

Committee on the Judiciary
Sub-committee on Immigration and Citizenship
United States House of Representatives
Washington, DC 20515

Committee on Foreign Affairs
Sub-committee on Oversight and Investigations
United States House of Representatives
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September 20, 2019

To Members of the House Judiciary and Foreign Affairs Committees,

We, the undersigned individuals, are former Foreign Service Officers with the United States Department of State. During our tenure, we served as consular officers in a range of embassies and consulates throughout the world. We wish to submit a formal statement regarding the waiver process as it relates to on-going Travel Ban. We hope that this statement will be useful in preparing for the upcoming oversight hearing on the Muslim Ban, scheduled for September 24, 2019.

Based on guidance material released by the State Department and our own experiences as consular officers, we do not believe that consular officers have sole discretion in issuing waivers for visa applicants impacted by Presidential Proclamation 9645. In this context, we believe that the doctrine of consular non-reviewability is being used as a fig leaf for an opaque inter-agency process that removes discretion from consular officers in the granting of waivers pursuant to Proclamation 9645. We believe that it is impossible to understand how objectively, fairly, or rigorously the waiver process is being applied without a fuller understanding of which government offices and agencies assess an individual's eligibility for a waiver under Proclamation 9645, particularly as it relates to questions of whether an applicant poses a national security risk.

According to Presidential Proclamation 9645, individuals from Ban-impacted countries can qualify for a waiver by showing that denial of entry would impose undue hardship upon the applicant, that the applicant's entry is in the national interest, and that the applicant's entry would not pose a threat to the national security or public safety of the United States.

Plaintiffs in two pending lawsuits (Franangis Amani et al. v. Kristin Nielsen et al. and Pars Equality Center, et al. v. Mike Pompeo et al.) allege that the waiver process is a sham. The majority of plaintiffs in both cases have been informed that their case necessitates additional "administrative processing."

This administrative processing is a barrier for many applicants to determining where they meet the third, "national security risk" prong. Information released to the public by the Department of State detailing the training and guidance issued to consular officers

regarding determination of waiver eligibility for applicants subject to Proclamation 9645 suggests that the “administrative processing” component of the Proclamation 9645 waiver process may have been modeled after security-related vetting for other visa categories.

The released guidance further stated that consular officers at the State Department may need to “consult” with other government offices, including offices in other government agencies, in order to determine if an applicant does/does not qualify for the third “national security risk” prong. Guidance acknowledges that a waiver determination “likely will not be made at the window.” This guidance includes information on how to refuse applicants while additional vetting is being conducted on their cases, particularly with regard to the third “national security” prong.

In our experience as consular officers, “administrative processing” on national security grounds for other visa categories which involved interaction and concurrence with other entities within the U.S. government was not “consultative” with consular officers. Rather, consular officers lose visibility into evaluations of an applicant’s case when they submit requests for security review to offices in Washington. In our experience, when a consular officer submits an application to offices in Washington for “administrative processing” on national security grounds, the officer typically receives a “yes/no” determination regarding an applicant’s eligibility to receive a visa on national security grounds. This response is often received after an extended period of time.

Far from being a consultative process, consular officers have no knowledge as to which government offices reviewed the case and by what standards they judged the applicant. Moreover, in our experience, individual consular officers cannot request additional information or appeal a security determination that they believe to be improper. In these scenarios, consular officers essentially make a recommendation as to an applicant’s eligibility for a waiver, with the final determination made by an opaque grouping of offices in Washington.

Accordingly, we believe that consular officers have limited discretion in assessing the viability of the national security prong pursuant to Proclamation 9645. Because the assessment of the national security prong is removed from the consular officers, consular officers do not and cannot have sole discretion in issuing waivers pursuant to Proclamation 9645.

As established by the released guidance, the national security vetting process is critical to a determination of whether a waiver will be issued pursuant to the Proclamation. As such, the waiver process cannot be fully understood without a clearer understanding of this national security vetting process. Absent additional documents and insight into the determination of eligibility concerning the national security prong of the Proclamation, it is impossible to evaluate how objectively, fairly, or rigorously the waiver process is being applied.

We encourage members on the House Judiciary and Foreign Affairs sub-committees on

Immigration and Citizenship and Oversight and Investigations to request additional information regarding the waiver process for Proclamation 9645, particularly as it relates to the evaluation of the national security prong, including which groups of offices and agencies review individual applications.

We hope this statement is helpful. We would be happy to provide further information on our specific consular experience as requested.

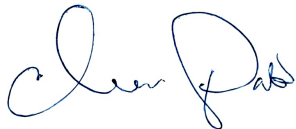
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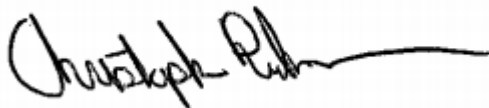
Sarah Gardiner
U.S. Embassy Madrid (Vice Consul) August 2016 – October 17



Lekisha Gunn
U.S. Consulate General Monterrey (Vice Consul) April 2014- March 2016



Charles Park
U.S. Consulate General Ciudad Juarez (Vice Consul) July 2011-2013



Christopher Richardson
U.S. Consulate Lagos (Vice Consul) 2011-2013; U.S. Embassy Managua, (Consul) 2013-2015; U.S. Consulate Karachi (Consul) 2015-2016; U.S. Embassy Madrid (Consul) 2016-2018