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Inappropriate Uses of
Educational and
Cultural Exchange
Visas





United States
General Accounting Office
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**National Security and
International Affairs Division**

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The Honorable Joseph R. Biden
Chairman, Committee on the Judiciary
United States Senate

The Honorable Edward M. Kennedy
Chairman, Subcommittee on Immigration
and Refugee Affairs
Committee on the Judiciary
United States Senate

The Honorable Jack Brooks
Chairman, Committee on the Judiciary
House of Representatives

The Honorable Bruce A. Morrison
Chairman, Subcommittee on Immigration,
Refugees and International Law
Committee on the Judiciary
House of Representatives

This report addresses the activities of visitors entering the United States under the J visa to participate in educational and cultural exchange programs. We made our review in response to the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (P.L. 100-461, sec. 555).

We are sending copies of this report to other cognizant congressional committees, the Director of the U.S. Information Agency, the Director of the Office of Management and Budget, and other interested parties.

This report was prepared under the direction of Joseph E. Kelley, Director of Security and International Relations Issues, who may be reached on (202) 275-4128 if you or your staff have further questions. Other major contributors are listed in appendix I.

Frank C. Conahan
Assistant Comptroller General

Executive Summary

Purpose

As a result of controversy over whether aliens in the United States on J visas were performing activities consistent with legislative intent, Public Law 100-461 required GAO to examine the J-visa program administered by the U.S. Information Agency (USIA). Specifically, GAO was to determine whether participant activities under the J-visa program are consistent with congressional intent of the J-visa legislation. GAO responded to that requirement and also assessed USIA's management of the J-visa program.

Background

The Mutual Educational and Cultural Exchange Act of 1961 was enacted to promote foreign policy objectives of mutual understanding between the people of the United States and other countries through educational and cultural activities. To enable nonimmigrant aliens to enter the United States to participate in educational and cultural activities, the act established the J visa.

USIA designates organizations as sponsors for participants from other countries. It classifies participants into seven categories: student, teacher, professor, research scholar or specialist, professional trainee, trainee, and international visitor. According to USIA data, about 111,000 participants entered the United States under the J-visa program in 1987—the last year with the most complete data. This was a 71 percent increase over 1983—the first year in the data base that GAO examined.

Results in Brief

Based on GAO's analysis of the 1961 act and its legislative history, to be eligible for J visas participants and their activities must fit the categories described in the act. A participant must be "a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a specialized knowledge or skill, or other person of similar description." A participant must come to the United States for the purpose of "teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training."

Most J-visa activities appear to conform to the intent of the 1961 act. However, GAO believes that certain activities and programs in the trainee and the international visitor categories, including the summer student/travel work, international camp counselor, and au pair (child care) programs, are inconsistent with legislative intent. GAO identified instances of participants working as waiters, cooks, child care providers,

amusement and leisure park workers, and summer camp counselors. Authorizing J visas for participants and activities that are not clearly for educational and cultural purposes as specified in the act dilutes the integrity of the J visa and obscures the distinction between the J visa and other visas granted for work purposes.

USIA's management oversight of the J-visa program has not been adequate to ensure integrity of the program. The J-visa regulations do not ensure that participant activities conform to the intent of the act. USIA lacks adequate information on participant activities, does not enforce requirements that program sponsors provide periodic information on participant activities, has no systematic process to monitor sponsors' and participants' activities, and does not adequately coordinate the program internally or with other agencies having visa responsibilities.

Principal Findings

Some J-Visa Activities Are Not Consistent With Legislative Intent

Participants' activities in the trainee category encompassed a great diversity of work situations. Participants are allowed to work, but their employment must be consistent with their status as defined in the legislation. In GAO's view, some training consisted primarily of employment in commercial enterprises with no cultural or educational emphasis placed on the participants' activities. This training involved participants in such capacities as waiters, cooks, hotel workers, and automobile body repairers. For example, in the hotel area, one participant who was a hotel receptionist in his home country worked as a receptionist, cashier, and housekeeper; another participant who was a hotel chef in his home country worked as a hotel store room manager. Two participants working in automobile body repair and painting were performing the same type of work that they had performed for 4 or 5 years in their home countries.

Participants' activities in the international visitor category also encompassed a great diversity of work situations. This category, which was established by USIA regulations, has been used for participants and activities that do not fall into the categories mentioned in the J-visa statute. The summer student travel/work, international camp counselor, and au pair programs are of this nature. Participants in these programs have worked at fast food restaurants, summer resorts, amusement parks, and summer camps; do not have special skills; or have provided

full-time child care. Public Law 100-461 required the continuation of au pair programs for fiscal years 1989 and 1990. The same section of Public Law 100-461 required GAO's assessment of J-visa activities, including the au pair program. In GAO's view, such programs do not include participants or activities of the type specified in the J-visa statute.

GAO was unable to determine the number of participants engaged in questionable activities because USIA's information system is not adequate to make that determination, but it appears that several thousand participants are involved.

J-Visa Regulations Are Inadequate

USIA's regulations governing J-visa programs are too vague and not comprehensive enough to ensure that participants and their activities are consistent with the intent and purpose of the 1961 act. The regulations do not state how the policy objectives of the 1961 act can be achieved, and they provide little guidance as to what constitutes legitimate educational and cultural exchanges. Many J-visa activities are not discussed in the regulations. For three types of programs that are discussed—the practical trainee, summer student travel/work, and international camp counselor—the regulations do not require participants' status and their activities to be the same or similar to the categories described in the act. Furthermore, USIA reported in 1987 that its regulations do not ensure compliance with the act. As of December 1989, USIA had not revised its regulations.

Problems in Managing the J-Visa Program Persist

USIA has devoted more attention to the J-visa program during the past year or so and has worked to correct problems in the program, but the following areas still require management attention:

- USIA does not have reliable data on the nature and extent of J-visa activities because its management system is not up-to-date, is unreliable, and contains erroneous information.

