Joel J. Warne
Chief Steward
IAMAW FD1 NFFE FL 1998
Senior Passport Specialist
Western Passport Center
7373 E Rosewood St.
Tucson, AZ 85710
(520) 733-8160

January 11, 2013

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

Re: 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 have read it thoroughly, and take exception to the finding of no violation of law, rule, or regulation; gross mismanagement; or abuse of authority for reasons I will explain.

I would like to begin by making a statement of intent: *Propriety in governance is neither a partisan nor adversarial issue in the employee-employer context, but rather it is an obligation that is incumbent upon all who have the pleasure of serving the American public in the federal service*. Federal sector unions, such as the National Federation of Federal Employees, Local 1998 (Union), exclusive representative of bargaining unit employees of the Department of State, Bureau of Consular Affairs, Passport Services Directorate (Agency), for which I am chief steward, serve a crucial role in the administration of public policy. Statutorily, they, as do we, represent bargaining unit employees by promoting superior training, sound policies that respect the integrity of our positions and limits of our authority, and workplace environments that foster the strongest, smartest, and most competitive workforce in the country. In accomplishing this mission, we also play a vital role in enhancing transparency, accountability, and accessibility in government, while projecting into our communities our best faces in representation of the agencies for which we work. In recognition of a debt of gratitude to the American public for this opportunity to serve in their government, I filed this disclosure as the only available recourse to have this issue addressed by the responsible authorities. The core issues involved, however, seem to have been lost in the investigatory process.

I. Stipulations

Much of the content of the Agency's report of investigation (ROI) is in agreement with the allegations made in my disclosure. The ROI begins with some very rudimentary facts regarding the authority to issue, withhold, or deny passports. As stated, in order to be eligible for a U.S. passport, applicants must provide evidence of three things: that they are U.S. citizens or nationals, that they are who they claim they are, and that they are statutorily eligible to bear a U.S. passport. The ROI correctly states the authorities, granted to the Secretary of State by Act of Congress, to issue passports on the behalf of the United States, and the delegations of the Secretary to passport specialists, such as myself, to perform this task on his or her behalf. Additionally, the ROI correctly states, as did I in my disclosure, that 22 CFR 51.40 and 51.41 places the burden of proof on the applicant to establish these facts, most specifically their citizenship and/or nationality status and identity. Also, correctly stated is that 22 CFR 51.45 permits the Agency (and its agents who engage in the issuance of passports) to require additional documentation to establishes these facts.

During the interview with Mrs.Siobhan Smith Bradley, OSC Attorney, I was asked why an earlier acquisition date being recorded would be beneficial to an applicant. The portion of the ROI which covers this matter (p. 2) corresponds with my response to Mrs. Smith Bradley. If a U.S. citizen, for example, who was born abroad, has a child abroad, the earliest date of acquisition may be necessary in order to know whether their child is a U.S. citizen and, if so, when that child became a U.S. citizen. This creates a domino effect, where an applicant for a U.S. passport today is basing his or her claim on either of his parents, either of their parents, either of their parents, etc.

That is where the stipulations end.

II. Areas of Contention

This is actually a relatively simple case.

A. Entitlement To Services

The "belief" that I have that the Western Passport Center (WPC) has a higher than average rate of Child Citizenship Act (CCA) cases (ROI, p. 3) was documented in a frequency study of "complex" cases during a time and motion study performed at approximately 13 passport agencies and centers across the country in order to attempt to calibrate productions rates for issuing, suspending, or denying applications as part of national policy. Despite the Union's multiple requests, the Agency declined to include WPC in its time and motion study due to, we believe, the extra requirements being placed on passport specialists at WPC compared to passport specialists at other agencies/centers, which triggered the grievance the Union filed in 2010 (ROI, p. 4), as well as its proximity to the U.S.-Mexico border, e.g. number of "complex" or derivative (most specifically CCA) cases the center receives. In settlement of a separate grievance filed by the

Union over how the time and motion study was being conducted, the Agency agreed not to include WPC in the time and motion study but to include it in a "frequency analysis" as a portion of the study (Exhibit A). The data showed that, of all the agencies and centers studied, WPC did and does have the highest rate of 320(a) INA (CCA by naturalization of biological parents) cases in the system, rivaled only by the New York Passport Agency (Exhibit B). So this "belief" is a stated fact, based on the Agency's own study. The grievance over annotations at WPC, as correctly stated, did not raise the appropriateness of the 'earliest acquisition date' policy but rather the time it took for passport specialists at WPC to make the extra annotations (ROI, p. 6). The fact that the grievance did not address the appropriateness of the policy has no bearing on whether the policy is legal. The risks associated with grieving the policy, potentially risking thousands of dollars of either party's on arbitration, made it so filing an Office of Special Counsel disclosure was a more viable option and also made it so the public would be made properly aware of how the Agency was operating with respects to our sisters and brothers born abroad.

