



United States Department of State

Washington, D.C. 20520

August 28, 2023

Case No. FL-2016-11198

John Michael Miano
Immigration Reform Law Institute
25 Massachusetts Ave., N.W.
Suite 335
Washington, D.C., 20001

Dear Mr. Miano:

As we noted in our letter dated July 27, 2023, we are processing your request for material under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. The Department of State ("Department") has identified five additional responsive records subject to the FOIA. We have determined that four records may be released in part and one record may be released in full.

An enclosure explains the FOIA exemptions and other grounds for withholding material. Where we have made redactions, the applicable FOIA exemptions are marked on each record. Where applicable, the Department has considered the foreseeable harm standard when reviewing these records and applying FOIA exemptions. All non-exempt material that is reasonably segregable from the exempt material has been released and is enclosed.

We will keep you informed as your case progresses. If you have any questions, please contact Assistant United States Attorney Kartik Venguswamy at (202) 252-1790 or Kartik.Venguswamy@usdoj.gov. Please refer to the associated case number, FL-2016-11198, and the civil action number, 1:17-cv-00118, in all communications regarding this case.

Sincerely,

A handwritten signature in black ink, appearing to read 'Diamonece Hickson', with a stylized, cursive script.

Diamonece Hickson
Chief, Litigation and Appeals Branch
Office of Information Programs and Services

Enclosures: As stated.

The Freedom of Information Act (5 USC 552)

FOIA Exemptions

(b)(1) Information specifically authorized by an executive order to be kept secret in the interest of national defense or foreign policy. Executive Order 13526 includes the following classification categories:

- 1.4(a) Military plans, systems, or operations
- 1.4(b) Foreign government information
- 1.4(c) Intelligence activities, sources or methods, or cryptology
- 1.4(d) Foreign relations or foreign activities of the US, including confidential sources
- 1.4(e) Scientific, technological, or economic matters relating to national security, including defense against transnational terrorism
- 1.4(f) U.S. Government programs for safeguarding nuclear materials or facilities
- 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to US national security, including defense against transnational terrorism
- 1.4(h) Weapons of mass destruction

(b)(2) Related solely to the internal personnel rules and practices of an agency

(b)(3) Specifically exempted from disclosure by statute (other than 5 USC 552), for example:

ARMSEXP	Arms Export Control Act, 50a USC 2411(c)
CIA PERS/ORG	Central Intelligence Agency Act of 1949, 50 USC 403(g)
EXPORT CONTROL	Export Administration Act of 1979, 50 USC App. Sec. 2411(c)
FS ACT	Foreign Service Act of 1980, 22 USC 4004
INA	Immigration and Nationality Act, 8 USC 1202(f), Sec. 222(f)
IRAN	Iran Claims Settlement Act, Public Law 99-99, Sec. 505

(b)(4) Trade secrets and confidential commercial or financial information

(b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product

(b)(6) Personal privacy information

(b)(7) Law enforcement information whose disclosure would:

- (A) interfere with enforcement proceedings
- (B) deprive a person of a fair trial
- (C) constitute an unwarranted invasion of personal privacy
- (D) disclose confidential sources
- (E) disclose investigation techniques
- (F) endanger life or physical safety of an individual

(b)(8) Prepared by or for a government agency regulating or supervising financial institutions

(b)(9) Geological and geophysical information and data, including maps, concerning wells

Other Grounds for Withholding

NR Material not responsive to a FOIA request excised with the agreement of the requester

UNCLASSIFIED

Released in Part

VISA WAIVER PROGRAM

Question 1: There are currently 38 countries participating in the Visa Waiver Program (VWP). Has the State Department been in discussions with the Department of Homeland Security to consider adding any countries to the program?

Answer:

(b)(5)

Question 2: What steps is the State Department taking to add countries to the program?

Answer:

(b)(5)

Question 3: In the past, specific legislation has been proposed for Poland and Israel. What is the status of those two countries?

