



October 24, 2013

Hon. John F. Kerry
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Hon. Rand Beers
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Kerry and Acting Secretary Beers,

We are writing to request your immediate attention to the case of Kerim Yildiz, a British human rights activist who has been waiting for more than nineteen months for a visa for travel to the United States. The Department of State has stated that it will grant Mr. Yildiz a visa but it has not done so, and we are increasingly concerned that the delay may be attributable to Mr. Yildiz's human rights advocacy. We respectfully ask that you immediately grant Mr. Yildiz a visa or explain publicly why he is being excluded from the United States.

In February 2010, the undersigned organizations wrote to former Secretary Clinton to ask that the State Department ensure that the immigration laws do not unwarrantedly become barriers to the free exchange of ideas across international borders. In response, former State Department Legal Advisor Harold Koh wrote in December 2010 that in assessing whether to grant a visa or waive inadmissibility, the State Department would "take[] steps to ensure that appropriate attention is given to the great importance of hearing diverse views." Exhibit A at 2. Mr. Koh indicated that the State Department would consider "the reasons for the proposed travel, and the positive or negative effects, if any, of the planned travel on U.S. public interests." *Id.* It would also "give significant and sympathetic weight to the fact that the primary purpose of the visa applicant's travel will be to assume a university teaching post, to fulfill speaking engagements, to attend academic conferences, or for similar expressive or educational activities." *Id.* Our organizations were hopeful that these assurances signaled a commitment to facilitating the exchange of ideas across international borders.

On September 15, 2011, our organizations wrote to protest the State Department's nearly year-long delay in ruling on a visa application by Mr. Yildiz who, at the time, was the Chief Executive of the U.K.-based Kurdish Human Rights Project (KHRP). Exhibit B. Mr. Yildiz sought a visa to travel to the United States to speak to American audiences and receive a prestigious award from an American foundation. Shortly following receipt of our letter, the State Department granted Mr. Yildiz a three-month tourist visa.

Mr. Yildiz is now the Director of the Democratic Progress Institute (DPI), a U.K.-based registered charity analogous to a U.S. 501(c)(3), which seeks to broaden public involvement in peace efforts and democracy building. On March 13, 2012, he applied for a tourist visa to travel to the United States to meet with the American Civil Liberties Union (ACLU), the Gruber Foundation, Harvard University, and the Open Society Foundations. After waiting more than seven months for a decision, on October 17, 2012, Mr. Yildiz contacted Ambassador Louis Susman of the U.S. Embassy in London to inquire about his application. That same day, the Consular Information Unit of the U.S. Embassy responded that Mr. Yildiz's application was "subject to additional administrative processing." On November 8, 2012, Mr. Yildiz sent the embassy additional materials supporting his visa application, including updated letters of invitation. On February 4, 2013, the U.S. Embassy's London Petitions Unit emailed Mr. Yildiz to request a new travel itinerary because his original travel dates had passed. Mr. Yildiz provided the information on April 23, 2013.

On May 15, 2013, the U.S. Embassy in London informed Mr. Yildiz that his visa application was denied under Immigration and Nationality Act (INA) Section 212(a)(3)(B)(i)(I), but that "the Department of State has authorized a waiver of this ineligibility." It requested him to "resubmit [his] passport . . . for visa issuance." Mr. Yildiz did so on June 19, 2013. On July 22, 2013, however, the embassy's Visa Coordination Unit informed Mr. Yildiz by email that "additional administrative processing [was] required." His visa application has now been pending for more than nineteen months.

Notwithstanding the State Department's inadmissibility determination, we know of no reason why Mr. Yildiz should be ineligible for a visa to the United States. He last entered the United States in 2011, complied with all terms of his stay, and departed in a timely manner. Mr. Yildiz is a respected human rights advocate who has met with and briefed numerous State Department officials about human rights issues in the Kurdish regions. If the State Department nonetheless considers Mr. Yildiz to be inadmissible (as it apparently does), the factors that Mr. Koh outlined in his December 2010 letter weigh strongly in favor of granting Mr. Yildiz a waiver. Mr. Yildiz seeks to speak to American audiences and meet with the ACLU, the Open Society Foundations, and the Gruber Foundation. Permitting him to visit the United States would serve the public interest because his area of specialty—Kurdish rights—is of obvious relevance to current public debates, including those about the United States' relations with Iraq and Turkey.

We are concerned that the ineligibility determination, and the lengthy delay in issuing Mr. Yildiz a visa despite the grant of a waiver of ineligibility, are attributable to Mr. Yildiz's legitimate advocacy concerning the rights of Kurds in Iraq and Turkey. Mr. Yildiz's exclusion from the United States is unfair to him and infringes the constitutional rights of Americans who wish to learn from, and engage in dialogue with, him.

We urge you to act immediately and to issue Mr. Yildiz a visa or publicly explain the reasons for his exclusion from the United States. Please contact Joanne Lin at (202) 675-2317. Thank you for your attention to this letter.