The ROI states that 'other state and federal entities often rely on passport records to determine eligibility ... for benefits' (p. 7). The ROI does not state what state and federal entities are relying on passport records, since when they have been relying on passport records, and why they are not, rather, relying on the records of the federal entity which has the primary responsibility of naturalizing immigrants, or otherwise documenting citizenship acquisition dates, the Department of Homeland Security (DHS)[1]. The passports, themselves, do not contain information related to dates of acquisition. The ROI incorrectly states that the Agency has a 'longstanding policy ... to document the passport applicant's earliest claim to citizenship (p. 6),' and the footnote (1), intended to evidence such a fact, does no such thing and rather just restates the intent of the law, to provide citizenship status to those who would not otherwise acquire under the INA. The ROI correctly states that it was not until 2010 that the Agency began requiring, on a citizenship worksheet, passport specialists to annotate the date of acquisition. Annotating the date of acquisition, however, was not the subject of this disclosure and is, therefore, irrelevant to the facts. It is important to note, however, as stated earlier in this paragraph, that the use of passport records for gleaning dates of acquisition would not be feasible until 2010, when the practice was implemented. For this reason, I found the reasoning stated in the ROI (p. 6) flawed. Additionally, the Agency makes the claim that, "In the past, applicants have submitted a record request [sic.] to obtain the citizenship record to use it as evidence of the date of citizenship acquisition ..." (ROI, p. 10). But again, the Agency does not provide any evidence to substantiate that claim and such a claim further calls into question the validity of the ROI as a whole since, by the Agency's own admission, the date of acquisition annotation was not a requirement until 2010 and the 'earliest date of acquisition' annotation was not required until 2012.

It was not until April 20, 2012, a little more than two weeks before this disclosure was filed, that the Agency released an updated citizenship worksheet requiring passport specialists to document

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[1] DHS issues Certificates of Citizenship to document citizenship acquisition, though newly acquired citizens are often referred to Passport Services since our services cost significantly less than DHS' in the performance of its duties to document acquisition.

the earliest date of acquisition (p. 6). That, too, is not the subject of this disclosure, but provides evidence that this claim of a longstanding practice is simply not true.[2] The ROI is filled with the opinions of individuals as to why acquisition dates are important, and that was never in dispute. Acquisition dates are very important. But they are not important in determining whether or not someone is or is not a U.S. citizen or national, which is, as stated in 22 CFR 51.40, that "the applicant has the burden of proving that he or she is a U.S. citizen or non-citizen national" (emphasis added), one of the three criteria, earlier enumerated, that applicants need to prove in order to be receive for a U.S. passport. The regulation does not state that *the applicant has the burden of proving that he or she is a U.S. citizen or non-citizen national and the earliest date at which he or she acquired such status*. If the regulations did state that, there would not be an issue with the law and this disclosure never would have been made. But there is a reason the regulation is not worded that way: **it would never survive public comment in the Federal Register.** So instead of changing the regulations, the Agency is subverting them. Therein lies the legal violation, and the level at which the policy was created, who thought it was a good idea or bad idea, etc., is all irrelevant. The policy is unlawful.

The Agency's own policy guidelines, the Foreign Affairs Manual (FAM), in 7 FAM 1313, *Entitlement to Services*, state:

> *Burden of Proof: Applicants have the burden of proving* **by a preponderance of the evidence** *their identity (22 CFR 51.23) and that they are citizens of the United States (22 CFR 51.40). (See also INA 309(a), 8 U.S.C. 1409(a), regarding the burden of proof to establish the citizenship of a child born abroad to an unmarried United States citizen father, 7 FAM 1100.) Nothing contained in 22 CFR 51.42 through 51.46 shall prohibit the Department or the consular officer from requiring an applicant to submit additional evidence deemed necessary to establish U.S. citizenship or nationality (see 22 CFR 51.45).*
>
> (emphasis added.)