Answer:

(b)(5)

UNCLASSIFIED

(b)(5)

Drafted: [REDACTED] (b)(6) CA/VO/F/P

Cleared: CA: [REDACTED] (b)(6) (ok)
CA/P: [REDACTED] (b)(6) (ok)
CA/VO: [REDACTED] (b)(6) (ok)
VO/F/P: [REDACTED] (b)(6) (ok)
VO/F: [REDACTED] (b)(6) (ok)
VO/P: [REDACTED] (b)(6) (ok)
VO/L: [REDACTED] (b)(6) (ok)

FOR OFFICIAL USE ONLY/LAW ENFORCEMENT SENSITIVE**ISRAEL AND THE U.S. VISA WAIVER PROGRAM (VWP)****VWP Background:**

(U) The VWP and the requirements for designation are set in law under Section 217 of the *Immigration and Nationality Act* (INA). Under the statute, the Secretary of Homeland Security has authority over the VWP, in consultation with the Secretary of State. Congress has amended the requirements for VWP designation several times over the past decade to reflect evolving immigration and security concerns, most recently in the *Secure Travel and Counterterrorism Partnership Act of 2007* (Section 711 of the *Implementing Recommendations of the 9/11 Commission Act of 2007*). Current VWP legislation includes strict and uniform security standards that are delineated below (pages 2-3).

(U/FOUO) In 2012, the Administration, including the President in letters to Congress, endorsed specific legislative efforts to amend U.S. law to expand the ability of additional countries to qualify for VWP designation. The principal change involved increasing the maximum nonimmigrant visitor visa refusal rate for initial designation from three percent to ten percent on a discretionary basis. The bill also added a requirement of an overstay rate of not more than three percent. Legislation that included language the Administration endorsed during the 112th Congress included the *Visa Waiver Program Enhanced Security and Reform Act* and the *Jobs Originating through Launching Travel ("JOLT") Act*. Members of Congress re-introduced the *Visa Waiver Program Enhanced Security and Reform Act* in the 113th Congress. The elements of JOLT were adopted in S.744, the Senate-passed Comprehensive Immigration Reform bill.

(U/FOUO) Although the Departments of Homeland Security and State support a carefully managed expansion of the VWP to qualified foreign partners, current and previous Administrations have consistently opposed draft legislation that would exempt specific countries from one or more of the VWP's uniform standards and designate specific countries into the VWP outside of the established criteria for designation. Several times in recent years, Members of Congress have introduced legislation that would designate Israel into the VWP. For example, the *Visa Waiver for Israel Act of 2012* was introduced during the 112th Congress. The *Visa Waiver for Israel Act of 2013* was also introduced during the 113th Congress and has a companion bill in the Senate. Further, both the Senate and House versions of the *United-States Israel Strategic Partnership Act of 2013* contain VWP language. As it stands, the House version represents a policy statement that once Israel meets all of the current requirements for the VWP, it should be a participant in the program. The Senate version, though, includes language that would exempt Israel from one program requirement (the nonimmigrant visa refusal rate requirement) and includes language on reciprocal visa-free travel (an existing VWP requirement).

VWP for Israel Background:

(U/FOUO) For several years, Israel has expressed interest in joining the VWP. The Departments of Homeland Security and State have discussed the program's requirements with Israeli representatives in the past. During senior-level meetings in 2012 and 2013, Israeli officials restated Israel's desire for VWP designation, whether by change in U.S. statute or by meeting current VWP requirements. Israel currently does not meet most of the requirements for program designation.

FOR OFFICIAL USE ONLY/LAW ENFORCEMENT SENSITIVE

(FOUO/L.E.S) To achieve VWP designation under current law, a country must:

- *Offer reciprocal visa-free travel for U.S. citizens:* Prior to VWP designation, the Department of Homeland Security considers whether countries extend reciprocal visa-free travel for 90 days for all U.S. citizens, although INA 217(a) links the reciprocity requirement to the admissibility of individual travelers under the program only if a country already has been designated as a VWP participant. The Department of State, in its consultative role, also considers whether a country extends reciprocal visa-free travel to U.S. citizens and nationals prior to endorsing a VWP designation. Israel imposes discriminatory entry and travel restrictions on Palestinian-Americans and other Americans of Arab and Middle Eastern origin wishing to travel to Israel or the West Bank.
- *Have a nonimmigrant visitor visa refusal rate of less than 3 percent:* Israel's refusal rate on nonimmigrant visitor visas was 6.9 percent in FY11, 5.4 percent in FY12, and rose to 9.7 percent in FY13.
- *Accept repatriation of its citizens, former citizens, and nationals with a final order of removal not later than three weeks after the issuance of the final order of removal:*

