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MOU-049-017

MEMORANDUM OF UNDERSTANDING
BETWEEN
The Bureau of Consular Affairs, THE DEPARTMENT OF STATE
(DOS/CA)
AND
THE DEPARTMENT OF DEFENSE, Defense Intelligence Agency (DOD/DIA)
FOR
THE SHARING OF VISA RECORDS

RELEASE IN
PART B7(E)

GENERAL PROVISIONS

I. PURPOSE:

The purpose of the Memorandum of Understanding (MOU) between the Department of State, Bureau of Consular Affairs (DOS/CA) and the Department of Defense, Defense Intelligence Agency (DIA), hereinafter referred to as the "Parties," is to facilitate interagency information sharing of visa records. The parties aim to improve the [redacted] process for visa applicants by transferring data, including DIA responses, electronically. This sharing of information will assist DIA in carrying out its task to assess potentially illegal transfers of controlled technology and goods. [redacted]

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[redacted] This MOU will also facilitate the sharing of intelligence and counterintelligence information to further enhance the efficiency of the Bureau of Consular Affairs' visa application process.

CA data to be shared with DIA: CA agrees to give DIA access to the nonimmigrant visa portion of the Consular Consolidated Database (CCD). Access to the CCD will enable DIA to review the records of visa applicants, including visa adjudication, issuance and refusal information.

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DIA data to be shared with CA: The DIA will provide CA with access to appropriate DIA information relevant to visa processing. [redacted]

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II. BACKGROUND:

CA and DIA currently share visa and intelligence information regarding technology issues. DIA reviews State and Commerce export license assessments for persons from countries of concern. DIA contributes to the [redacted] and to the Militarily Critical Technologies List (MCTL).

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[Redacted] This MOU details the process for updating the ongoing exchange of information between the Parties.

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III. AUTHORITY:

The DOS is entering into this MOU under the authority provided by 8 U.S.C. Section 1104 and 1105. DIA is entering into this MOU under the authority provided by 10 U.S.C. and 50 U.S.C. Section 403.

IV. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO SYSTEMS, DATA UPDATE AND COORDINATION

1. The DOS understands it will:

- a. Provide electronic access to nonimmigrant visa data housed in the Consular Consolidated Database (CCD) in Sensitive But Unclassified (SBU) form to the DIA; and
- b. Provide [Redacted] data via the direct link Director of National Intelligence – Unclassified (DNI-U) or other appropriate means.
- c. The specific elements of data are identified in the Reports and Users (See attachment).

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2. The Defense Intelligence Agency understands it will:

- a. Provide electronic [Redacted] and nonimmigrant visa information to the DIA's personnel who have a need to know the information to carry out their official duties; and
- b. Inform DOS when DIA review of DOS visa data suggests that: 1) a non-U.S. citizen, non-U.S. resident individual might represent a threat to the security of the United States; 2) a non-U.S. citizen, non-resident individual might be using a false identity or fraudulent document; or information is available to the DIA that appears to be of relevance to the visa process.

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c.

[Redacted]

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- d Respond promptly and completely to any CA requests for the background on DIA information including the data described in b and c above or any other information otherwise relevant to the visa process.

Additional responsibilities are set forth in section V.

V. TECHNOLOGY STANDARDS:

1. The Parties agree to use efficient network and database technology to store and transfer data in a manner that will allow data to be transferred, updated and tracked initially daily and eventually in real-time or near real-time manner;
2. DIA users should have access to the interagency network known as DNI-U to most conveniently connect to the CCD; and
3. The Parties are committed to updating the technologies employed to implement this MOU to ensure that the system remains efficient and mutually inter-operative as data volumes increase and more advanced technologies become available.

VI. LIMITATIONS ON THE DISCLOSURE AND USE OF INFORMATION:

Visa records are considered confidential under the provisions of Section 222(f) of the Immigration and Nationality Act, which reads in pertinent part as follows:

The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States except that-

* * *

(2) the Secretary of State, in the Secretary's discretion and on the basis of reciprocity, may provide to a foreign government information in the Department of State's computerized visa database and, when necessary and appropriate, other records covered by this section related to information in the database-

(A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigation, or punishing acts that would constitute a crime in the United States.....