USIA has not adequately monitored the J-visa program and complied with its regulations to (1) cancel unused and underused programs, (2) obtain annual reports to monitor sponsor activities, (3) ensure that programs are reciprocal to the extent required (that is, programs send Americans to other countries as well as bring aliens to the United States), and (4) ensure that extensions of participants' stay in the

United States comply with policy and program objectives. It has no systematic procedure for monitoring sponsors' and participants' activities—some of which have been ongoing since the 1960s.

- USIA has not adequately coordinated the J-visa program within the agency and with other agencies, such as the Department of Labor and the Immigration and Naturalization Service, which have responsibilities related to visas, to ensure compliance with U.S. foreign policy objectives and labor and immigration laws.

Matters for Consideration by the Congress

Because GAO believes that several kinds of participants and activities are not consistent with the intent of the 1961 act, the Congress may want to review such participants and activities and determine whether they should be included under other visas or explicitly provided for under the J-visa or other legislation.

Recommendations to the Director, USIA

GAO recommends that the Director, USIA,

- revise the J-visa regulations to make them consistent with the authorizing legislation and more comprehensive regarding policy and program objectives and criteria as to what constitutes a bona fide program under the act.
- take several specific actions related to improving the management information system, complying with regulations, monitoring program activities, and ensuring that program activities promote policy and program objectives. (See ch. 3 for detailed recommendations.)

Agency Comments

GAO discussed the contents of the report with responsible agency officials, who expressed no disagreement with GAO's analyses and positions. They expressed their intent to address the concerns in the report. For example, USIA officials said they plan to establish three task forces to address regulatory, information management, and other management concerns.

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Abbreviations

GAO	General Accounting Office
INS	Immigration and Naturalization Service
USIA	U.S. Information Agency

Introduction

Controversy over the legitimacy of certain activities of foreign nationals in the United States on J visas (for example, child care by au pairs¹) sparked congressional interest in the J-visa educational and cultural exchange program. Public Law 100-461, October 1, 1988,² requires GAO to determine whether exchange visitors coming to the United States on J-1 visas³ are performing activities consistent with congressional intent of the J-visa legislation.

Background

The Mutual Educational and Cultural Exchange Act of 1961⁴ was intended to promote mutual understanding between the people of the United States and other countries by means of educational and cultural exchanges. To serve its purposes, the act established the J visa by adding section 101(a)(15)(J) to the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J)). It defined a J-visa user as

“an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training.” (underscoring added)

The U.S. Information Agency (USIA) is responsible for managing the J-visa (Exchange-Visitor) program. USIA designates organizations as J-visa program sponsors.⁵ Any reputable U.S. agency or organization or recognized international agency or organization having U.S. membership and offices can be a sponsor.

¹Au pairs are live-in nannies who provide child care.

²Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, 102 Stat. 2268-37.

³J-1 visas are issued to program participants, and J-2 visas are issued to participants' family members. In this report, we refer to J-1 visas only as J visas.

⁴Public Law 87-256, 75 Stat. 527 (1961).

⁵A February 27, 1986, memorandum from USIA's Office of General Counsel to the Director, USIA, states that designation involves a determination by USIA that a proposed program specifically fits within guidelines of the J-visa regulations.

USIA provides program sponsors with authorizing forms for J visas.⁶ The sponsor, through various means such as visits or through affiliated organizations overseas, selects individual program participants, fills out the USIA forms, and provides them to selected individuals. An individual presents the form to a consular officer at an overseas post and obtains a J visa. At the U.S. port of entry, the Immigration and Naturalization Service (INS) dates the form and sends a copy to USIA for its use as a source document in its automated data system. The data system supports the program office in operating the J-visa program and is the only consolidated source of detail information on J-visa participants entering the United States.

Type and Number of Participants

The J-visa regulations define seven categories of J-visa holders. These categories are important because they indicate a participant's general activity and the maximum length of time the participant is to stay in the United States. See table 1.1 for the categories and the purposes for requesting a J visa.

Table 1.1: Categories of Participants

Category of participant	Reason for J-visa request
Student	To pursue formal courses, research, or teaching that will lead to a recognized degree or certificate in an established school or institution of learning. Students are permitted to stay in the United States as long as they pursue substantial scholastic programs leading to recognized degrees or certificates. After receiving a degree or certificate, they may remain in the United States up to 18 additional months for practical training.
Trainee	To obtain on-the-job training with firms, institutions, and/or agencies in specialized fields of knowledge or skill for periods not to exceed 18 months.
Teacher	To teach in established primary or secondary schools or schools offering specialized instruction for up to 3 years.
Professor	To teach or conduct advanced research in an established institution of higher learning for up to 3 years.
Research scholar or specialist	To undertake or participate in research or in demonstrating specialized knowledge or skills for up to 3 years.
International visitor	To travel, observe, consult, research, train, share, or demonstrate specialized knowledge or skill, or participate in organized people-to-people programs for up to 1 year.
Professional trainee	To pursue clinical training in the medical and allied fields for up to 7 years.

⁶Form IAP-66, Certificate of Eligibility for Exchange-Visitor (J-1) Status.

In addition, the regulations establish the maximum length of stay for certain specific participants:

- graduate nurses, 2 years;
- medical technologists, medical record librarians, medical record technicians, radiologic technicians, nurse anesthetists, and other participants in similar categories, length of the approved training program plus a maximum of 18 months for practical training not to exceed a total of 3 years;
- alien employees of USIA, 10 years plus additional periods determined in individual cases; and
- research assistants sponsored by the National Institutes of Health, 5 years.

According to the regulations, exceptions to the specified lengths of stay in the United States will be permitted only in unusual circumstances.