Sincerely,

American Civil Liberties Union
American Association of University Professors
PEN American Center

cc: Mary McLeod, Principal Deputy Legal Advisor to the Secretary of State
Janice L. Jacobs, Assistant Secretary, DOS Bureau of Consular Affairs
David McKean, Director, DOS Policy Planning Staff
Joseph Maher, Acting General Counsel, DHS (Office of the Secretary)
David Heyman, Assistant Secretary for Policy, DHS
Seth Grossman, Deputy General Counsel, DHS
John Cohen, Principal Deputy Counterterrorism Coordinator and Senior Advisor to the Secretary, DHS
James Cole, Deputy Attorney General, DOJ

Exhibit A



United States Department of State

Washington, D.C. 20520

December 22, 2010

Ms. Joanne Lin
Legislative Counsel
American Civil Liberties Union
915 15th Street, N.W.
Washington, D.C. 20005

Dear Ms. Lin:

Thank you for forwarding the February 16 coalition letter expressing appreciation for the Department of State's decision to exempt Professor Adam Habib and Professor Tariq Ramadan from inadmissibility on the basis of the facts that previously led to their visa denials.

In that letter, the coalition asked for an end to the practice of ideological exclusions and requested a review of past visa denials, which it stated reflected an Administration practice of ideological exclusion. Although the statutory confidentiality of visa records precludes me from discussing particular cases, let me assure you that this Administration does not engage in the practice of ideological exclusion.

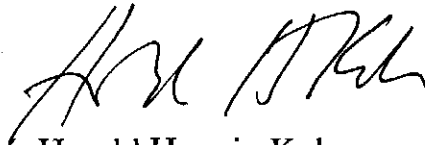
The Department of State is aware that in litigation filed by the ACLU on behalf of various U.S. organizations, plaintiffs have described as "ideological exclusion" a statutory provision at section 212(a)(3)(B)(i)(VII) of the Immigration and Nationality Act (INA) that renders inadmissible an alien who "endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization." The Department is obligated by law to apply that provision, if applicable, but any finding of inadmissibility under that provision may be overcome through exercise of waiver or other discretionary authority, as appropriate.

The coalition's letter also references the Administration's use of the INA's discretionary authority to waive certain grounds of inadmissibility, when consistent with the safety and security of the United States. Waivers may be granted by the Department of Homeland Security following a recommendation from the State Department. In evaluating whether to seek waivers from the Department of Homeland Security for individuals subject to inadmissibility on terrorism-related grounds, the Department considers the recent nature and seriousness of the activity

or condition causing the visa inadmissibility, the reasons for the proposed travel, and the positive or negative effect, if any, of the planned travel on U.S. public interests. In evaluating the reasons for the proposed travel, the Department will give significant and sympathetic weight to the fact that the primary purpose of the visa applicant's travel will be to assume a university teaching post, to fulfill speaking engagements, to attend academic conferences, or for similar expressive or educational activities.

The Department of State has taken steps to ensure that appropriate attention is given to the great importance of hearing diverse views, balanced against other relevant factors, including any facts that may make the individual inadmissible. Within the Department, the Deputy Assistant Secretary of State for Visa Services in the Bureau of Consular Affairs is charged with reviewing all cases involving individuals found inadmissible on terrorism-related grounds who seek to enter the United States for teaching or speaking engagements. The State Department will review carefully the circumstances of the individuals identified in the coalition's letter, in a manner consistent with the law and with an eye toward promoting the global marketplace of ideas to which we are all committed.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'HHK', is written over the typed name.

Harold Hongju Koh
The Legal Adviser

Exhibit B



Sept. 15, 2011

Hon. Hillary Rodham Clinton
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Hon. Janet Napolitano
Secretary of the Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretaries Clinton and Napolitano,

We are writing to express our deep concern about your agencies' apparent refusal to grant a B-1 visa to Kerim Yildiz, a U.K. national who is the Chief Executive of the U.K.-based Kurdish Human Rights Project (KHRP), a registered charity and limited company with charitable objects in England & Wales since 1992 (analogous to a U.S. 501(c)(3)). Mr. Yildiz seeks to enter the United States to speak to American audiences, meet with American officials and American civil society organizations, and receive a prestigious award – the Justice Award of the Peter and Patricia Gruber Foundation – on behalf of KHRP, but his visa application has been pending for almost a year. His unexplained exclusion from the United States, besides being unfair to him, infringes the constitutional rights of Americans who wish to meet with him. We know of no reason why Mr. Yildiz would be ineligible for a visa, and we are increasingly troubled by the possibility that the extraordinary delay in processing his visa may be related to his legitimate advocacy concerning the rights of Kurds in Turkey, Iraq, and elsewhere. We respectfully ask that you immediately grant Mr. Yildiz a visa or explain why he is being excluded from the United States.

