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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN ACADEMY OF RELIGION; AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS; PEN AMERCIAN CENTER; TARIQ RAMADAN,

Plaintiffs,

v.

MICHAEL CHERTOFF, in his official capacity as Secretary of the Department of Homeland Security; CONDOLEEZZA RICE, in her official capacity as Secretary of State,

Defendants.

06 Civ. 588 (PAC)

I, Christopher R. Dilworth, declare and state as follows:

1. I am a visa specialist in the Coordination Division of the Office of Legislation, Regulations and Advisory Assistance in the Visa Office of the U.S. Department of State's Bureau of Consular Affairs ("CA/VO/L/C"). My responsibilities include being the Office's primary visa revocation analyst, as well as general responsibilities in reviewing visa applications where the consular officer assigned has identified possible national security concerns. I have been employed by the Department of State since January 3, 1999, and have held my current position since June 12, 2004. I make the following statements based upon my personal knowledge, on information provided to me in my official capacity, and on my evaluation of that information.

2. CA/VO/L/C has the primary responsibility for prudential visa revocations on national security grounds. As the Visa Revocation Analyst, I review visa revocation packages and recommend them for revocation, as appropriate. Final authority to revoke

visas has been delegated to the Deputy Assistant Secretary for the Visa Office, within the Bureau of Consular Affairs, so final visa revocation decisions are made at that level.

3. On May 5, 2004, Tariq Ramadan was issued an H-1B visa permitting him to travel to the United States for purposes of assuming a faculty position at the University of Notre Dame. Subsequent to the issuance of that visa, the State Department received information, in the ordinary course of business, that might have led to a determination that Mr. Ramadan was inadmissible to the United States, and therefore, not entitled to a visa.

4. Under State Department procedures, when derogatory information about an individual comes to light after visa issuance, consideration is given to whether it is prudent to revoke the visa, pursuant to § 221(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1201(i). The purpose of a prudential revocation is to allow a consular officer to see the applicant again and elicit further information that either confirms the basis for inadmissibility and leads to a firm visa refusal, or discounts it and clears the applicant for a solid issuance. A prudential revocation of a visa is a safety precaution that, in security cases, is issued with a relatively low threshold of information to ensure that all relevant or potentially relevant facts about an alien are thoroughly explored before we admit that alien to the United States. In some instances, the information can be explained by the applicant in a way that clarifies the question at hand and eliminates the potential concern. In such cases, the visa is simply re-issued and the subject's name is purged from the lookout system.

5. In accordance with the INA and State Department procedures and practice, a prudential visa revocation under INA § 221(i) is not a finding of inadmissibility; it is an opportunity to evaluate derogatory information in the context of a new visa application. As such, the burden of proof is significantly lower. If there is prima facie evidence of a potential inadmissibility on national security grounds, a potential revocation is considered warranted, in accordance with INA § 212(a)(3) and INA § 221(i).

6. On July 28, 2004, the State Department prudentially revoked Mr. Ramadan's H-1B visa, under the authority of INA § 221(i), based upon the information referenced above. No determination was made as to Mr. Ramadan's actual inadmissibility under any provision of INA §212(a)(3).

7. Mr. Ramadan was provided with oral notice of the revocation by a consular officer.

8. Mr. Ramadan reapplied for the visa on October 4, 2004. The visa was refused on the same date, pursuant to the provisions of INA § 221(g). Section 221(g) is primarily an administrative refusal used to close a case pending the receipt of further information. Typically, this information consists of additional documentation from an applicant or a Security Advisory Opinion ("SAO") from Washington. Once the required information is obtained, the case is reopened, and a final adjudication is made. In

accordance with State Department policy and practice, if this information is not forthcoming within a year, the refusal is considered final. The applicant may, however, reapply without prejudice. In Mr. Ramadan's case, an SAO was sent and it was expected that, at the conclusion of this review, a final decision would be made by the consular officer regarding Mr. Ramadan's admissibility.