The J-visa program has been operating since the early 1960s with the passage of the Mutual Educational and Cultural Exchange Act of 1961. Table 1.2 shows the number of participants, by category, entering the United States for 1983-88, the period covered by USIA's data base that we analyzed. Although USIA's data base is incomplete and contains some erroneous data, it does indicate that as a general trend, the number of J-visa participants entering the United States increased each year. Seventy-one percent more participants entered the United States in 1987 than in 1983. Data for 1988 was incomplete, but indications are that the percentage increase for 1988 should be greater.

Table 1.2: Participants (By Category), 1983-88

Category	1983	1984	1985	1986	1987	1988 (partial)
Student	26,568	30,109	36,373	37,707	40,318	29,230
Trainee	5,551	6,165	6,729	7,767	9,352	7,375
Teacher	1,133	1,205	1,386	1,525	1,683	1,119
Professor	3,155	3,551	4,118	8,951 ^a	20,788 ^a	15,085 ^a
Research scholar/ specialist	13,287	14,415	17,946	24,841 ^a	30,429 ^a	32,913 ^a
International visitor	12,938	17,281	21,666	15,424 ^a	6,626 ^a	2,876 ^a
Professional trainee	1,912	1,840	2,004	1,756 ^a	1,447 ^a	996 ^a
Unspecified	9	42	196	187	8	7
Total	64,553	74,608	90,418	98,158	110,651	89,601
Percent yearly increase		16	21	9	13	

^aBeginning with the category "professor" in 1986, the number of participants is not correct by category because of a flaw in USIA's data system. An indeterminable amount of the next category is included in each category. For example, some research scholars are included with professors and some international visitors are included with research scholars. This data error must be considered in interpreting information in this table.

Source: Prepared by GAO from USIA data base.

Type of Sponsors

The variety of J-visa sponsor organizations—government agencies, educational institutions, hospitals and related institutions, nonprofit organizations, and businesses—provides further insight on the range and diversity of J-visa participants' activities. Participants have come to the United States under about 1,500 programs since 1983. Table 1.3 shows the number of participants for each type of sponsor for 1983-88.

Table 1.3: Participants (By Sponsor), 1983-88

Sponsor	1983	1984	1985	1986	1987	1988 (partial)	1987 (percent)
Governmental							
USIA	5,270	5,519	6,851	6,819	6,885	5,006	6
AID ^a	5,085	5,029	7,071	8,013	9,092	5,867	8
State	9	7	25	11	77	33	b
International organizations	765	812	816	736	708	419	1
Other government	1,847	2,047	2,303	2,204	2,421	1,623	2
Subtotal	12,976	13,414	17,066	17,783	19,183	12,948	17
Nongovernmental							
Educational	22,684	25,039	31,284	31,427	34,223	21,863	31
Hospital	93	81	81	70	60	43	b
Nonprofit	24,827	31,257	36,512	41,856	48,665	44,633	44 ^c
Business	3,973	4,817	5,475	7,022	8,520	10,114	8
Subtotal	51,577	61,194	73,352	80,375	91,468	76,653	83
Total	64,553	74,608	90,418	98,158	110,651	89,601	100

^aAgency for International Development.

^bLess than 1/2 percent.

^cAbout 48 percent of nonprofit organization participants in 1987 were in the student category. This was equivalent to about 21 percent of all entrants into the United States in that year.

Source: Prepared by GAO from USIA data base.

As shown in table 1.3, the government programs (17 percent), educational programs (31 percent), and students entering the United States under a nonprofit sponsor program (21 percent) represent the majority of participants.

Objectives, Scope, and Methodology

We examined whether participants receiving J visas for current programs of educational and cultural exchange are performing activities consistent with legislative intent as directed by Public Law 100-461. We did not, however, make judgments as to the value of any program. In addition, we examined USIA's management of the program.

We interviewed officials at USIA, INS, the Departments of State and Labor, and the Agency for International Development. We met with several former officials of the J-visa program and a former INS General Counsel familiar with the program. We also met with William Fulbright, former senator and one of the initial sponsors of exchange-visitor legislation, to obtain his perspectives.

At USIA we reviewed sponsors' program files, J-visa regulations, and additional information provided by program officials. We obtained and analyzed USIA's master data file as of April 1989 on participants entering the United States since 1983.

We researched the authorizing legislation and legislative history and consulted with other agencies regarding their interpretation of legislative intent.

After our initial survey of the program and consultations with congressional staff, we narrowed the scope of our work to sponsors in two categories: nonprofit organizations and businesses. In these two categories of sponsors, we concentrated on the trainee and the international visitor categories of participants and the au pair program. We chose them because (1) participant activities are not clearly defined; (2) USIA officials, consular officers, and others have questioned the cultural and educational value of some of the participant activities in these areas; and (3) nonprofit and business sponsors bring in the largest number of trainees and international visitors.

We did not focus on programs sponsored by government agencies, educational institutions, hospitals and related institutions, and the high school student programs of nonprofit organizations. USIA and others interviewed during the survey did not question the overall educational or cultural aspects or intent of these sponsors' programs. Furthermore, we did not pursue the participant categories of student, teacher, professor, research scholar/specialist, or professional trainee because their nature appeared to conform to the statute.

We interviewed 23 sponsors with a total of 33 J-visa programs. We interviewed sponsors having programs with a wide spectrum of activities and a large number of participants. These 33 programs had about 26,000 (or 78 percent) of nonstudent participants sponsored by nonprofit and business entities in 1987. We met a total of 90 participants in Massachusetts, Connecticut, New York, New Jersey, Maryland, Washington, D.C., Virginia, Florida, Texas, and California.

We did our work between December 1988 and December 1989 in accordance with generally accepted government auditing standards. We discussed the contents of this report with responsible agency officials and considered their views in preparing the report.

