operations. I want to work closely with the Congress, particularly on improving our information technology capabilities. I look forward to moving forward together in a positive way to improve systems for protecting our borders and our citizens, native born and naturalized. I look forward to answering your questions.