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Mrs. Siobhan Smith Bradley
Office of Special Counsel
Washington, DC

Re: Supplemental Response to Report of Investigation for OSC Whistleblower Disclosure
DI-12-2963.

Mrs. Smith Bradley:

I am in receipt of the report of investigation; presented by Under Secretary of State for Management Patrick Kennedy, for the Office of Special Counsel (OSC) Whistleblower Disclosure with the file number DI-12-2963. I wish to provide this supplemental response, which begs more information from the Agency and makes a crucial clarification.

I. More Information Needed

The U.S. Department of State (Agency) comes to the conclusion based on interviews alone that no applications were wrongly denied, while the applicants have legitimate claims to citizenship under 320(a) INA, due to the policy that is the subject of this disclosure (ROI, p. 11). The Agency provides a footnote (ROI, p. 10, fn. 11) stating that it will not provide passport records except as permissible under the Privacy Act. Even absent passport records, which the Agency, by the way, had no issues with the disclosing in its response to DI-12-0320¹, it fails to provide an iota of data or confirmation of an electronic or physical record search of all passport application denials at WPC since 2010, or nationally, for that matter, since April 20, 2012 (the date the earliest acquisition policy became ‘national’), to confirm this conclusion. It instead relies on a “they said it didn’t happen, so it didn’t” standard of evidence, which, and I say this in jest, *is* a lower

¹ In response to DI-12-0320, the Agency submitted passport applications that were properly redacted to preserve the integrity and privacy of the applicants. The position that I took in protest of their response was that of all the data that was protection worthy, they unnecessarily declined to redact the adjudicators’ names that appear on their jurat stamps. I took the position that this, the failure to protect the names of the adjudicators, constituted an unnecessary violation of the Privacy Act.

standard of adjudication than we are to apply when adjudicating passport applications. The only statement the investigator makes is: “1) There is no evidence that WPC has improperly denied applications in the manner alleged by Mr. Warne; 2) there is not a substantial likelihood that such a denial will occur; and 3) that WPC’s practice in adjudicating CCA applications does not impose an undue financial burden on applicants.” But none of these conclusions are based on material fact or reliable evidence other than “according to him-according to her.”

I stated, as is the case, that, during my three-month customer service rotation in 2011, I witnessed approximately 90 applications that were being set up for “no response denials” where there were perfectly legitimate claims to 320(a). I immediately issued them all; handed the ‘batches’ to my supervisor, Sarah Nale; and told her that if she disagreed, to give me SKEs (as defined in my prior comment) for every single one of them. She agreed that they should have been issued and said she would take care of them. But based on the training that passport specialists have received, specifically those hired at and not transferred to WPC, some of whom are now or are about to be GS-11’s, you cannot trust that my ability to adjudicate correctly has been imparted upon those hired at WPC (ROI, part D, sec. 1-2.).

Additionally, since the Agency has a firm grasp on statistics and the “rarity” of 320(a) INA claims identifying two parents as U.S. citizens, or only identifying the citizenship status of one parent, on the application, they fail to identify exactly how “rare” they claim the occurrences to be (ROI, p. 10). I believe the President and the Congress should like and need to know the statistics evidencing their claim of rarity, since I, and anyone else who adjudicates, would easily call this claim false.

II. Clarification

After further research, I wanted to clarify a claim purportedly made by the Director of the Office of Adjudication Director, Don Simpkins, providing an example of when a state of other governmental entity would need access to a U.S. citizens date of acquisition via passport records. The ROI quotes, presumably in paraphrase, “Passport applicants have previously requested their passport records to use as documentary evidence of their date of acquisition of citizenship when applying for student loans” (ROI, p. 7).

The Department of Education Reports (in addition to stating student loan eligibility qualifications regarding citizen- or non-citizenship statuses) the standards by which such cases are adjudicated:

Other documentation

If a student must prove his status as a citizen or national, you decide what documents are acceptable. The Department doesn’t specify them, but here are documents you might choose to use:

- *A copy of the student's birth certificate showing that she was born in the United States, which includes Puerto Rico (on or after Jan. 13, 1941), Guam, the U.S. Virgin Islands (on or after Jan. 17, 1917), American Samoa, Swain's Island, or the Northern Mariana Islands, unless the person was born to foreign diplomats residing in the U.S.*
- *A U.S. passport, current or expired, except limited passports (which are typically issued for short periods such as a year and which don't receive as much scrutiny as a regular passport when applying). In the case of nationals who are not citizens, the passport will be stamped "Noncitizen National."*
- *A copy of Form FS-240 (Consular Report of Birth Abroad), FS- 545 (Certificate of birth issued by a foreign service post), or DS- 1350 (Certification of Report of Birth). These are State Department documents.*
- *A Certificate of Citizenship (N-560 or N-561), issued by USCIS to individuals who derive U.S. citizenship through a parent.*
- *A Certificate of Naturalization (N-550 or N-570), issued by USCIS through a federal or state court, or through administrative naturalization after December 1990 to those who are individually naturalized².*

(emphasis mine.)

That is, of course, after they verify the citizenship status through SSA, just as we do, and has nothing to do with the date of acquisition since this process of verification occurs prior to the distribution of funds. So, although it may have happened that applicants have requested their applications for student loan purposes, it was not or likely not to get their acquisition dates. If that is the case, I would like for Mr. Simpkins to provide such a request, even under order of protection, for the record and not to be included with the final report. But per the Department of Education, they only have to prove they are citizens, not when they acquired such status.

So, as the Agency loves to say, and borrowing their own term, I find this claim of need for date of earliest acquisition to receive a U.S. passport to be *without merit*.

/s/

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The National Federation of Federal Employees

² <http://www.ifap.ed.gov/sfahandbooks/attachments/0506Vol1Ch2.pdf>