In 2010, in anticipation of a trip to the United States, Mr. Yildiz attempted to register under the Electronic System of Travel Authorization (ESTA), but his registration was rejected. The U.S. Embassy in London advised Mr. Yildiz to submit a visa application, which he did. At an interview in late October 2010, consular staff expressed surprise that Mr. Yildiz's ESTA registration had been rejected and they were optimistic that he would be granted a visa quickly. Almost a year later, however, Mr. Yildiz has not received a visa or any explanation for the delay.

On Mr. Yildiz's behalf, the American Civil Liberties Union (ACLU) has made inquiries by phone and in writing with the Embassy and with the State Department's Office of Visa Services. In June 2011, the latter office informed the ACLU in writing that it was "currently reviewing Mr. Yildiz' case and [would] provide . . . a complete response as soon as possible." When Mr. Yildiz received an email from the Embassy seeking additional information about his proposed travel dates and the purposes of his trip, he immediately provided the requested information. Mr. Yildiz indicated that he planned to attend the Gruber Prize Awards ceremony, listed the organizations with which he expected to meet in the United States, and explained that although he had not rebooked his travel to the United States because of the difficulty he was encountering in being granted a visa, he was eager to do so. Almost three months have passed since Mr. Yildiz provided this information. A visa specialist at the State Department informed the ACLU on Sept. 8 that the application was "still being processed" and that the DOS could not offer any timeframe for the completion of processing.

Again, we know of no reason why Mr. Yildiz should be ineligible for a visa – or, for that matter, ineligible for entry under the visa waiver program. Mr. Yildiz entered the United States in 2009 on a non-immigrant visa, complied with all terms of his stay, and departed in a timely manner. KHRP is a respected human rights organization and Mr. Yildiz is a respected human rights advocate. Mr. Yildiz has written and co-authored numerous books on Kurds and human rights issues including *The Kurdish Conflict: International Humanitarian Law and Post-Conflict Mechanisms* and *The Kurds in Iraq; the Past, Present and Future*. He is a senior Advisor to the Geneva-based Centre for Humanitarian Dialogue. When Mr. Yildiz was in the United States in 2009, he spoke about "The 'Kurdish Opening' in Turkey" to an audience at Columbia University and participated in a discussion and book signing at the City University of New York. In several instances, Mr. Yildiz and KHRP have succeeded in compelling government compliance with international human rights standards, including through individual petitions to the European Court of Human Rights. In furtherance of KHRP's work, Mr. Yildiz has met with State Department officials in the United States, Turkey, Armenia, and Iraq to brief them about human rights issues in the Kurdish regions. The Turkey Desk Officer of the State Department's Office of Southern European Affairs has asked Mr. Yildiz to meet with him in Washington, D.C., if and when Mr. Yildiz is permitted to enter the country.

As you know, the undersigned organizations were among those that wrote to Secretary Clinton in February 2010 asking that the State Department take steps to ensure that the immigration laws do not unwarrantedly become barriers to the free exchange of ideas across international borders. In a constructive response to that letter, State Department Legal Advisor Harold Koh wrote in a December 2010 letter that, in assessing whether to grant a visa, the State Department would consider, among other things, "the reasons for the proposed travel and the positive or negative effects, if any, of the planned travel on U.S. public interests." Mr. Koh also wrote: "In evaluating the reasons for the proposed travel, the Department will give significant and sympathetic weight to the fact that the primary purpose of the visa applicant's travel will be to assume a university teaching post, to fulfill speaking engagements, to attend academic conferences, or for similar expressive or educational activities."

The factors that Mr. Koh outlined in his letter weigh in favor of granting a visa to Mr. Yildiz. Mr. Yildiz seeks to enter the United States to speak to American audiences; he has

already scheduled engagements with the ACLU, the Peter and Patricia Gruber Foundation, and the Open Society Foundations. Permitting him to visit the United States would serve the public interest, particularly because his area of specialty – Kurdish rights – is one of obvious relevance to current public debates, including those about the United States’ relations with Iraq and Turkey.

Once again, we respectfully request that you grant Mr. Yildiz a visa or explain without delay why his visa is being refused. As Mr. Yildiz is scheduled to receive the Justice Award from the Peter and Patricia Gruber Foundation on October 6, and in light of the fact that Mr. Yildiz’s application has been pending for almost a year already, we urge you to act immediately.

Thank you for your attention to this letter.

Sincerely,

American Civil Liberties Union
American Association of University Professors
PEN American Center

cc: Harold Koh, Legal Advisor to the Secretary of State
Janice L. Jacobs, Assistant Secretary, DOS Bureau of Consular Affairs
Anne-Marie Slaughter, Director, DOS Policy Planning Staff
Kelly Ryan, Acting Deputy Assistant Secretary for Immigration and Border Security, DHS (Office of Policy)
John R. Sandweg, Counselor to the Secretary and the Deputy Secretary, DHS (Office of the Secretary)
Esther Olavarria, Counselor to the Secretary, DHS
Gary Grindler, Acting Deputy Attorney General, DOJ