(b)(5)

- *Enter into bilateral information sharing agreements:* The 2007 statutory changes added a requirement for VWP countries to sign information sharing agreements "regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens" as well as an agreement on the exchange of information on lost and stolen passports. Israel has signed one of the three necessary agreements.
- *Report lost and stolen passport data to INTERPOL according to the organizations best practices:* VWP countries are required to report lost and stolen passport data to INTERPOL daily so that the United States can prevent the use of these documents by illicit travelers. Israel reports such data only sporadically to INTERPOL and INTERPOL's Stolen and Lost Travel Document database contains relatively few Israeli passport records.
- *Issue electronic passports (e-passports) that are machine readable with biometric capabilities:* Israel is testing e-passport issuance, but has only issued them on a very limited basis. Over 97 percent of the Israeli traveling public are estimated not to have an e-passport and it will be years before many Israeli travelers have e-passports.
- *Receive a positive determination by the Secretary of Homeland Security, in consultation with the Secretary of State, that the designation would not compromise U.S. security, law enforcement, and immigration enforcement interests:* The evaluation includes a comprehensive review of a country's counterterrorism (CT) and law enforcement risks and capabilities, CT and law enforcement relationships with the United States, border control

capabilities, immigration laws and policies, and travel and identity document issuance and security.

- *Undergo an independent intelligence assessment from the Office of the Director of National Intelligence:* The evaluation includes a review of terrorist threats; an evaluation of the subject country's CT efforts; an evaluation of information sharing relevant to prevent terrorist movements, financing, and actions; an assessment of the risks associated with including the subject country in the VWP; and recommendations to mitigate the risks identified. This intelligence assessment is also reviewed as part of the comprehensive DHS evaluation noted above.

Israel VWP Talking Points:

- The VWP provides the United States with exceptional opportunities to deepen security partnerships with foreign countries as well as achieve greater law enforcement cooperation, improved travel documents, and other security goals.
- The Secretary of Homeland Security, in consultation with the Secretary of State, may designate countries for participation in the VWP when and if the country meets uniform and high security standards established in statute and policy.
- Current and previous Administrations have consistently opposed draft legislation that would exempt specific countries from the VWP's consistent and high security standards and designate specific countries into the VWP outside of the established criteria for designation.
- Country-specific bills significantly weaken the existing VWP statute's strong security requirements. Such a change would also compromise the judgments made by the Executive Branch regarding national security implications and law enforcement and immigration enforcement interests that go into a determination of whether to designate a country into the VWP.
- Country-specific bills could also have a negative impact on our relationships with other countries that are taking the necessary steps to meet the criteria in order to qualify for VWP designation and those that have already done so.
- The Administration continues to support a "one tier VWP" in which all countries must meet established criteria as prerequisites for designation and are consistently evaluated for continuing designation according to uniform standards for law enforcement, national security, and immigration purposes.
- At this time, Israel does not meet most VWP eligibility requirements including, but not limited to, a low nonimmigrant visa refusal rate of less than three percent.

(b)(7)(E)

(b)(7)(E)

- Other requirements that Israel does not currently meet include entering into information-sharing agreements with the United States regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens, full issuance of electronic passports (e-passports), and the timely reporting of lost and stolen passports to INTERPOL.
- The Administration also remains concerned with the unequal treatment that Palestinian-Americans and other Americans of Arab and Middle Eastern origin receive at Israel's borders and checkpoints. To gain entry to the VWP, countries must offer "reciprocal privileges to citizens and nationals of the United States." The Department of Homeland Security considers whether countries extend reciprocal visa-free travel for 90 days for all U.S. citizens prior to VWP designation, although the INA links the reciprocity requirement to VWP country status, not specifically initial VWP designation. The Department of State, in its consultative role, also considers whether a country extends reciprocal visa-free travel to U.S. citizens and nationals prior to endorsing a country's VWP designation. The United States considers the current restrictions, faced by Palestinian-Americans and other Arab-Americans, to be inconsistent with the 90 days of visa-free travel the United States offers to citizens and nationals of VWP countries.
- The Departments of Homeland Security and State are prepared to discuss with Israel the VWP and Israeli efforts to meet the VWP's current requirements for designation.