9. In December of 2004, before that review could be completed, Mr. Ramadan withdrew his acceptance of Notre Dame's job offer, upon which the petition underlying the H-1B visa application was based. Accordingly, the Department of Homeland Security revoked the validity of the H-1B petition on January 28, 2005, thereby rendering his visa application moot, as there was no longer a valid petition on which to base the application.

10. On September 16, 2005, Mr. Ramadan submitted a visa application at the United States Embassy in Bern, Switzerland. That application remains under active consideration.

11. Mr. Ramadan's September 2005 visa application presented an opportunity for a consular officer to ensure that all relevant or potentially relevant facts about Mr. Ramadan were thoroughly explored before he would be issued a visa to the United States. In furtherance of that objective, two interviews were conducted of Mr. Ramadan. The first, held in September 2005, followed up on the information underlying the prudential revocation. After the results of the first interview were analyzed, and certain gaps identified, a second interview was scheduled and held in December 2005.

12. In the course of these interviews, Mr. Ramadan made statements that raised serious questions concerning his eligibility for a visa under the INA. The investigation, analysis, and deliberations related to those statements account for the delay associated with the pending visa application.

13. Based upon information available to the relevant US Government officials on the date of this declaration, the relevant Government officials have not determined, and do not at the present time intend to determine, for purposes of the pending visa application, that Mr. Ramadan is inadmissible under the provisions of INA § 212(a)(3)(B)(i)(VII). That provision applies to an alien who "endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization."

14. Mr. Ramadan has never had a visa revoked or a visa application denied on the basis of INA § 212(a)(3)(B)(i)(VII).

15. The Government cannot predict the additional time required to complete processing of Mr. Ramadan's pending visa application. While simple non-immigrant visa applications may be processed in a matter of days, complicated cases that may raise issues under certain provisions of INA § 212(a)(3)(B) such as the present case, take significantly longer, while interested US Government agencies pursue and assess

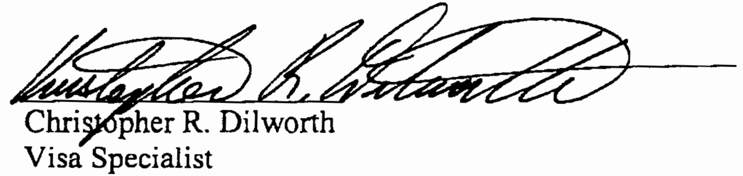
available information, as appropriate. No alien may be admitted to the United States until an informed determination can be made as to the alien's admissibility under the Immigration and Nationality Act.

16. A true and accurate copy of relevant portions of the Foreign Affairs Manual is annexed hereto as Exhibit A.

17. A true and accurate copy of material printed from the website of the United States Embassy in Bern, Switzerland is annexed hereto as Exhibit B.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31 day of March 2006 in Washington, D.C.



Christopher R. Dilworth
Visa Specialist

EXHIBIT A

9 FAM 41.122 PN12.3 Prudential Revocations

(CT:VISA-778; 10-13-2005)

a. Although consular officers generally may revoke a visa only if the alien is ineligible under INA 212(a) or is no longer entitled to the visa classification, the Department may also revoke a visa if an ineligibility or lack of entitlement is suspected. In addition to the conditions described in 9 FAM 41.122 PN12.2, the Department may revoke a visa when it receives derogatory information directly from another U.S. Government agency, including a member of the intelligence or law enforcement community. The process is initiated when CA/VO/L/A or CA/VO/L/C receives derogatory information, usually through Bureau of Intelligence and Research (INR). When the derogatory information relates to a suspected 212(a)(3) security ineligibility, it will be evaluated by CA/VO/L/C. Otherwise, derogatory information will be evaluated by