But even the last line in that paragraph, that '*nothing contained in* [these regulations] *shall prohibit the Department or the consular officer from requiring an applicant to submit additional evidence deemed necessary...,*' refers to establishing their U.S. citizenship or nationality and not specific aspects thereof, such as the date they became a citizen or national. The only case in which the preponderance of the evidence test does not apply, as is stated in the above captioned section of the FAM (309(a) INA), is in the cases of children born out of wedlock and acquiring or deriving their citizenship status (automatically naturalizing at birth) through their fathers, in which case the *beyond a reasonable doubt* test applies. So to suspend an application for a passport when the documentary evidence shows that it is more likely than not that they acquired citi-

[2] As a matter of practice, in Freedom of Information Act responses made by applicants requesting passport records, the notes of the passport specialist, as well as the specialist's jurat stamp, are redacted from the record provided. The citizenship worksheet, which is something the passport specialist fills out and not submitted by the applicant, too, is not sent to the applicant in response to FOIA.

zenship under 320(a) as opposed to 301 or 309 INA, you are unilaterally raising that standard of evidence in violation of law. That standard of evidence, however, the *preponderance of the evidence* standard, for all other derivative citizenship cases is documented in rulings by the U.S. Supreme Court, most notably, Lance v. Terrazas (444 U.S. 252), and in other proceedings, such as the agreement come to between the Agency and the American Civil Liberties Union in the matter of Castelano v. Clinton. Part II, Sec. A, of which, states: "*The burden of proof* [for passport applicants] *remains on the applicant ... who must establish his or her eligibility for a passport* ***by preponderance of the evidence****, except where otherwise provided by statute.*" (emphasis mine.) The section continues:

> *19.* ***The Parties acknowledge that the preponderance of the evidence is a "more likely than not" standard****. The Department agrees to reinforce this standard through its on-going training procedures and continuing education methods.*
>
> *20. The Department* ***will issue a passport when the applicant has demonstrated U.S. citizenship or nationality by a preponderance of the evidence****, the applicant's identity is not reasonably in question, the applicant has complied with all requirements, procedures, and instructions for filing a passport application, and there are no statutory, regulatory, or other legally sufficient reasons not to issue.*
>
> (emphasis added.)

Not only is the Agency in violation of its own agreement in this matter--to which the Madame Secretary, Under Secretary for Management Patrick Kennedy, and Managing Director for Passport Issuance Florence Fultz were all involved--but, as correctly described in the ROI (Part D, Sec. 1), it has proceeded to train and educate its passport specialists to the contrary of the agreement.

Nowhere on the application, as would constitute 'complying with the requirements, procedures, and instructions for filing a passport application,' does it ask the applicant whether or not they would like to permit us to perform a 'more thorough' investigation of their citizenship status and a warning that making such an election may delay the process, require the provision of additional documents, the potential suspending of the case until such a time when those documents are acquired, affidavits and evidence to support those affidavits, etc. This would be a reasonable option for those who wish for the Agency, as opposed to DHS, to document the finer details of their citizenship status. But the nearly infinite majority of our applicants are applying for one thing: a passport. To suspend, or withhold, is to temporarily deny to the applicant the benefit for which they are paying their fees. In the instant cases, these are U.S. citizens who, barring any identification issues or statutory bars, have a right under the law to those benefits.

NOTE: *The ROI states that the instance of having an applicant identify both his or her parents as U.S. citizens but only providing evidence for one of those parents is a rarity (p. 8). That is not only a falsehood but an abject to lie, and the individual responsible for making such a statement*

should either be dismissed or demoted to janitorial services. Therefore, the indication that "passport specialists are not instructed to look behind all LPR cards," correctly states that that would be redundant (p. 10) and, might I add, stupid. Unfortunately, it is what is occurring and what the Agency is ignoring. Further, contrary to what is stated in the ROI, passport specialists at the WPC are being required to suspend for earlier acquisition for all CCA cases, even when the applicant has submitted all necessary documentation to be issued a passport as a proven citizen under the law when the applicant, to include presenting proof of legal entry, evidence of U.S. citizenship of one parent, and evidence of relationship to that parent, or the person filling out the application on his or her behalf, identifies both parents as being U.S. citizens or even when one parent is identified as being a U.S. citizen, but the applicant fails to identify the citizenship status of the other parent or makes any corrections to the identification of the citizenship status of the other parent on the application itself.