Released in Part

U.S. DEPARTMENT OF STATE

U.S. EMBASSY TEL AVIV, ISRAEL

UNCLASSIFIED

INFORMATION MEMORANDUM

DATE: 5 JUNE, 2012
TO: THE AMBASSADOR
THROUGH: DCM – Thomas H. Goldberger
FROM: CG - Lawrence J. Mire

SUBJECT: Visa Waiver Program

Overview

The Visa Waiver Program (VWP) enables nationals of certain designated countries to travel to the United States for tourism or business (visitor [B] visa purposes only) for stays of 90 days or less without obtaining a visa. The objective is to facilitate low-risk travel to the United States. The program is open only to countries that have very low rates of nonimmigrant visa refusals and immigration violations, issue biometric passports (i.e., e-passports), and work closely with U.S. law enforcement and counterterrorism authorities. By building security-related requirements into the program, the VWP stimulates tourism and commerce, and permits the Department of State to focus consular resources in other areas.

Currently, 36 countries participate in the VWP: Andorra, Australia, Austria, Belgium, Brunei, the Czech Republic, Estonia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, the Republic of Korea, San Marino, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. Ability to travel under the VWP is based on the nationality of the traveler, not the traveler's place of birth or residence.

VWP travelers to the US must still undergo screening by ESTA (Electronic System for Travel Authorization). ESTA requires that VWP travelers apply on-line and receive a valid ESTA approval before boarding an air or sea carrier to travel to the

United States under the VWP. ESTA approvals became mandatory for VWP travel on January 12, 2009. ESTA is a limited database (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

Travelers who are not able to obtain an ESTA approval must apply for a visa at their nearest U.S. embassy or consulate.

Requirements

The Secretary of Homeland Security, in consultation with the Secretary of State, is authorized to designate countries to participate in the VWP, provided the countries meet the applicable requirements. The requirements to join the VWP are set forth in Section 217 of the Immigration and Nationality Act, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, and in other statutes (for example, 8 U.S.C. § 1732 sets forth the applicable travel document standards).

The standard requirements include:

- a nonimmigrant visa refusal rate below three percent
- offering reciprocal visa-free travel for U.S. citizens for business or tourist visits of up to 90 days
- issuing International Civil Aviation Organization (ICAO) compliant e-passports
- sharing lost and stolen passport information with the United States through INTERPOL or other means
- sharing information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens
- and cooperation on repatriation matters.

At present, the United States is focusing on bringing the pre-2008 VWP member countries into compliance with the enhanced requirements of the 9/11 Act rather than on expanding the pool of VWP countries. We do not foresee creating any subsequent “VWP roadmaps” for groups of interested countries. Any engagement relating to VWP membership will occur on a country-by-country basis as appropriate, given both statutory and resource limitations. There is little institutional desire at State to shut off another potential stream of MRV fees given the increasingly important role that visa fees pay in funding our overseas operations.

Regarding visa refusal rates, the 9/11 Act gave the Secretary of Homeland Security the authority to waive the less than three percent nonimmigrant visa refusal rate requirement and consider for VWP membership countries that have

visa refusal rates of between three percent and ten percent and that meet additional statutory and other program requirements, including the strengthening of document security standards and airport and aviation security. However, his authority was suspended on July 1, 2009, because a biometric air exit program was not implemented by June 30,

Problems for Israelis Accession

There are three main obstacles to Israel joining the VWP. The first is the visa refusal rate, currently over 5%. This refusal rate is unlikely to decrease. Our

(b)(5); (b)(7)(E)

(b)(5)

(b)(5)

(b)(7)(E)