CA/VO/L/A. Once it has been determined that the derogatory information appears sufficient to warrant a revocation, the subject's name shall be entered into CLASS, and a Certificate of Revocation will be submitted for signature to the Deputy Assistant Secretary (DAS) of State for Visa Services with a summary of the available intelligence and/or background information, and any other relevant documentation. When the Certificate of Revocation has been signed, it will be communicated within the Department and to other agencies by the following means:

(1) The file is reviewed to ensure that the subject has been entered into CLASS under the appropriate code. For a prudential revocation, the "VRVK" code will be entered as well as any applicable quasi-ineligibility ("P") code that corresponds to the suspected ineligibility. In the case of a prudential revocation based on derogatory information forwarded to VO by INR, the "DPT-00" code will be entered as well as "VRVK" and any applicable "P" code. For revocations based on a finding of ineligibility, the appropriate ineligibility code is entered, but the "VRVK" code is not required. For additional guidance on the use of the VRVK code, refer to Standard Operating Procedures: No. 11.

(2) Copies of the Certificate of Revocation are sent to the Department of Homeland Security (DHS) and to INR when the revocation relates to INA 212(a)(3)(A), (B), or (F).

(3) A Departmental request to post to attempt to notify the visa holder of the revocation is sent to the issuing post, DHS and, when the revocation relates to INA 212(a)(3)(A), (B) or the Federal Bureau of Investigation (FBI).

NOTE: If law enforcement interests require that the subject remain unaware of U.S. Government interest, post will be informed of the revocation but instructed not to notify the subject).

b. Except for revocations based on recommendations from post where the alien may be in the United States, most of the Department's revocations are prudential revocations, which do not constitute permanent finding of ineligibility. They simply reflect that, after visa issuance, information surfaced that has called into question the subject's continued eligibility for a visa. Subjects of prudential revocations are free to reapply and reestablish their eligibilities. If a subject of a CLASS code of "DPT-00" or an ineligibility under INA 212(a) applies for a visa, post must request either a security advisory opinion to CA/VO/L/C or, if there is no "00" entry and the ineligibility code relates to a INA 212(a) subsection other than 212(a)(3)(A), (B), (C), (D), (E), or (F), an advisory opinion other than security to CA/VO/L/A. (If the "VRVK" code is only accompanied by an entry from another post, the adjudicating post *should contact the revoking post via email,* and, in most cases will not need to send a cable

to the Department). Upon receipt of a visa application from a subject of a prudential revocation for whom CLASS reflects a Department entry of a code of "VRVK" or a quasi-ineligibility under an INA section other than 212(a), posts are required to obtain Department approval prior to visa issuance. Posts must submit a Security Advisory Opinion (SAO) request to CA/VO/L/C, in cases with CLASS codes relating to a security-related subsection of INA 212(a), or a request for advisory opinion other than security to CA/VO/L/A, in cases relating to other INA 212(a) subsections.

9 FAM 41.121 PN3 Procedures in Cases Deferred for Advisory Opinions or for Other Reasons

(TL:VISA-359; 02-28-2002)

a. When, as a result of the visa interview, the consular officer decides that an advisory opinion is necessary, the officer must first refuse the visa under INA 221(g). The officer must not inform the applicant that he or she has been refused under any other specific ground of inadmissibility, other than INA 221(g), even if the officer believes there is substantial evidence to sustain a refusal under INA 212(a) or some other substantive ground. However, in non-security advisory opinion cases, the consular officer generally should inform the alien of what the suspected substantive ineligibility is and the underlying reason why post believes the ineligibility applies, unless the information is classified, SBU, or other-agency-derived, or unless revealing the information would compromise an ongoing investigation. The officer must record the refusal as being based on INA 221(g) only, pending a response to the advisory opinion request. The file copy of the request for advisory opinion is to be attached to the documents retained and filed in the post's A-Z file. Documents submitted are not to be returned until final action is taken.