NOTE: *I never claimed that "passport specialists are being required to make citizenship determinations" and that "that function is outside the normal duties and responsibilities of* [our] *positions" (ROI, p. 8). Rather what I said, or intended to say, as I do in this response is that it is our job to make citizenship determinations, but the extent to which we are being required to do so, in addition to be unnecessarily burdensome on the applicant, is outside the normal duties and responsibilities.*

B. Right to Choose Law of Acquisition

22 CFR 51.43, states:

> A person born outside the United States must submit documentary evidence that he or she meets all the statutory requirements for acquisition of U.S. citizenship or non-citizen nationality *under the provision of law or treaty under which the person is claiming U.S. citizenship or non-citizen nationality*.

This portion of regulation, which codifies the provisions of the INA, is very clear that the law under which an applicant applies is at his or her own discretion. That is not to say that if the applicant chooses the wrong law, that the case should be abandoned with requesting information for other avenues. But in the captioned case, this is not a factor because, as explained before, the applicant has presented evidence that he or she has no claim of citizenship under any other law than that provided for in 320(a) and 321 (repealed) INA.

Often, specifically in the cases of Mexican Americans, when applications are suspended and they do respond, they will respond so with letters, memorandums, and even captured documents from the Agency's own website, travel.state.gov, which outlines the requirements for acquisition under 320(a). These documents are often acquired by immigration attorneys, whose services have been acquired at additional cost to the applicants. (Again, referring to the Castelano v. Clinton settlement.)

It is true that the general public does not have the degree of training that is provided to passport specialists, consular officers, and other Agency personnel who engage in citizenship determinations. But this is irrelevant, since our requirements with regard to citizenship determinations under the law, as described above, are very clearly laid out: did the individual acquire citizenship? If the applicant has provided proof of citizenship under 320(a) than that requirement has been met and the application should be issued, absent any other bars to eligibility. Traditionally, and I have worked now at two passport agencies/centers with five years of experience, the section of regulation described above that leaves the law to which the applicant is staking his or her claim to the applicant has been implemented to mean 'whichever law is easier on the applicant.' The insinuation that this is a longstanding practice (ROI, p. 6) is not true.

C. Permanent Residence of Proof of Non-Acquisition At Birth

The only issue remaining is in the cases involving applicants who submit Permanent Resident Cards (PRCs) but have not completely proven their citizenship status under 320(a) INA, e.g. submit a photocopy of their foreign birth certificate or some other unacceptable form of evidence, when there is 'evidence' that they have an at-birth claim to citizenship. The practice that began at WPC in 2010 identified 'evidence of an at-birth claim' as having two parents listed as U.S. citizens on the application while having received only the date of acquisition for the parent whose citizenship evidence was included with the application package. I am opining here, but I would assert that 95 percent of applicants, whose parents were born abroad, and one of whom's naturalization certificates is submitted, naturalized on the same date or naturalized in like fashion. But even in a case where an applicant (again, having submitted a PRC) submits a naturalization certificate for one of his or her parents and indicates on the application that the other was born in the United States, or even an applicant who submits a domestic, U.S. birth certificate for one of his or her parents, as opposed to the naturalization certificate or domestic birth certificate of the other parent, the Agency must consider the laws and regulations governing PRCs and who has a lawful right to bear one.

PRCs are immigrant visas. U.S. Citizenship and Immigration Services (USCIS, formerly Immigration and Naturalization Services) sets four standards to be eligible for a PRC. The applicant must[3]:

1) *Be eligible for one of the immigrant categories established in the Immigration and Nationality Act (INA)*
2) *Have a qualifying immigrant petition filed and approved for you (with a few exceptions)*
3) *Have an immigrant visa immediately available*
4) *Be admissible to the United States*

[3] http://www.uscis.gov > home > green card > green card processes and procedures > green card eligibility.

U.S. citizens, other than those former citizens whose citizenship was revoked by the commission of an expatriating act, do not qualify for immigrant visas because they meet only one of those requirements, admissibility to the United States.

The ROI correctly states that I maintained during the investigatory interview over this disclosure that PRCs are proof of non-acquisition of U.S. citizenship at birth, but incorrectly states that I could not cite the FAM reference to substantiate that claim (p. 4). The footnote (5) assumes that I was referring to 7 FAM 1159.1(f)(5)(a), which "lists '[PRCs]' as 'evidence of permanent residence status." That is a falsehood, and something that is deeply troubling about the entire investigation of this claim, something that I will get into later on. In an e-mail between myself and a dear friend and former peer, Jason Roach, Adjudication Manager for the Honolulu Passport Agency and [at the time] Acting Adjudication Manager for WPC, I asked that he re-instruct the newer specialists to stop suspending applications for affidavits of physical presence when the applicants submit PRCs with part of their application package. In that chain of e-mails, the substance of which Mr. Roach agreed to (Exhibit C), I listed 7 FAM 1159.2(a)(3), which, in a side note, states:

> *IR-2 – The child was legally adopted by the petitioner (domestically or abroad) before the child's 16th birthday and the child had resided with and in the legal custody of the petitioner for at last 2 years. This category also includes stepchildren who may or not be subsequently adopted by a stepparent. While granted IR-2 status, the stepchild, absent adoption by a U.S. citizen stepparent, cannot derive any benefits from the CCA.* ***NOTE: An IR-2 can also be a biological child who does not acquire under INA 301.***[4]
>
> (emphasis mine.)

I very clearly stated this during the investigatory interview as well as in the documentary evidence submitted to the attorney for the Office of the Legal Advisor (S/L) conducting the interview.

Additionally, the regulation that defines lawful permanent residence, 8 CFR, Sec. 1.2, Defintions, states:

> Lawfully admitted for permanent residence means the status of having been lawfully accorded the privilege of residing permanently in the United States **as an immigrant** in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of ex-

[4] This section of the FAM is actually incorrect, as PRC holders are also ineligible for citizenship under 309 INA, or any other citizenship category for that matter, unless they naturalize or derive via 320 or 321 (repealed) INA.

clusion, deportation, or removal. (Revised 6/13/03; 68 FR 35273) (Added 4/29/96; 61 FR 18900)

(emphasis added.)

In short, U.S. citizens do not qualify for immigrant visas. The fact that someone bears a PRC is evidence enough, based on the preponderance of the evidence, that he or she did not acquire at birth. Had he or she acquired, the immigration officer or consular officer conducting the investigation would have referred the individual to get a passport or certificate of citizenship.

Note: *On or around October 31, during the Department's mandatory "Intermediate National Training Program," I asked the question the the instructor, an Agency instructor, whether you can presume from the presence of a PRC in an application package that an applicant did not acquire via birth. The answer was a resounding "yes." His name was Qui, and I apologize for not knowing his last name. Also, on the date prior to the investigatory interview for the first of two OSC disclosures filed, I brought the issue to the attention of newly hired Assistant Director of WPC and former Regional Training Coordinator Carol Aguilar, who agreed you would not go for an earlier acquisition date for an applicant that bears a PRC. So, there is a lot of "saving face" going on, and I am proud the Agency has its best and brightest attorneys making this poor case that a PRC is not proof of non-acquisition.*

D. "But PRCs Are Often Issued In Error"

That is a rather tenacious argument for the Agency to make, but one that sounds like an issue that needs to be addressed with DHS and not with passport specialists whose duties are, simply, to issue passports to the American traveling public.

E. Significant Knowledge Errors

Significant knowledge errors (SKEs) are not something that I will delve into deeply in this response to the ROI. It is, essentially, an 'error category' manifested by the Agency to address "errors that could lead to the issuance of a passport in error." SKEs were adopted by the Agency in 2009, but they were redefined in 2011 to encompass any judgment made by the passport specialist to which the supervisory passport specialist disagrees, not only in whether the application should or should not have been issued, but in disagreements over which law of acquisition apply to applicants confirmed to be U.S. citizens or nationals. It is a nebulous category of error intended to subvert, in its entirety, the spirit of 5 U.S.C. Chapter 43. It is a loophole in the law that allows individuals to be targeted for dismissal, and several cases have arisen. The concept of the SKE is currently, as of the date of this writing, the subject of an arbitration hearing, a decision on which has yet to be rendered. It is a method 'quick dismissal' of 'undesirables,' e.g. me and others who stand up for the law over personal ambitions.

It is significant here because passport specialists, particularly at WPC, and, based on the information contained in the ROI, throughout the system, are being charged SKEs for not suspending applications for passports where there is 'evidence' of earlier acquisition when in fact, based on the fact the applicant bears a PRC, there is no evidence at all of an earlier acquisition. Based on the above captioned regulations, the evidence is to the contrary of the applicant having acquired citizenship at birth. There is, therefore, no reason to suspend other than to request the other information necessary to satisfy the claim under 320(a) INA.

III. Closing

To suspend, or withhold, issuance of a passport is to temporarily deny that benefit to a U.S. citizen for purposes that are unfounded in law and/or tradition. Doing so violates not only the very standard of evidence that the U.S. judicial system has bound the Agency to, but also to the standard of evidence the Agency has agreed to in its own legal battles over that very standard. In permitting, and training, educating, and encouraging passport specialists to perform their duties in this manner, the Agency has abused its authority and violated law, rule, and regulation.