Most J-Visa Activities Appear to Be Consistent With Legislative Intent, but Some Do Not

The majority of J-visa activities appear to comply with the J-visa statute and the legislative intent that educational and cultural exchanges are for students, scholars, teachers, trainees, and persons with highly specialized skills. University and high school exchange programs, along with some government programs, make up the bulk of these activities. In the period since 1961, however, the J-visa program has expanded to include activities that do not meet the qualifying language of the J-visa statute. These activities involve practical trainees, international visitors, and au pairs, although the Congress recently indicated that the currently structured au pair program should continue, at least temporarily, to be a J-visa program. There are other visas, such as the H, L, and M visas, that may be appropriate to use for certain training, international visitor, or au pair activities.

USIA regulations are not sufficiently comprehensive to ensure compliance with the purpose and intent of the act. Furthermore, the regulations authorize some exchange activities which are not consistent with the act. USIA reported in its 1987 Federal Managers' Financial Integrity Act report that its regulations needed revisions, but as of December 1989 it had not made any changes.¹

Legislative Intent of J-Visa Program

The 1961 act was intended to promote U.S. foreign policy objectives of friendly, sympathetic, and peaceful relations between the United States and other countries by increasing mutual understanding through educational and cultural exchanges. This purpose was similar to that of a predecessor act, the United States Information and Educational Exchange Act of 1948.

The 1961 act described educational exchanges as (1) "studies, research, instruction, and other educational activities" by American citizens in foreign countries and by foreign citizens in American schools and institutions of learning and (2) "visits and interchanges between the United States and other countries of students, trainees, teachers, instructors and professors." It described cultural exchanges as (1) "visits and interchanges between the United States and other countries of leaders, experts in fields of specialized knowledge or skill, and other influential or distinguished persons" and (2) participation in (a) tours abroad and in the United States in nonprofit activities by creative and performing

¹The Federal Managers' Financial Integrity Act of 1982 (31 U.S.C. 3512) requires federal agencies to evaluate their internal control systems and report annually to the President and the Congress on their plans to correct identified weaknesses.

artists and athletes representing any field of the arts, sports, or any other form of cultural attainment and (b) international artistic, dramatic, musical, sports, and other cultural festivals, competitions, meetings, and like exhibitions and assemblies. The act created the J visa consistent with these purposes.

The conference report on the 1961 act indicated that J-visa participants would be able to work, but only when the employment was not inconsistent with the program in which they were participating.

To be consistent with the intent of the 1961 act, J-visa participants must meet two requirements:

(1) Their status must be the same or similar to the categories described in the statute. (2) They must enter the United States to engage in activities consistent with those described in the statute.

That is, participants must be bona fide students, scholars, trainees, teachers, professors, research assistants, specialists, leaders in a specialized knowledge or skill, or other persons of similar description. They must be engaged in teaching; instructing or lecturing; or studying, observing, conducting research, consulting, demonstrating special skills, or receiving training.

Some J-Visa Activities Are Inconsistent With Legislative Intent

Practical Trainees

Practical on-the-job trainees under the J visa engage in a wide array of activities. For example, participants work in the areas of automobile body repair, aviation, banking and finance, computers, horse breeding, hotel and restaurant operations, horticulture, laboratory research, and retail. In our view, some practical training activities are not consistent with the eligible categories of participants and activities defined in the act.

Determinations regarding the appropriateness of training activities, however, are highly judgmental because the act is not explicit regarding

its intent, implementing regulations are loosely written, and activities engaged in are very diverse.

The terms “trainee” and “receiving training” are not expressly defined in the act or its legislative history. While the terms “trainee” and “receiving training” seem to be considerably broader than the other categories set forth in the statute and for that reason are more difficult to define, in our view participants and activities involved in these categories must be comparable to the other categories cited in the act.

We noted several instances of training which, in our view, did not have the same status as the categories mentioned in the statute and which would not generally be considered to have the same educational and cultural value. Training appeared to consist primarily of manual labor in commercial enterprises with no cultural or educational emphasis placed on the participants’ program activities.

- In the horticulture area, three participants were engaged in work which included planting, pruning, spraying, cutting, arranging, and shipping various plants and flowers. Two were recent high school graduates, and one was a cook in his home country.
- Two participants working in automobile body repair and painting were performing the same type of work they had performed for 4 or 5 years in their home countries.
- In the hotel area, one participant who was a hotel receptionist in his home country was working in various different positions, such as receptionist, cashier, and housekeeper. Another participant who was a hotel chef in his home country was working as a hotel store room manager.
- In the restaurant area, one participant who had worked as a waiter, receptionist, and night manager in his home country was working as a waiter. Another participant who was a chef in his home country was working as a chef in a U.S. restaurant.

USIA officials have expressed the view that some practical training programs have not been consistent with the intent of the J-visa legislation. For example, a USIA legal analysis suggested that the terms “trainee” and “training” should be construed more narrowly than they have been in the past. The analysis indicated that the 1961 act refers to exchanges of an educational and cultural nature between students, trainees, teachers, instructors, professors, and leaders and that the term “trainee” refers to academic trainees rather than business or vocational trainees.

Inadequate Training Regulations

USIA's J-visa regulations are not comprehensive enough to ensure compliance with the intent of the act. USIA reported this as a major internal control weakness in its 1987 and 1988 Financial Integrity Act reports. The following quote is from its 1987 report.

"Current regulations governing the administration of the Agency's Exchange-Visitor Program are not sufficiently comprehensive to ensure compliance with the intent and purpose of the Mutual Educational and Cultural Exchange Act (MECEA) of 1961 For example, the regulations covering training programs lack sufficient definition to prevent work programs, under the guise of training, from being conducted under the program."

Under the practical trainee program, as described in USIA's regulations, participants receive on-the-job practical training for up to 18 months to enhance their skills through active participation in day-to-day operations at a work site. The regulations specify that sponsors are to ensure that (1) the training is suitable and appropriate for an individual's field of endeavor and level of career development and (2) participants have sufficient knowledge of English to function in the English-speaking environment.