b. The post should use a tickler system as a reminder to send the Department a follow-up request for a response after a reasonable period of time has elapsed. If it is later determined on the basis of the Department's advisory opinion that the alien is ineligible under a provision of INA 212(a), 212(e), 214(b), or some other specific legal provision, the alien must be formally refused under the pertinent section of the law. Under no circumstances may a final resolution of the question of eligibility be made before the Department's advisory opinion is received. [See 9 FAM 40.6 N1.2.]

c. This same procedure is to be followed; that is, a refusal of the visa under INA 221(g) and an annotation of the Form DS-156, Nonimmigrant Visa Application, in other situations where the alien has formally applied, but a final determination is deferred for additional evidence, further clearance, namecheck or some other reason.

EXHIBIT B

EMBASSY OF THE UNITED STATES
BERN• SWITZERLAND

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NONIMMIGRANT VISAS

General Information

Nonimmigrant Visas are for people with permanent residence outside the U.S. but who wish to be in the U.S. on a temporary basis - for tourism, medical treatment, business, temporary work or study.

A visa doesn't permit entry to the U.S., however. A visa simply indicates that your application has been reviewed by a U.S. consular officer at an American embassy or consulate, and that the officer has determined you're eligible to enter the country for a specific purpose. Consular affairs are the responsibility of the U.S. Department of State.

A visa allows you to travel to the United States as far as the port of entry (airport, seaport or land border crossing) and ask the immigration officer to allow you to enter the country. Only the immigration officer has the authority to permit you to enter the United States. He or she decides how long you can stay for any particular visit. Immigration matters are the responsibility of the U.S. Department of Homeland Security.

Apply Early

Recent changes in U.S. visa laws

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Change in U.S. Dollar/Swiss Franc Consular Rate Effective June 27, 2005
Due to the fluctuation of the exchange rate, a new average consular rate will become effective June 27, 2005. The resulting change of fees, paid in Swiss Francs, is indicated on the respective information sheets.

Visainformationen auf Deutsch
•
Informations de visa en Français
•
Informazioni per visti in Italiano

and regulations have increased the amount of time it can take to get a visa. Stricter security measures require more thorough checks and lengthen the visa application process but ensure the safety of visitors and U.S. citizens alike.

Who Needs a Visa?

The Visa Waiver Program (VWP) permits visa free travel to the US, if you are a citizen of one of the following countries and the conditions below apply to you:

Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, The Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, The United Kingdom

You may travel **without a visa** if you meet all of the following requirements:

- You are a citizen of one of the above-mentioned countries and hold a valid passport of that country. Your passport needs to be valid for at least six months beyond the period of your contemplated stay in the U.S. If you arrive in the U.S. on or after October 26, 2004, a machine-readable passport is required. Belgian nationals arriving in the U.S. on or after May 15, 2003 need machine-readable passports to continue to qualify for entry under the Visa Waiver Program. The Swiss emergency passport is machine-readable.
- You are traveling for business, pleasure or transit only.
- Your intended stay in the US does not exceed 90 days.
- You must hold a valid return

or onward ticket. Onward tickets may not end in Canada, Mexico or the Caribbean.
- You will enter the US aboard an air or sea carrier that has agreed to participate in the program. This applies to most airlines and shipping companies (Private or official aircraft or vessels do not meet this requirement). You will need a visa if your carrier is not a participant.

You **must apply for a visa** if you do not meet all the conditions of the Visa Waiver Program, i.e.,

- You intend to work in the US (paid or unpaid!). This includes work as an au pair or intern.
- You intend to stay in the US for more than 90 days.
- You intend to attend school or university in the US.
- You have been refused admission into or have been deported from the US within the past five years.
- You have been arrested or convicted of any offense or crime (including drug trafficking).
- You have been afflicted with a serious communicable disease, or are a drug abuser or addict.
- You have participated in the persecution of any person under the control of the Nazi Government of Germany.
- You have been a member or representative of a terrorist organization.
- You have previously overstayed in the U.S.

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