Additionally, U.S. citizens are ineligible for immigrant visas. If it is the position of the Agency that U.S. citizens are entitled to PRCs, I would like them to respond so declaratively to this comment on their ROI. But they will not, because they know that what I am saying here is true. Even if the Agency is audacious enough to accuse DHS of issuing PRCs in error, than that is something that should be addressed with DHS. But the Agency's mission is simple: issue passports to eligible U.S. citizens. While I appreciate that the government has attempted to amend its organization to allow for documentation of dates of acquisition in a less expensive manner (passports are cheaper than citizenship certificates), it is potentially an issue that the Congress and representatives of DHS should look into to lower fees for citizenship certificates in order to properly and responsibly document acquisition dates of citizenship withhold holding up the benefit for which the applicant is applying, a U.S. passport.

For the record, since this writing will go before the Congress, this issue is not about making it easier for non-U.S. citizens to get passports or subjecting the process to fraud. Passport specialists throughout the system are resilient at preventing this from happening to the best of the abilities and based on the technology at their disposal. It is instead about de-bureaucratizing the process and getting passport applications out of our offices and passports into the hands of eligibles, without arbitrarily deeming passport specialists as having "a lack of knowledge" for knowing and properly applying the laws and regulations as they exist today.

31 U.S.C. Sec. 9701(b)(2), states:

> (b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agen-

cies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—
(1) fair; and
(2) based on—
(A) the costs to the Government;
(B) the value of the service or thing to the recipient;
(C) public policy or interest served; and
(D) other relevant facts.

If this practice was not inconsistent with this or any other section of law, rule, or regulation, than the Agency would not be in the practice of settling disputes over similar policies outside of court and would, instead, take them through the litigation process with the expectation of winning.

IV. Final Notes

A. It is of interest to note that the Monday following the investigation for the disclosure, the director of WPC announced her retirement. This was an announcement that many at WPC have been waiting years to hear.

B. The Agency, in its ROI, provides no meaningful statistics except for data from 2010, two years prior to this disclosure being filed and two years prior to the instructions to "suspend for an earlier acquisition" becoming a national policy. Meaningful data would be from 2012, be broken down by the separate agencies and centers, and include question and answer responses to and from the different agencies/centers and the Office of Adjudication since 2010.

C. To date, the Agency has sent no such memo as they stated they would in the ROI, providing specific instructions on adjudicating CCA cases (p. 12).

/s/
Joel J. Warne
Chief Steward
IAMAW FD1 NFFE 1998
The National Federation of Federal Employees

EXHIBIT A

Settlement

Date: June 10, 2011

FMCS Case Number: 11-52102-A

Issue: 2010 Production Standards

This Settlement Agreement is entered into and between the United States Department of State, Passport Services ("Agency" or "Management") and the National Federation of Federal Employees, Local 1998 ("Union"), collectively referred to as the "Parties." In accordance with Article 20 of the collective bargaining agreement (CBA, or "Master Agreement") between the Parties, on March 30, 2010, the Union filed a Final Step Grievance regarding the nationwide production standards.

The Parties do now wish to fully and finally resolve this grievance, without the need for arbitration.

Therefore, the Parties Mutually Agree as Follows:

1. Until the standards resulting from the 2011 production standards review are implemented, the Agency agrees that no current agency employee shall be terminated solely due to low production numbers under Work Commitment 1(c). Once the new standards are implemented, employees failing to meet those new standards may be placed on a PIP within the time specified in the Collective Bargaining Agreement. Nothing in this paragraph shall be construed to alter or negate paragraph 2 of the November 12, 2010 settlement agreement.

2. The Production Standards Working Group (PSWG) lead and representatives of PPT/PMO will meet with the national Union leadership in Seattle, prior to formulating final recommendations on the 2011 production standards review. The meeting will afford the Union with the opportunity to provide the PSWG lead with any additional information deemed necessary to be considered in setting production standards. The Agency will provide transportation and per diem for up to three bargaining unit employees as designated by the Union to attend the meeting in Seattle, proposed dates September 1 & 2, 2011. At least 7 calendar days prior to the Seattle meeting, the Agency will provide the Union with the consolidated "Frequency Data" and "Past Performance Data" considered during the 2011 review of production standards.