A USIA official pointed out that although it is not clear how the training regulations serve the purposes of the 1961 act, it appears that the regulations were issued to serve the needs of employers. Sponsors are free to determine what constitutes training and to establish training programs after participants arrive in the United States. A participant is not prohibited from filling a normal work position. USIA officials expressed concern that the practical training regulations may give the appearance of circumventing immigration regulations.

International Visitors

The international visitor category has been used to some extent as a catchall for participants and activities not clearly within the categories mentioned in the J-visa statute. The summer student travel/work, international camp counselor, and au pair² programs are of this nature. These programs, as well as others in the international visitor category, do not require a participant's status and activity to be the same or similar to that described in the act.

²In January 1989 USIA changed the category of au pairs from international visitor to student, but it did not require au pairs to meet USIA requirements for students.

**Chapter 2
Most J-Visa Activities Appear to Be
Consistent With Legislative Intent, but Some
Do Not**

International visitors are not mentioned in the statute as an authorized category of persons to receive J visas. USIA regulations, however, identify "international visitor" as a category of participants coming to the United States for

"travel, observation, consultation, research, training, sharing, or demonstrating specialized knowledge or skill, or participating in organized people-to-people programs."

Any determination about the propriety of an international visitor designation must begin with the J-visa statute. If the participant's status is the same or similar to the categories described in the statute and if the statute authorizes the activity in which the international visitor is participating, then issuing a J visa to a participant as an "international visitor" would be proper. Conversely, if these conditions are not met, then prospective participants could not properly be issued a J visa either as an international visitor or under any other category set forth in the regulations.

**Summer Student Travel/Work
Program**

Summer student travel/work programs, which provide foreign university students with employment opportunities in the United States during their summer vacations, do not require participants to engage in activities cited in the legislation. Some sponsors told us that the participants work at fast food restaurants, summer resorts, amusement parks, or other places where they can find work. Participants may be placed in jobs before they arrive or find work after they arrive. These are not jobs requiring special skills or distinguished merit and ability. One of the program sponsors we interviewed brings about 8,000 to 11,000 summer students a year to the United States.

**International Camp Counselor
Program**

Similar to the summer student program, the international camp counselor program does not meet the requirements for valid J-visa activities. The program, as currently structured, is designed to give participants the opportunity to work at an American camp and to impart appropriate skills to American youth. Aside from this general statement of program purpose, USIA does not ensure that participants and their activities are consistent with the categories specified in the legislation. The only requirements are that a camp counselor be fluent in English and 18 years of age. Two sponsors we interviewed each brought in over 3,500 camp counselors in 1987.

Au Pair Program

Early in 1986, USIA designated two pilot au pair programs for a period of 2 years. Au pair programs bring to the United States nonimmigrant

aliens between the ages of 18 and 25 to provide child care for host families. The participants, or au pairs, live with American families as guest members for 12 months. They work up to 45 hours a week. As of December 1989, USIA had designated six more au pair programs modeled after the two pilot programs. These programs are each authorized to bring up to 2,840 participants a year into the United States.

During the 2-year pilot program, an interagency review panel, including representatives of the Departments of State and Labor, INS, and USIA, determined that full-time child care work programs did not meet the educational and cultural requirements of the statute and should not be continued on that basis.

USIA concluded that 45 hours of child care a week constituted full-time domestic employment and was not authorized by the act or by USIA regulations. It determined that the 1961 act and its legislative history suggest that exchanges under the act are primarily to be educational or cultural. USIA maintained that household domestic work was not intended.

In December 1987, USIA informed the au pair program sponsors that the program could not be continued permanently on a 45-hour-a-week basis but that programs involving 30 hours a week of child care with a significant educational component would be allowed. The suggested reduction to 30 hours was not well received by the au pair sponsors. That number of hours would not provide working parents with required child care.

A Department of Labor official informed us that the current au pair program violates the spirit of the J-visa statute. The official pointed out that a 40-hour week constitutes full-time employment, and, as such, makes au pairs temporary foreign workers. These workers would normally have to receive certification from the Department of Labor that enough qualified U.S. workers were not available and that the wages and working conditions attached to job offers would not adversely affect similarly employed U.S. workers.

As a result of interest generated over the au pair program, the Congress enacted legislation requiring the continuation for fiscal years 1989 and 1990 of au pair programs, as previously authorized by USIA. This legislation was in the same section of Public Law 100-461 that required GAO's assessment of J-visa activities, including the au pair program. We have independently assessed the compatibility of current au pair programs with the 1961 law for purposes of determining whether they should be

continued after fiscal year 1990 under current law. We believe that the currently structured au pair programs are not compatible with the original intent of the 1961 act. We hold this view because current au pair programs are essentially child care work programs that do not correlate with the qualifying categories mentioned in the J-visa statute. As currently structured, au pair programs would normally be subject to Department of Labor administrative review and certification.

Some J-Visa Activities May Be More Appropriately Done Under Other Nonimmigrant Visas

While it is not clear how some J-visa activities fulfill the intent of the 1961 act, other visas, such as the H, L, and M, may be more appropriately used for some of the activities. These visas have certain safeguards to protect U.S. interests, however, and the requirements relating to them are more stringent than those governing the J visa:

- Under the H-2A, visa individuals may come temporarily to the United States to perform agricultural labor or services if unemployed persons capable of performing such services cannot be found. A labor certification is required.
- Under the H-3, visa industrial trainees may come temporarily to the United States if their employment will not displace a U.S. worker.
- The L visa is designed especially for intracompany transfers. An alien who has worked for one year with a firm may enter the United States in order to continue his services to the employer in the capacity of manager, executive, or any position that requires specialized knowledge or skill. The U.S. employer must petition INS for the admission of the alien.
- The M visa allows an alien to pursue a full course of study at an established vocational or other recognized nonacademic institution in the United States. The course of study must be approved for an individual by the Attorney General, after consultation with the Secretary of Education. Although the vocational student may not normally work in the United States, INS may authorize the student to accept employment for practical training after completion of the student's course of study.