Possible Solutions

(b)(5)

FL-2016-11198 A-00000443037

"UNCLASSIFIED"

8.28.2023 Page 11

(b)(5)

(b)(5)

Cleared:

ConGen: Jeremy Jolles

DHS: Richard Jolles

Attachments:

9 FAM 41.62 N4.12-4 Student Work and Travel Pilot Programs for Citizens of Australia and New Zealand.



Released in Part

U.S. DEPARTMENT OF STATE

U.S. EMBASSY TEL AVIV, ISRAEL

~~**SENSITIVE BUT UNCLASSIFIED**~~

INFORMATION MEMORANDUM

DATE: November 3, 2015
TO: The Ambassador
THROUGH: DCM – William Grant
FROM: CONS – David Schwartz
SUBJECT: Status Report on VWP Progress

As summarized below, the GOI has made steady progress on a number of VWP requirements since the bilateral VWP working group met in Washington in August 2014. Both the USG and GOI understand that there is no near term date on which readiness for VWP admission consideration will be complete.

- (U) Timely reporting of lost and stolen passports: This element is **complete**. In early October 2015, the GOI and USG exchanged diplomatic notes affirming that all required steps related to this VWP requirement has been satisfied.
- (U) Issuance of ePassports: As of June 2015, DHS certified that Israeli e-Passports comply with internationally accepted biometric and document authentication standards, as required for admission into VWP. However, in to qualify for VWP designation, the GOI must exclusively issue e-Passports and cease issuing non-biometric passports.

(b)(7)(E)

(b)(7)(E)

- ~~(SBU)~~ Information sharing agreements on persons/passengers who may pose a terrorist or criminal threat: VWP designation requires the completion of two bilateral agreements that allow for the exchange of information on potential criminals and terrorists. (b)(5)

(b)(5)

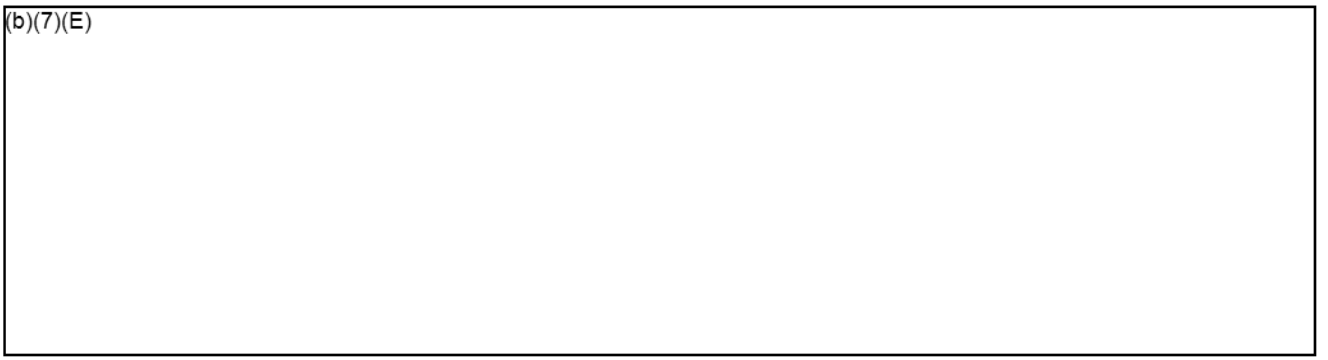
(b)(5)

- ~~(SBU)~~ Reciprocal visa-free travel for U.S. citizens: The GOI has stated it will provide reciprocal visa-free entry and travel into Israel uniformly for all U.S. citizens, including U.S. citizens listed on the Palestinian Population Registry. The United States has informed the GOI that equal treatment of all U.S. citizens, including Americans of Arab and Middle Eastern origin, will be considered prior to entry into VWP.
- ~~(SBU)~~ Less than 3 percent visa refusal rate during the previous fiscal year: The FY14 global refusal rate for Israeli citizens published by the Department of State was 8.2 percent. The FY15 refusal rate will be published by the Department of State in the coming weeks. Early indications (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

- ~~(SBU)~~ Receive a positive determination by the Secretary of Homeland Security, in consultation with the Secretary of State, that the designation would not compromise U.S. security, law enforcement, and immigration enforcement interests: DHS will commence this evaluation after all other VWP criteria are met, or are about to be met. The DHS evaluation includes a review of a country's counterterrorism and law enforcement risks and capabilities, counterterrorism and law enforcement relationships with the United States, border control capabilities, immigration laws and policies, and travel and identity document issuance and security.