3. The Agency will include Miami in the sites to be visited for the 2011 Time and Motion study. Additionally, the Agency will conduct a Frequency Analysis at the Western Passport Center (Tucson) as part of the 2011 production standards review.

4. By signing this settlement, the Union agrees to withdraw the grievance.

5. The Agency agrees that no employee or Union official will suffer any retaliation in any manner (including disciplinary or performance based actions) for participating in the case and that the Union as an entity will suffer no retaliation.

6. The Parties agree that if there are any disputes over the application or interpretation of this agreement that cannot be settled by the Parties, then either Party can submit a grievance in accordance with Article 20 of the Master Agreement.

7. The Agency shall pay the Arbitrator's cancellation fee.

For the Union:

For Management:

EXHIBIT B

Frequency analysis shows 0.74% frequency rate for 320(a) cases nationally with occurrence rates of 1.2% and 1.7% at WPC and PPT/NY. 0.74%, ignoring the WPC and PPT/NY frequency rates, of 14,000,000 applications is 1,036,000 applicants affected.

Frequency Totals		CPC	WN	CT	PA	NY	SF	HN	LA	WPC	BN	MM	HH	NPC	Totals	%		EFs
Sheet-																		
Type	Total Observed	4955	1492	400	1037	741	2081	1949	1603	2000	420	1449	407	1000	19534		Total Observed	2000
ID	DL	2346	774	197	724	221	980	1083	693	1183	254	722	146	589	9912	50.74%	DL	59.10%
	US PPT	18	1	2	6	12	8	14	11	6	5	18	9	13	123	0.63%	US PPT	0.75%
	ID Only	150	34	4	23	40	97	42	74	65	3	22	57	12	623	3.19%	ID Only	3.10%
	Gov't ID	1	1	0	0	1	0	0	0	1	0	0	2	0	6	0.03%	Gov't ID	0.00%
	Nat Cert	4	2	1	2	52	6	0	1	14	3	31	1	9	126	0.65%	Nat Cert	1.50%
	Foreign ID	1	0	1	0	0	1	1	3	0	0	1	7	2	17	0.09%	Foreign ID	0.30%
	Military	35	7	0	0	1	3	6	8	13	0	5	28	1	107	0.55%	Military	0.25%
	Other	0	0	3	5	15	9	5	0	0	0	78		3	118	0.60%	Other	0.45%
US Birth Certs	All	3941	1138	299	846	347	1418	1560	1088	1148	333	86	257	721	13182	67.48%	All	72.30%
	State	1573	819	40	644	13	302	329	129	758	32	876	111	175	5801	29.70%	State	27.10%
	Delayed	16	2	1	2	2	5	6	0	16	0	3	1	1	55	0.28%	Delayed	0.40%
	US Territory	9	0	7	5	5	0	7	3	3	1	21	110	0	171	0.88%	US Territory	0.45%
	Listing Foreign POB	4	2	0	3	0	2	1	1	5	0	1	1	0	20	0.10%	Listing Foreign POB	0.00%
USCIS Docs	Nat Cert	378	129	29	53	86	221	110	177	219	23	83	22	74	1604	8.21%	Nat Cert	8.55%
	Cit Cert	42	9	3	7	1	22	22	9	19	3	8	6	1	152	0.78%	Cit Cert	1.00%
	Other (Non-PRC)	1	0	0	0	0	2	2	0	0	0	1		0	6	0.03%	Other (Non-PRC)	0.05%
DoS Docs	Prev PPT DS-11 <16	881	348	108	157	228	454	267	386	268	95	62	85	174	3513	17.98%	Prev PPT DS-11 <16	15.35%
	Prev PPT DS-11 >16	263	49	16	64	34	140	130	114	137	29	405	59	112	1552	7.95%	Prev PPT DS-11 >16	11.30%
	CRBA	25	11	0	5	2	9	19	6	15	1	8	3	4	108	0.55%	CRBA	0.35%
Forms	DS-64	130	47	10	29	27	63	60	70	79	6	65	27	22	635	3.25%	DS-64	6.75%
	DS-10	0	0	0	0	1	0	0	0	0	0	1		0	2	0.01%	DS-10	0.05%
	DS-71	7	4	2	1	15	5	2	7	5	1	46	24	7	126	0.65%	DS-71	0.50%
	DS-60	0	0	0	0	0	0	0	0	0	0	1		0	1	0.01%	DS-60	0.10%
	DS-3053 (Consent)	225	55	10	35	43	60	113	51	53	3	46	11	32	737	3.77%	DS-3053 (Consent)	4.10%
	DS-3053 (SFC)	39	9	1	5	15	18	17	28	7	1	10		3	153	0.78%	DS-3053 (SFC)	1.05%
Other	MC DS-11	31	15	1	20	7	12	12	15	22	4	9	17	15	180	0.92%	MC DS-11	0.75%
	MC DS-82	0	0	0	0	0	1	2	0	1	0	0	4	0	8	0.04%	MC DS-82	0.00%
	C/O, NC DS-11	26	9	2	9	5	26	11	36	26	3	3	5	7	168	0.86%	C/O, NC DS-11	1.15%
	C/O, NC DS-82	0	0	0	0	0	0	2	0	0	0	0	1	0	3	0.02%	C/O, NC DS-82	0.25%
	C/O Custody	46	26	6	2	7	29	11	16	32	0	13	10	15	213	1.09%	C/O Custody	0.85%
	C/O Adoption	0	1	0	1	0	1	0	0	0	0	3		1	7	0.04%	C/O Adoption	0.15%
	Death Cert	20	3	2	2	0	4	7	4	5	1	9	2	5	64	0.33%	Death Cert	0.50%
	Overseas Limited, 11	0	0	0	0	0	2	0	2	1	1	0		0	6	0.03%	Overseas Limited, 11	0.00%
	Overseas Limited, 82	0	0	0	0	0	0	0	0	0	0	0		0	0	0.00%	Overseas Limited, 82	0.00%
	CCA - 320 (a)	28	11	2	9	13	15	8	15	25	0	11	1	6	144	0.74%	CCA - 320 (a)	0.55%
	CCA- 320 (b)	7	0	0	4	1	0	1	0	5	0	0		0	18	0.09%	CCA- 320 (b)	0.10%
	At Birth	0	0	0	0	0	0	0	1	2	0	0	7	0	10	0.05%	At Birth	0.05%
	Other Non-CCA Der	0	0	0	1	0	0	0	0	1	1	1	10	0	14	0.07%	Other Non-CCA Der	0.05%