Because the regulations governing the exchange visitor program are not as stringent as those governing other visas—for example, labor certifications and INS petitions are not required—employers may prefer to use the J visa. Several sponsors who use other visas as well as the J visa stated that they prefer the J visa because it is easier to administer. The Department of Labor estimated a 43-percent increase in J-visa admissions between 1985 and 1988. Labor said that this growth was probably fueled in part (1) by a desire of aliens and employers to avoid the more

stringent requirements of work visas—both permanent and temporary—that are dependent upon labor certifications and (2) by the employer sanctions provisions in the Immigration Reform and Control Act of 1986.

J-Visa Regulations Do Not Ensure Compliance With Legislative Intent

The discussions in the previous sections regarding practical trainees, international visitors, and au pairs show that USIA's regulations governing J-visa programs are not comprehensive enough to ensure compliance with the intent and purpose of the 1961 act. In addition to the inappropriate activities we found, USIA recognized the weakness in its regulations as a major internal control problem to be resolved. As stated by USIA, "the regulations covering training programs lack sufficient definition to prevent work programs, under the guise of training, from being conducted under the program." The act authorizes educational and cultural exchanges to promote mutual understanding between the peoples of the United States and other countries and specifies the status and activities of participants. The regulations do not ensure that J-visa participants and activities comply with these requirements.

In addition to authorizing or otherwise permitting inappropriate activities, the regulations are broad, vague, or lacking in various respects. For example, they do not contain a statement of policy and program objectives or state how the foreign policy objectives of the 1961 act will be achieved. Also, they provide little guidance on what constitutes a legitimate J-visa program.

Under their definition, a J-visa program is a program of a sponsor that is

- designed to promote an interchange of (1) persons, knowledge, and skill and (2) developments in the fields of education, arts, and sciences and
- concerned with one or more of the J-visa categories of participants: student, trainee, teacher, professor, research scholar, international visitor, professional trainee, or alien employee of the Voice of America. (However, in another place the regulations state that participants are not limited to these categories.)

The regulations provide that only sponsors of bona fide educational and cultural exchange programs as described in the 1961 act may be considered for J-visa programs. However, they provide no information as to what constitutes "bona fide" educational and cultural exchanges except for five types of programs: the alien physician program, the practical

trainee program, a summer student travel/work program, an international camp counselor program, and a high school program for teenagers. The regulations do not contain similar descriptions for other activities such as university and government-sponsored activities or other kinds of activities under the international visitor category. It appears that at least half of all participants in 1987 were in programs not directly addressed in the regulations.

Conclusions

The Mutual Educational and Cultural Exchange Act of 1961 was intended to increase mutual understanding through educational and cultural exchanges. As a general rule, to meet the educational and cultural intent of the act, exchange visitors' status must be the same or similar to the categories named in the statute, and their activities must be consistent with activities in the statute. Most J-visa participants and activities (for example, those involving university and high school academic and government programs) appear to meet these qualifying conditions. However, some participants and activities in the practical trainee and international visitor categories, such as summer student travel/work and camp counselor, and the au pair program do not conform to these qualifying conditions. Some participants do not have the prerequisite status, or they are not engaged in authorized activities, or both, and thus do not qualify for J visas.

USIA's J-visa regulations are too vague and general to ensure that activities comply with legislative intent and, in some instances, authorize activities that do not conform to the statute. For the practical trainee, summer student/travel work, and international camp counselor program, the regulations do not require the participants to have the status or to perform activities consistent with the act.

Some of the activities now being engaged in under the J visa may be more appropriate under other visas, such as the H work visa, the M vocational school visa, or the L intracompany transfer visa. Sponsors prefer to use the J visa, however, because it is easier to administer. The J visa was established specifically for educational and cultural exchange purposes. Permitting participants to engage in activities not clearly within these purposes dilutes the integrity of the J visa. It also obscures the distinction between the J visa and other visas.

**Matters for
Consideration by the
Congress**

A number of J-visa activities in the practical trainee and international visitor categories, including summer student travel/work, camp counselor, and au pair activities—some of which have been ongoing for years—do not conform to the original legislative intent concerning educational and cultural exchanges. The Congress may want to review the status of these kinds of participants and activities to determine whether they should be included under other visas or explicitly provided for under the J-visa or other legislation.

**Recommendations to
the Director, USIA**

We recommend that the Director, USIA, revise the J-visa regulations to make them consistent with the authorizing legislation and more comprehensive regarding policy and program objectives and criteria as to what constitutes a bona fide program under the act.

As part of this revision, we recommend that the Director ensure that participants' status and their activities are consistent with the statute.

Agency Comments

USIA officials provided oral comments on a draft of this report. They expressed agreement with our analyses and views on the legislative intent of J visas. They indicated their intent to address the issues raised in the report and to establish an interagency task force to address necessary regulatory changes.

Problems Persist in USIA's Management of the J-Visa Program

USIA has devoted more attention to the J-visa program during the past year or so. Nevertheless, persistent major problems and internal control weaknesses affect the integrity of the J-visa program.

USIA has not complied with its own regulations or adequately monitored program activities. It cannot effectively use its computerized management information system to manage the J-visa program because the system is unreliable and not up-to-date. USIA does not

- know the number of valid J-visa programs,
- have current or accurate information on the number of participants entering the United States and their category of activity, and
- periodically review programs—even though some were designated in the 1960s—to ensure that their activities conform to USIA policies and objectives.

USIA has not canceled inactive programs as provided for by the regulations. Additionally, it has not monitored or enforced its regulations to ensure that

- programs have a minimum of five participants;
- sponsors submit annual reports on their activity as a management tool;
- programs are reciprocal, that is, Americans are sent to other countries and nonimmigrant aliens are brought to the United States; and
- participants extend their stay in the United States beyond specified limits only in unusual circumstances.