(b)(7)(E)



Drafted: CONS: DSchwartz

FL-2016-11198

A-00000443025

"UNCLASSIFIED"

8.28.2023 Page 15

Cleared: CA/VO: MRitchie ok
 CA/OCS: KRichter ok

Info: DHS: CGianfranco

UNCLASSIFIED

Requirements for Visa Waiver Program (VWP) Initial Designation

The following outlines the requirements a Visa Waiver Program (VWP) aspirant country must complete *before* being designated a VWP country:

1. Reciprocal Visa-Free Travel for U.S. Citizens and Nationals

To become eligible for VWP designation, aspirant countries must offer visa-free travel to U.S. citizens and nationals.

2. Low Nonimmigrant Visa (NIV) Refusal Rate

To be designated in the VWP, a country must have a visa refusal rate below three percent for visitor (B category) nonimmigrant visas world-wide for the previous fiscal year. Refusal rates are posted on the Department of State website.

3. Issuance of Biometric Passports

VWP countries must issue International Civil Aviation Organization (ICAO)-compliant machine readable passports containing biometric identifiers (i.e., “e-passports”). Visa-free travel for countries designated into the VWP after passage of the *Implementing Recommendations of the 9/11 Commission Act of 2007* (9/11 Act) is restricted to travelers using e-passports.

4. Repatriation of Nationals

VWP aspirant countries must accept repatriation of any citizens, former citizens, or nationals ordered removed by the United States no later than three weeks after the issuance of the final order of removal.

5. Completion of Three Information Sharing Agreements

The 9/11 Act amended the primary VWP statute to create new information sharing mandates for all VWP countries. The following three instruments were deemed sufficient to meet these requirements:

b(7)(E)

UNCLASSIFIED

Technical implementation is under the responsibility of DHS and the Federal Bureau of Investigation (FBI).

(b)(7)(E)

An agreement to report information to INTERPOL (or through other designated means) on lost and stolen passports. To fulfill this requirement, the United States and each of its VWP partners must complete a Memorandum of Understanding (MOU) or an exchange of diplomatic notes documenting their intent to report information on lost and stolen passport through INTERPOL in accordance with the organization's reporting standards. VWP countries are expected to report lost and stolen passport data to INTERPOL on a daily basis.

6. Completion of a Thorough Security Review by DHS

Once the basic requirements illustrated above are met, DHS must “evaluate the effect that the country’s designation would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law).”

Reviews for initial designation are especially comprehensive and always include a visit by DHS and other United States Government officials to the candidate country. During the in-country visit, the assessment team meets with host government officials in charge of immigration, law enforcement, counterterrorism, border security, and document issuance and verifies applicable standards and procedures to determine whether the country meets the stringent security standards required for VWP designation.

DHS also takes into special consideration the “discretionary measures” outlined in the 9/11 Act: (1) the airport security standards in the country; (2) whether the country assists in the operation of an effective air marshals program; (3) the standards of passports and travel documents issued by the country; (4) other security-related factors, including the country’s cooperation with the United States intelligence community in sharing information regarding terrorist threats.

Following the in-country visit, DHS writes a report detailing to the Secretary of Homeland Security and, ultimately, the U.S. Congress any security challenges or loopholes that could potentially compromise U.S. interests should the country be designated as a VWP country. VWP assessment teams frequently issue recommendations for improvement of procedures and practices that must be met prior to VWP designation.

7. Favorable Completion of an Independent Director of National Intelligence (DNI) Assessment of the Aspirant Country

This assessment is carried out in conjunction with the DHS designation review described in item number 6, above. The DNI assessment evaluates, among other things, the effectiveness of the country's counterterrorism efforts.