1.2%
CCA cases at WPC, though the actual occurrence is much higher and there's no evidence to show the frequency data was truly random or how the number to each agency were analyzed for compared to .74% as mentioned average. At WPC more than 1 application out of every 100 is a 320(a) case and the majority of these cases identify both parents a citizen or don't identify the citizenship status of the other parent.

EXHIBIT C

Concurrence that affidavits of physical presence should not be going to applicants who bear PRCs but, then visiting, Adjudication Manager Jason Roach.

From: Roach, Jason S WPC
Sent: Friday, June 24, 2011 2:35 PM
To: Warne, Joel J
Subject: RE: HELP

That's a fine point to bring up...however at the same time we have to be careful how we bring it up b/c of the newness of some people here...sometimes too much info leads to paralysis. But yes we can get to that.

SBU

This email is UNCLASSIFIED

From: Warne, Joel J
Sent: Friday, June 24, 2011 2:32 PM
To: Roach, Jason S WPC
Subject: RE: HELP

7 FAM 1159.2

IR-2 – The child was legally adopted by the petitioner (domestically or abroad) before the child's 16th birthday and the child had resided with and in the legal custody of the petitioner for at last 2 years. This category also includes stepchildren who may or not be subsequently adopted by a stepparent. While granted IR-2 status, the stepchild, absent adoption by a U.S. citizen stepparent, cannot derive any benefits from the CCA. NOTE: An IR-2 can also be a **biological child who does not acquire under INA 301.**

From: Roach, Jason S WPC
Sent: Friday, June 24, 2011 2:29 PM
To: Warne, Joel J
Subject: RE: HELP

Not really...just asking you to check the FAM for it.

SBU

This email is UNCLASSIFIED

From: Warne, Joel J
Sent: Friday, June 24, 2011 2:24 PM
To: Roach, Jason S WPC
Subject: RE: HELP

Did I nail you on that one? ☺

From: Roach, Jason S WPC
Sent: Friday, June 24, 2011 2:12 PM
To: Warne, Joel J
Subject: RE: HELP

Well...what does the FAM say about date of acquisition??? Should we try to adjudicate the earliest date

is possible?

SBU

This email is UNCLASSIFIED

From: Warne, Joel J
Sent: Friday, June 24, 2011 2:11 PM
To: Roach, Jason S WPC
Subject: RE: HELP

Could you ask people to stop sending requests for affidavits of physical presence when they've already submitted an IR-2 RAC?