



United States Department of State

Washington, D.C. 20520

June 1, 2023

Case No. FL-2018-05010

John Miano
Federation for American Immigration Reform
25 Massachusetts Ave. NW, Suite 330
Washington, DC 20001

Dear Mr. Miano:

As we noted in our letter dated April 20, 2023, we are processing your request for material under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. The Department of State ("Department") has identified an additional five responsive records subject to the FOIA. We have determined that four records may be released in full and one record may be released in part.

An enclosure explains the FOIA exemptions and other grounds for withholding material. Where we have made redactions, the applicable FOIA exemptions are marked on the record. Where applicable, the Department has considered the foreseeable harm standard when reviewing the record and applying FOIA exemptions. All non-exempt material that is reasonably segregable from the exempt material has been released and is enclosed.

We will keep you informed as your case progresses. If you have any questions, your attorney may contact Assistant United States Attorney Stephanie Johnson at (202) 252-7874 or Stephanie.Johnson5@usdoj.gov. Please refer to the case number, FL-2018-05010, and the civil action number, 19-cv-00182, in all correspondence about this case.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Hickson', with a large, stylized initial 'D' and a long horizontal stroke at the end.

Diamonece Hickson
Chief, Litigation and Appeals Branch
Office of Information Programs and Services

Enclosures: As stated.

The Freedom of Information Act (5 USC 552)

FOIA Exemptions

(b)(1) Information specifically authorized by an executive order to be kept secret in the interest of national defense or foreign policy. Executive Order 13526 includes the following classification categories:

- 1.4(a) Military plans, systems, or operations
- 1.4(b) Foreign government information
- 1.4(c) Intelligence activities, sources or methods, or cryptology
- 1.4(d) Foreign relations or foreign activities of the US, including confidential sources
- 1.4(e) Scientific, technological, or economic matters relating to national security, including defense against transnational terrorism
- 1.4(f) U.S. Government programs for safeguarding nuclear materials or facilities
- 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to US national security, including defense against transnational terrorism
- 1.4(h) Weapons of mass destruction

(b)(2) Related solely to the internal personnel rules and practices of an agency

(b)(3) Specifically exempted from disclosure by statute (other than 5 USC 552), for example:

ARMSEXP	Arms Export Control Act, 50a USC 2411(c)
CIA PERS/ORG	Central Intelligence Agency Act of 1949, 50 USC 403(g)
EXPORT CONTROL	Export Administration Act of 1979, 50 USC App. Sec. 2411(c)
FS ACT	Foreign Service Act of 1980, 22 USC 4004
INA	Immigration and Nationality Act, 8 USC 1202(f), Sec. 222(f)
IRAN	Iran Claims Settlement Act, Public Law 99-99, Sec. 505

(b)(4) Trade secrets and confidential commercial or financial information

(b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product

(b)(6) Personal privacy information

(b)(7) Law enforcement information whose disclosure would:

- (A) interfere with enforcement proceedings
- (B) deprive a person of a fair trial
- (C) constitute an unwarranted invasion of personal privacy
- (D) disclose confidential sources
- (E) disclose investigation techniques
- (F) endanger life or physical safety of an individual

(b)(8) Prepared by or for a government agency regulating or supervising financial institutions

(b)(9) Geological and geophysical information and data, including maps, concerning wells

Other Grounds for Withholding

NR Material not responsive to a FOIA request excised with the agreement of the requester

DEPARTMENT OF STATE
Office of the Secretary

Exercise of Authority under Section 243(d) of the Immigration and Nationality Act (INA)
Temporarily Discontinuing Visa Issuance to Certain Applicants in Eritrea

- (1) Following receipt of notice from the Secretary of the Department of Homeland Security that the Government of Eritrea is denying or unreasonably delaying accepting certain aliens who are citizens, subjects, nationals, or residents of that country, after that government was asked to accept said aliens under this section. In my capacity as Secretary of State, acting under the authority of INA section 243(d), 8 USC 1253(d), order consular officers in Eritrea to discontinue granting non-immigrant B1, B2, and B1/B2 visas to citizens, subjects, nationals, and residents of Eritrea beginning on the second business day following the signing of this order.
- (2) This discontinuation of non-immigrant visa issuance shall not apply to persons described in paragraph (1) above:
 - (a) whose travel serves the national interest as determined by the Department,
 - (b) who are traveling for humanitarian or emergency reasons such as for medical care as determined by the Department, or
 - (c) who are otherwise specifically authorized by the Department to be issued a visa.
- (3) This discontinuation of issuance of non-immigrant visas may be expanded to include additional categories of applicants upon agreement of the Assistant Secretary for African Affairs and the Assistant Secretary for Consular Affairs.
- (4) Normal issuance of visas in Eritrea will resume when the Secretary of Homeland Security provides notice as required under the statute.

Date

Rex W. Tillerson
Secretary of State

Legal Authorities

(U) Immigration and Nationality Act section 243(d) - Penalties Related to Removal provides:

(d) Discontinuing Granting Visas to Nationals of Country Denying or Delaying Accepting Alien.-On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien under this section, the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary that the country has accepted the alien.

(U) 2003 Memorandum of Understanding between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002 (Section 428 MOU) at section (c) provides:

c. Discontinuing granting visas to nationals of country not accepting aliens. The Secretary of Homeland Security will have authority to notify the Secretary of State pursuant to INA section 243(d) when a foreign government denies or delays accepting an alien who is a citizen, subject, national, or resident of that country. When so notified, the Secretary of State shall order consular officers to discontinue granting nonimmigrant and/or immigrant visas, as the Secretary of State deems appropriate.

