

Testimony of

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On Facilitating Travel to the United States in the National Interest

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Mr. Chairman, I am grateful for the opportunity to testify today. Microsoft commends the Committee for its focus on this critical issue. The obstacles that face business visitors, students, and talented workers seeking to travel to the United States pose a problem of serious and damaging proportions. These obstacles are a direct threat to American competitiveness.

As you know, Microsoft, like many American companies, competes on a global stage. We have subsidiaries, affiliates and business partners throughout the world. Projects to develop new products and to improve existing products frequently involve work not just in the United States, but in multiple foreign countries as well. To conduct our operations successfully, we often require in-person meetings of foreign nationals at our headquarters in Redmond, Washington, and at other U.S. locations. In many instances, a face-to-face meeting is necessary for team-building and the creative process

required to develop world-class software; at other times, it is because this is the best and most secure way to preserve trade secrets and intellectual property. For decades, legitimate business travel of this kind has been a corner-stone of American economic prosperity, and these business visits are expressly recognized as a lawful basis for the temporary entry of foreign nationals into this country. Despite this fact, our company's operations have been severely disrupted by inordinate, unpredictable and seemingly random delays and denials of Business Visitor (B-1) visas to deserving foreign nationals whom we have invited to meet with us in the United States.

Likewise, it is crucial to the interests of Microsoft, and to countless others in this country who depend upon the highest intellectual capital, that our schools continue to attract and educate the best students from around the world. Those students feed into our nation's laboratories, our hospitals, and our businesses. They fuel innovation, creativity, and economic strength. Offering the world's best and brightest students the opportunity to study in the United States is perhaps the most important means of ultimately attracting the world's best and brightest scientists, doctors, researchers, and other highly skilled workers to the United States. The changes that have taken place in the visa process have both altered the perception of the desirability of study in the United States and have increased the difficulty of coming here for those students who wish to do so. When we make it difficult to study here, other countries gain, and we lose.

This problem is compounded by the fact that other countries, including Canada, the United Kingdom, and others are sometimes viewed as having immigration policies

that are more straightforward, more welcoming, and less bureaucratic than that of the United States. When faced with a choice between a country with immigration policies that appear open and welcoming, and one with policies that sometimes appear difficult and closed, the world's best and brightest students may ultimately decide that the difficulties of studying in the United States outweigh the benefits. This kind of result would be a serious blow to the long-term competitiveness of the United States in the global marketplace.

In addition to business visitors and students, Microsoft and other major U.S. employers have faced unprecedented difficulties in bringing the best and most accomplished foreign nationals into the country to join our workforces. Putting aside for a moment the statutory limits on visa availability, such as the H-1B cap, we have increasingly seen visa appointment delays, repeat visits to consulates to provide additional information, and inappropriate visa denials hamper our efforts to recruit the most talented possible workforce. Even after a foreign national is working in the U.S., visa issues often remain an ongoing concern. Foreign nationals worry about becoming stranded outside of the U.S. while attempting to renew a visa stamp, and the delays associated with obtaining a visa stamp sometimes require international business travel to be postponed or avoided altogether.

Microsoft, of course, recognizes the critical need in the post-Sept. 11 era to ensure that those who want to harm the United States and its citizens are prevented from entering this country. Both Congress and the Administration have gone to great lengths

to address this need. Today's visa process has been changed to require face-to-face interviews in nearly every situation. Expanded security checks, often extensive and protracted, have been put into place. Documentary and technological requirements for visas and other travel documents have been heightened. While this vigilance is necessary to protect our national security, we at the same time must protect the competitiveness of our national economy. Maintaining national security and ensuring that those who have legitimate reasons to come the United States can do so without unreasonable delays are not mutually exclusive goals. We can have both safe, secure borders and an efficient, workable visa application and issuance process.

Despite the earnest and often productive efforts of the affected agencies to facilitate visa issuance and travel to the United States, we are unfortunately nowhere near where we should be as a country. One vivid example is the sheer length of time it takes simply to get an appointment to apply for a visa in Chennai, India. There, the wait time for an appointment today for any type of temporary visa – visitor, student, or work-based – is a staggering 163 days. The pace of today's business world simply does not provide 163 days of lead time to wait for a visa appointment in order to allow time-sensitive business projects to move forward, and the result is that Microsoft and other businesses must often do without critical members of a project team because of visa delays. Chennai is but one example – in numerous consulates around the world, it takes weeks or months to get a visa application appointment. We do not believe this to be a function of unwillingness on the part of the State Department or its consulates; we see signs that they are trying, within their ability, to address these very serious issues. Rather, we believe

this to be the result of a grave insufficiency of resources devoted to a function that is critical to our national interests.