In addition to these problems and weaknesses, chapter 2 shows that USIA's regulations do not ensure program compliance with the 1961 act. GAO Standards for Internal Controls in the Federal Government¹ require a reasonable assurance that internal control systems prevent improper activity. In its Federal Managers' Financial Integrity Act reports for 1987 and 1988, USIA acknowledged that the J-visa regulations did not ensure that programs conformed to the statute and the management information system was unreliable and failed to control the program. Thus, USIA cannot adequately manage the J-visa program.

¹Standards to be followed by executive agencies in establishing systems of internal control, as required by the Federal Managers' Financial Integrity Act of 1982 (31 U.S.C. 3512(b)).

Computerized Management Information System Is Not Reliable or Current

USIA's computerized data system does not provide current and accurate data on valid J-visa programs or participants entering the United States. USIA officials are aware that information provided by the system is not current or reliable and therefore is of limited use in managing the program. USIA has not improved the system, although it identified system weaknesses as a major internal control problem in its 1987 Financial Integrity Act report.

Number of Programs

The number of valid J-visa programs cannot be determined through the J-visa information system. Based on the sequential numbering of designated programs, it appears that over 5,000 programs have been approved since the J-visa program began. USIA officials have estimated that there are currently 4,000 designated programs. USIA's master data file, which records participant activity from 1983 to the present, contains about 2,400 programs. USIA officials could not explain the difference between the number of programs in the data base and their estimate of 4,000 programs.

USIA does not routinely monitor programs for inactivity to determine if they should be revoked, although the regulations provide that a program designation may be revoked when a program has remained inactive for 2 or more years. At least 44 percent of the 2,400 programs in the data system have been inactive since 1986. About 900 have had no new participants since 1983. Of the 1,500 programs that have had new participants, 37 have had no participants since 1984, 88 since 1985, 147 since 1986, and 234 since 1987.

According to a USIA official, some sponsors have recently requested visa authorization forms for programs that have had no new participants for many years. In these instances, USIA informed sponsors that they would have to submit a new sponsor application form.

The regulations also provide that the minimum number of participants for a program is five a year, but USIA has not enforced this provision. Our review of the 470 programs of nonprofit and business sponsors in 1987 showed that 210, or 45 percent, had less than five participants.

Number of Participants

USIA's data on the number of participants entering the United States is incomplete, out of date, and in some cases erroneous. Information

regarding participants is taken from the visa authorization form. INS collects copies of the authorization forms from participants as they enter the United States and provides the forms to USIA. USIA enters information from the forms into its management information data system.

Since August 1986, USIA has had a chronic backlog of visa forms because the computer data entry function was unfunded for one year. Funds for data entry have run short each year since then. When funds for fiscal year 1989 ran out in March, USIA had on hand an estimated 30,000 forms that had not been entered into the system. When the data entry function resumed in July 1989, the number of forms on hand had increased to an estimated 160,000.

According to one official, during the last several years, USIA staff have not reviewed, corrected, and entered into the data base all visa forms rejected by data processing for errors. He attributed this to the accumulation of thousands of forms during unfunded periods and the difficulty of reviewing thousands of errors made by sponsors in filling out the forms.

The system also contains systemic errors related to recording participant categories, and thus the number of participants in some categories cannot be determined. Since about 1986, participants have been erroneously recorded in the categories of professor, research scholar/specialist, international visitor, and professional trainee. For example, two programs with over 9,000 participants in the international visitor category were shown in USIA's data base with participants in the research scholar/specialist category. This systemic error exists because USIA failed to revise its data base when it revised the visa authorization form in the mid-1980s, combining the professor and the research scholar/specialist categories into one field. On the revised forms, the international visitor category is placed in the field occupied by the research scholar/specialist on the original form. Consequently, sponsors checking the international visitor category on the revised form are shown in USIA's data base as having participants in the research scholar/specialist category.

Annual Reports Not Fully Used to Monitor Sponsor Activity

Aside from data obtained from USIA's computerized data system, annual reports are the primary means USIA has for monitoring sponsor and program activity. USIA does not do independent reviews to ensure that sponsors are carrying out activities consistent with their designations and current foreign policy and program objectives. USIA requires annual

reports from some sponsors but not from others. Where reports are required, USIA has not monitored or ensured their submission. Without annual reports, an adequate data system, and regular visits to observe program activities, USIA has no systematic procedure for monitoring J-visa programs.

The regulations require programs to be reciprocal if possible, and annual reports are USIA's primary source of information on whether sponsors have reciprocal programs. The summer student travel/work program requires a one-for-one reciprocal program. If a sponsor fails to meet this requirement, the regulations provide that USIA can restrict the number of foreign participants in the following year. USIA has not enforced the one-for-one reciprocal requirement. The four summer student/travel work programs included in our review had substantially smaller out-bound programs than their inbound programs.

According to a USIA official, the staff do not have time to keep track of sponsors who fail to submit annual reports. The official intends to implement a computerized system for tracking sponsors' submissions of required reports. If a sponsor submits an annual report, it is reviewed by a staff member for (1) approved program activities, (2) program growth, and (3) reciprocal program activity. Additional information is requested if warranted. On this basis, only the sponsors who comply with the reporting requirement may be held accountable, while no action would be taken against sponsors who do not comply with the reporting requirement.

USIA does not have a standardized format for the annual reports to facilitate its use of them. Furthermore, the regulations do not state why the reports are required from some sponsors or how they should be used, except to monitor the reciprocal requirement. One sponsor complained about this lack of guidance on the reporting requirement.

A USIA official told us that sponsors of nonprofit and business programs, of which there are about 470, are generally required to submit annual reports. A uniform reporting requirement would facilitate obtaining the information needed for management and monitoring purposes. If this management procedure were extended to additional sponsors, a uniform reporting requirement would be even more important.