Foreign Affairs Manual (FAM)

(SBU) 9 FAM 601.12 **Discontinuation of Visa issuance under INA 243(d)** provides Department guidance to consular officers implementing INA section 243(d), including operational details at paragraph (b) and the following guidance for processing exceptions to the sanctions:

9 FAM 601.12-3(D) (U) Exceptions to 243(d) and Cases requiring an Advisory Opinion

a. (U) Advisory Opinion Required. Orders issued by the Department of State to discontinue visa issuance may include certain exceptions, such as for travel covered by U.S. international legal obligations, for humanitarian reasons, or for other U.S. national interests. Guidance on applying exceptions will be included in a cable to affected posts.

b. (SBU) If you believe an applicant generally covered by an order of discontinuance is otherwise eligible for the visa and may qualify for an exception specified in the order, you should enter refusal code "243D" in NIV and request an Advisory Opinion by email to CA-AO243d@state.gov.

The Honorable
Elaine Duke
Acting Secretary of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

Dear Ms. Duke:

I received your recent letter formally notifying me of your determination, pursuant to Section 243(d) of the Immigration and Nationality Act, 8 U.S.C. 1253(d), that Sierra Leone has denied or unreasonably delayed the return of its citizens whom the United States has ordered removed and noting the Department's obligations under that law.

In response to your notification, effective September 11, 2017, I have ordered, as a first step, that consular officers in Freetown discontinue the issuance of B1, B2, and B1/B2 nonimmigrant visas to all Ministry of Foreign Affairs officials and, immigration officials, of Sierra Leone. If after 90 days Sierra Leone does not improve cooperation, this order will be expanded to all citizens, subjects, nationals, and residents of Sierra Leone. The order does not apply for travel in the U.S. national interest, for urgent humanitarian or emergency reasons, and other limited exceptions. As noted in the order, these initial measures may be expanded to include additional categories of applicants, as needed. I am enclosing a copy of my order, for your reference.

I look forward to hearing from you on significant actions taken by Sierra Leone to cooperate with their international obligations.

Sincerely,

Rex Tillerson

Enclosures:
As stated.

DEPARTMENT OF STATE**Office of the Secretary****Exercise of Authority under Section 243(d) of the Immigration and Nationality Act (INA)
Temporarily Discontinuing Visa Issuance to Certain Applicants in Sierra Leone**

- (1) Following receipt of notice from the Secretary of Homeland Security that the Government of Sierra Leone is denying or unreasonably delaying accepting certain aliens who are citizens, subjects, nationals, or residents of that country, after that government was asked to accept said aliens under this section, I, in my capacity as Secretary of State, acting under the authority of INA section 243(d), 8 USC 1253(d), order consular officers in Sierra Leone to discontinue granting B1, B2, and B1/B2 nonimmigrant visas to all Ministry of Foreign Affairs officials and, immigration officials, of Sierra Leone beginning on the second business day following the signing of this order.
- (2) This discontinuation of nonimmigrant visa issuance shall not apply to persons described in paragraph (1) above:
 - (a) whose travel serves the national interest as determined by the Department,
 - (b) who are traveling for humanitarian or emergency reasons such as for medical care as determined by the Department, or
 - (c) who are otherwise specifically authorized by the Department to be issued a visa.
- (3) This discontinuation of issuance of nonimmigrant visas may be expanded to include additional categories of applicants upon agreement of the Assistant Secretary for African Affairs and the Assistant Secretary for Consular Affairs.
- (4) Normal issuance of visas in Sierra Leone will resume when the Secretary of Homeland Security provides notice as required under the statute.

Date

Rex Tillerson
Secretary of State

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**DeControlled****United States Department of State*****Washington, D.C. 20520***~~SENSITIVE BUT UNCLASSIFIED~~

August 21, 2018

ACTION MEMO FOR THE SECRETARY**FROM:** CA – Carl C. Risch**SUBJECT:** (SBU) Resumption of Normal Visa Processing in Guinea after Lifting of Immigration and Nationality Act (INA) Section 243(d) Visa Sanctions**BLUF:** (SBU) DHS Secretary Nielsen informed you on August 4 that Guinea no longer denies or unreasonably delays the return of its citizens or nationals ordered removed from the United States. As such, visa sanctions under INA 243(d) should now be lifted.**Recommendation**

(SBU) That you approve the resumption of normal visa processing in Guinea, based on DHS Secretary Nielsen's notification of Guinea's cooperation on removals. (Approve/Disapprove by 8/27/18)

Background

(SBU) On September 13, 2017, in response to a letter from Acting Secretary of Homeland Security Duke invoking Section 243(d) of the INA, former Secretary Tillerson ordered consular officers in Guinea to discontinue issuing nonimmigrant visas to certain individuals associated with the Guinean government and their immediate family. In a letter dated August 4, 2018, DHS Secretary Nielsen informed you that the Guinean government no longer denies or unreasonably delays the return of its citizens or nationals whom the United States has ordered removed. Therefore, under Section 243(d), normal visa processing in Guinea may resume.

(SBU) Since September 2017, the Guinean government has complied with the demands of DHS/ICE to facilitate the repatriation of its nationals. Secretary Nielsen notes in her recent letter that with support from the Department of State, ICE has worked with the Guinean government "to implement a regular, repeatable process whereby cases of individuals with final orders of removal from the United States are presented to Guinean officials for verification and travel documents are issued within 30 days." For FY 2018 to date, Guinea received 197 of its nationals ordered removed from the United States, compared to the 16 individuals it accepted in FY 2016.

Attachment:

August 4 Letter from DHS Secretary Nielsen

~~SENSITIVE BUT UNCLASSIFIED~~

Approved: CA: Carl C. Risch (CCR)

Drafted: CA/VO – Valerie Chittenden ext.(b)(6) and cell(b)(6)

Cleared:

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R: AGhildyal	(OK)
PA:	(No Response)
CA/Press: VCarstens	(OK)