The difficulties with the visa process are often the most pronounced in the very countries that are the most critical to the future growth of Microsoft and other major U.S. businesses. Microsoft has critically important operations in India, China, and other developing countries, and we have numerous ongoing joint-development projects involving Microsoft employees in the U.S. working in collaboration with Microsoft employees in India, China, and other countries. The success of these projects depends in a substantial way on the ability of our U.S. project teams to collaborate both in the U.S. and abroad with our foreign project teams, and delays in the visa process are a major impediment to these projects.

Obtaining an appointment is only the first of many challenges in the visa application process. Once an applicant for a business visitor visa finally is able to apply for that visa, a whole new set of challenges begins. Nearly five years after 9/11, there still is not a sufficiently orderly and predictable process by which we can determine the likely eligibility of a particular individual or class of business invitees to receive B-1 visas and attend scheduled meetings. The same is too often true for applicants for other types of visas, including applicants who are critical employees or recruits.

While the business visit problem has been particularly acute for those from China, Russia, India, and the Czech Republic, Microsoft has experienced difficulties with B-1 visa applications on a virtually global basis. These include:

- The extreme delays associated with the post-9/11 requirement that almost all nonimmigrant visa applicants must be scheduled and appear for an in-person visa interview;
- The requirement that all business visitor visa applicants, even those employed by a foreign subsidiary or partner of a major U.S. corporation, must overcome an automatic presumption that they intend to remain permanently in the U.S. in violation of their visitor visa, with the visa being issued only if they can prove a negative, i.e., that they don't intend to overstay their visa and remain forever in the United States;
- The lack of accurate information on procedures and timeframes for security clearances, as well as the fact that security clearances must be repeated anew every time a B-1 visa application is submitted, regardless of how many visas have been issued to the applicant in the past. This uncertainty regarding timeframes impedes the reliable scheduling of business meetings requiring the attendance of visitors from many countries;
- Inadequate inter-agency coordination and the lack of any required response deadline for government agencies that receive clearance requests from U.S. consular officers;

- The problem of passports held “captive” at a U.S. consular post while clearances are processed, thereby preventing the submission of visa applications for business visits to other countries (if the passports are retrieved from the American Consulates for this purpose, the U.S. visa-clearance process is started afresh, and applicants go the end of the queue);
- The seemingly random nature of visa approvals, denials or consular requests for additional information from employees of Microsoft’s foreign subsidiaries, especially our researchers and engineers, who hail from the same country and possess similar expertise, education and career histories but nonetheless receive disparate treatment; and
- The seeming unwillingness of some consular officers to consider additional documentation provided by visa applicants in the course of a visa interview or when such documentation is submitted after an initial refusal of the visa.

In our view, national security – without doubt a top national imperative – must still be reasonably balanced with the needs of commerce, study, and innovation.

President Bush has recognized this:

"America is not a fortress; no, we never want to be a fortress.

We're a free country; we're an open society. And we must always protect the rights of our law -- of law-abiding citizens from around the world who come here to conduct business or to study or to spend time with their family."

In January, Secretaries Rice and Chertoff announced a joint initiative to better facilitate travel to the United States and improve border security. The three-part plan would leverage technology to improve visa and travel access; modernize travel documents; and create more advanced traveler screening capabilities. Among its highlights, the initiative would expand programs to reduce visa appointment and processing wait times; provide for the experimental use of videoconferencing for visa interviews; establish a private sector advisory board to identify areas for improvement; provide for improved information sharing between the Departments of State and Homeland Security; create a pilot program to test "paperless" visa processing; and establish improved mechanisms to redress traveler screening problems.

We commend the Administration for its positive recognition of the importance of facilitating legitimate business, academic, and other travel to this country. While this is an important step in the right direction, it is a long way from success. The success of this joint initiative will depend on the level of commitment shown by both Departments in converting a broad initiative into a detailed set of programs.

There are many solutions available to Congress and the Administration that would achieve in the visa process an optimal and reasonable balance between U.S. national protection and prosperity. Changes that could have an immediate positive impact, while in no way reducing the level of security in the visa screening process, include:

- Increase significantly the resources available to the State Department to expand the corps of consular officers to conduct visa interviews and handle application processing, including giving each consular officer the time to fully question each visa applicant and review any supporting documentation provided by the applicant. Under the current system, many visa applicants are given less than 5 minutes to explain the purpose of their travel and to present supporting documentation;
- Add the infrastructure needed to increase visa interview capacity, both in terms of physical space and location, and leverage technology in order to allow for visa interviews to be conducted remotely where appropriate;
- Streamline the visa issuance decision making process, including requiring the agencies involved in the security clearance process to respond to requests for security clearance decisions within a specific timeframe;
- Utilize technology to match security clearances with individuals, not applications, so that the same security clearance process does not have to be repeated each time an individual applies for a visa stamp;
- Establish a uniform, clearly accessible mechanism to present business emergencies and to facilitate travel when circumstances do not permit visa applications through normal wait times;
- Implement, on a global basis, “prescreening” programs to allow employees of major multinational companies to apply for business visitor visas on an expedited basis; and

- Alter or eliminate the automatic presumption of immigrant intent in section 214(b) of the INA.