Extensions of Participants' Stay in the United States Not Monitored

USIA has not monitored or enforced its regulations requiring that extensions of participants' stay in the United States beyond specific limits will be permitted only in exceptional circumstances or if additional time is required to complete highly specialized training. This requirement is to ensure that participants remain in the United States only so long as is necessary to satisfy their stated program objectives and the objectives of the 1961 act. Each year a large number of participants have extended their stay in the United States.

USIA's data base on participants shows that in 1987 about 42,600 extensions of programs were granted to participants. About 63 percent of these extensions were granted to participants in educational programs. However, about 6,800 extensions were for participants in programs of nonprofit and business sponsors. Although we could not determine from the data base how many of these extensions exceeded the limits specified in the regulations, USIA officials informed us of three business sponsors who had routinely approved program extensions and participants' stay in the United States beyond the time specified in the regulations.

Sponsors approve program extensions, and participants apply directly to INS for extension of their J visas. USIA's J-visa regulations specify that if a participant requests an extension that exceeds specified limits, the sponsor must strongly support the request with evidence that there are exceptional circumstances or that additional time is required to complete highly specialized training. USIA has not monitored or enforced this requirement, and there is no specific procedure for INS coordination with USIA before visa extensions can be granted.

USIA could ensure that program extensions are in the interests of J-visa policy and program objectives by monitoring and/or participating in the extension process. Monitoring could be done through the computerized information system if the system were properly managed. As an additional control procedure, INS could coordinate with USIA before granting visa extensions beyond specified program lengths.

The J-Visa Program Should Be Better Coordinated

Better coordination of the J-visa program with USIA's Bureau of Educational and Cultural Affairs and with other agencies, such as INS and the Department of Labor, could provide added assurance that proposed J-visa activities are consistent with U.S. educational and cultural exchange policy objectives and with applicable immigration and labor laws.

The J-visa program is managed by USIA's Office of General Counsel. The Bureau of Educational and Cultural Affairs, however, has primary responsibility for carrying out the purposes of the Mutual Educational and Cultural Exchange Act. The Bureau develops, administers, encourages, and supports activities intended to increase mutual understanding between the people of the United States and other countries. It also seeks, through its programs, to promote the free exchange of ideas and information between U.S. citizens and people around the world. The J visa was established to aid in carrying out these purposes.

The J visa allows full-time work in the United States without requiring a labor certification from the Department of Labor. The Department is responsible for ensuring that aliens do not displace Americans in employment opportunities. In the opinion of a senior Department of Labor official, the Department should know who comes to the United States and receives employment.

Coordination with INS and the Department of Labor and with the Bureau of Educational and Cultural Affairs prior to the designation of a new type of J-visa program should help to ensure the appropriateness of proposed J-visa holders' activities. For example, the au pair program was not coordinated with Labor and its concerns considered before the program was initiated. INS was informed of the proposed au pair program, but USIA did not address INS' concerns or further coordinate the program before it was approved. From the outset, both agencies expressed their position that 45 hours of child care a week constitutes full-time employment and possesses all the indications of being an employment program. Similarly, a senior official in the Bureau of Educational and Cultural Affairs expressed the view to us that J-visa activities should be educational or cultural in a formal sense. In his view, full-time work in an activity not included in the statute, such as 45 hours a week of child care, could not meet that criteria.

Recent Agency Actions

In the last year or two, USIA has devoted more attention to the J-visa program. It has consolidated the program designation function and the waiver review function² under one supervisor. It has also added several new staff members to the program. This staff has progressively worked

²USIA evaluates participants' requests for waivers of the 2-year home residency requirement under which certain participants must return to their home country for 2 years before they can transfer to another visa status in the United States.

to improve management of the program. USIA officials indicated that inadequate staffing had contributed to the program's problems.

USIA staff are aware of inconsistencies in the way the program has been administered, of questionable activities—especially in the practical trainee area—and of the need to revise the regulations. They have taken corrective action in some areas but not in others.

Conclusions and Recommendations

We believe that improving the management information system, ensuring compliance with federal regulations, improving monitoring of program activities, and ensuring that designated programs continue to serve legitimate foreign policy interests would enhance the overall administration of the J-visa program. We further believe that better coordination of the J-visa program with the Bureau of Educational and Cultural Affairs and other responsible agencies would ensure that it serves the foreign policy objectives in the 1961 act.

We recommend that the Director, USIA, take the following actions:

- (1) Determine the number of valid programs, update the computerized management information system, cancel inactive programs, and require programs to comply with the condition to have at least five participants a year.
- (2) Review and revalidate all designated programs periodically to ensure that their activities are consistent with their designation and that the designation continues to serve policy and program objectives.
- (3) Correct the erroneous participant categories in the data system and provide funding for timely input of participant information from the visa authorization form.
- (4) Establish the form and content of annual reports, ensure that sponsors submit annual reports, and use the reports to monitor program activities.
- (5) Monitor sponsors' extensions of participants' stay in the United States beyond specified program lengths. Work with INS to ensure that extensions are granted only in exceptional circumstances or for completion of highly specialized training and are equitably and uniformly administered.

(6) Establish a requirement that new types of program designations be coordinated with the Bureau of Educational and Cultural Affairs and the Department of Labor and other involved agencies.

Agency Comments

While agency officials did not specifically address the recommendations, they indicated their intent to improve management of the program. USIA officials said they plan to establish two task forces to address matters discussed in this chapter. One will address needed improvements in the J-visa information management system and the other will address other management problems.

Major Contributors to This Report

**National Security and
International Affairs
Division, Washington,
D.C.**

Jess Ford, Assistant Director
Joseph Murray, Assistant Director
Roy Hutchens, Evaluator-in-Charge
Janine Cantin, Evaluator
Lynda Kyte, Evaluator

**Office of the General
Counsel, Washington,
D.C.**

Robert Hunter, Associate General Counsel, (202) 275-2888
Jerold Cohen, Assistant General Counsel
Richard Seldin, Senior Attorney

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