Mr. Chairman, while the principal focus of this hearing is on the difficulties that surround the *process* of getting a visa, the problems that have prompted the hearing stem in very significant part from the policies that govern the *supply* of visas. As Microsoft has worked hard to illustrate for Congressional policymakers, America's need for the world's most talented individuals has never been greater, yet high-skilled immigration to the United States is in crisis. Getting the best and brightest into the U.S. workplace is key to the national interest. This ethic of creativity drives the U.S. economy, strengthens U.S. companies in the global marketplace, and creates jobs for American workers and their families.

But U.S. employers cannot get the professional talent they need, either from recruiting of U.S. workers or through the current immigration programs. The annual supply of visas is nowhere near what is needed. Temporary H-1B visas ran out two months before the start of this fiscal year, leaving U.S. employers unable to hire needed professionals for fourteen months. Wait times for employment-based green cards reach five years, and longer for nationals of India and China.

Without reform, American competitiveness will suffer. Other countries will gain from the international talent that U.S. employers cannot hire or retain. U.S. employers

will be forced to move their functions to places where they can find or bring (through another country's immigration processes) the highly skilled workers that they need.

The Senate Judiciary Committee has recently reported a bill that would offer excellent short-term solutions to permit U.S. employers to get international talent on the job and relieve the wait for permanent residence for these key employees. The Senate Judiciary Committee's bill would provide critical relief from H-1B visa shortages, by raising the base annual H-1B cap to 115,000 beginning in fiscal year 2007; exempting from the H-1B cap those workers who have earned an advanced degree in science, technology, engineering, or mathematics; retaining the separate existing exemption from the H-1B cap for up to 20,000 workers who have earned an advanced degree (in any field) from a U.S. university; and establishing a market-based cap increase mechanism, so that if the cap is reached in any fiscal year, the cap for the following fiscal year would increase by 20 percent.

The bill approved by the Senate Judiciary Committee would also implement a more welcoming policy toward foreign students by permitting students to work off-campus more easily; authorizing post-curricular employment for optional practical training for longer periods; and creating a new "F-4" student visa for students pursuing an advanced degree in science, technology, engineering, or mathematics. F-4 students would be able to receive a student visa even if they wish to seek permanent residence here after completion of their studies. Their status would last through graduation, up to another year while the student seeks a job in the field of study, and as long as it takes the

government to adjudicate the green card filings. After graduating and finding a job, F-4 students and certain others would be able to begin the green card process, and therefore get work and travel authorization, even if a visa number is not yet available, upon the payment of a \$2,000 fee toward scholarships and training for U.S. workers (80%) and fraud prevention (20%).

Finally, and most importantly, the proposal would provide relief from shortages of immigrant visa numbers. This would be accomplished by exempting certain groups of foreign nationals from the numerical limits on employment-based immigration: holders of advanced degrees in science, technology, engineering, or math (whether from U.S. or foreign universities) who have worked in the United States in a related field for three years with a temporary visa; aliens of “extraordinary ability,” outstanding professors and researchers, and persons who have received a “national interest waiver” of the normal job offer requirements in the green card process, and spouses and children of employment-based immigrants. The proposal would increase the annual worldwide level of employment-based immigrants to 290,000, and make certain adjustments to the way that limit is administered.

Nearly identical provisions are included in an immigration bill introduced by the Senate Majority Leader. We commend both the Senate Majority Leader and the members of the Senate Judiciary Committee for their recognition that these visa shortages, and the damage they do to our competitiveness, are urgent problems that

demand immediate solutions. An immigration bill passed by the House in December would do nothing at all to address these problems.

Beyond these crucial immediate measures, there are a great number of broader reforms that would drive American competitiveness:

- calibrate the annual supply of employment-based green cards to market needs;
- establish a new “pre-immigrant” category of visas for highly-valued professionals whom U.S. employers intend from the outset to hire permanently;
- eliminate discriminatory per-country limits on employment-based green cards;
- eliminate the cumbersome labor certification process for those with advanced educations in science, technology, engineering, or mathematics, and streamline the process for professionals with bachelor’s degrees in those fields;
- eliminate the outmoded presumption of permanent intent for those seeking temporary visas for professional purposes or to study
- eliminate spousal employment bans that inhibit recruitment; and
- eliminate unnecessary interruptions to work and travel that result from processing delays.

Mr. Chairman, the issues before the Committee, and before the Congress, today are absolutely critical to the ability of this country to maintain its position of global leadership in innovation. At the same time the nation strives to maintain its security, it must also strive to maintain its intellectual and economic strength. The ability to bring

the best and brightest from around the world into this country – to conduct business, to study, to join our workforce – is indispensable to that effort. Yet there are many serious obstacles to achieving that goal. Many of those obstacles are self-imposed. Microsoft commends the Committee for its efforts to eliminate these unnecessary obstacles wherever possible, and we stand ready to work with you in any way we can.