(B) with regard to any or all aliens in the database, pursuant to such conditions as the Secretary of State shall establish in an agreement with a foreign government in which that government agrees to use such information and records for the purposes described in subparagraph (A) or to deny visas to persons who would be inadmissible to the United States.

Both parties recognize that the data and other information that DOS will be providing the DIA under this MOU constitute visa records of the Department of State within the scope of Section 222(f) of the INA. Such records, including extracts from and portions of such records, must be treated in accordance with Section 222(f) and may be used "only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States," as determined by DOS.

Both Parties further recognize that a visa bearer's status may change to United States citizen. In recognition that the records of United States citizens are subject to Privacy Act requirements, both parties agree to follow their agency's internal procedures for meeting those requirements, including verification of status with DHS. To ensure the proper handling and protection of visa records, the Parties define their responsibilities as follows:

The Department of State will:

1. Train certain DIA personnel on the handling and protection of visa data prior to access by users to ensure proper treatment of the data by all DIA users. This will be done in close coordination with designated DIA points of contact able to act as information systems security officers; and
2. Designate DOS representatives with authority to permit the DIA to share visa records, if necessary and appropriate, with another U.S. government entity outside the DIA, or with a foreign government.

The Defense Intelligence Agency will:

1. Limit access to DIA personnel who have a need to know to carry out their duties under applicable law;
2. Update CA on the arrival or departure of any personnel detailed to DIA from a third agency or contractors whose duties while detailed to the DIA require access to CA's data;
3. Require all DIA personnel to be appropriately trained and briefed on the handling and protection of visa data prior to access. Such training shall be refreshed as needed and documented in writing including the signing of a briefing acknowledgement statement;
4. Ensure that all DIA personnel with access to visa records handle such records in accordance with the guidance of DOS and with this MOU;
5. Treat all requests for visa records received from third parties (including ~~Congress, the General Accounting Office, courts, and the general public~~) as subject to the "third agency rule" and refer them to DOS for decision;
6. Notify DOS of any inquiries and/or analyses involving the visa process, including any specific visa adjudications;
7. Not reproduce, transmit, or copy any visa record with a US government entity outside of the DIA, with the exception of Immigration and Customs Enforcement in the Department of Homeland Security, Federal Bureau of Investigation, Department of Commerce's Bureau of Industry and Security, Defense Security Service and the Defense Technology Security Administration, unless done with the prior consent of the DOS and;

8. Not reproduce, transmit, or copy any visa record for sharing with a foreign government unless the DIA has first notified DOS of any requests by a foreign government for visa record information, and obtained DOS consent;
9. Provide points of contact to act as information systems security officers to carry out the requirements of this MOU with regard to the disclosures and use of information and training for DIA employees with access to relevant visa data.

VII. REPORTING REQUIREMENTS:

The Parties agree to cooperate in meeting any congressional or other reporting requirements.

VIII. DISPOSITION OF RECORDS:

Each agency will be responsible for the disposition of records in its possession in accordance with its own records retention authorities.

IX. FUNDING:

This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that this in no way implies that Congress will appropriate funds for such expenditures.

X. INFORMATION SECURITY:

It is the intent of the Parties that the exchange of data will be conducted in accordance with the Department of State's SBU standards described in its Foreign Affairs Manual at 12 FAM#540.

XI. AMENDMENT:

This MOU may be amended by the mutual written consent of the Parties' authorized representative. Any changes or modifications to this MOU shall be provided in an addendum attached hereto.

XII. PERIODIC REVIEW:

The Parties will designate responsible officials to meet annually, or at the request of either Party, to discuss and review the implementation of this MOU. Any disagreement over the implementation of the MOU shall be resolved through consultation between the Parties.

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XIII. Points of Contact in the Department of State

**Director, Information Management and Liaison, Visa Office (VOI)
Director, Coordination Division, Visa Office (VO/LC)**

**DIA
Team Lead, Technology Transfer Team, DIA**

XIV. TERMINATION:

Either Party may terminate this agreement by giving written notice to the other Party at least 30 days prior to termination. However, all provisions regarding the protection of records remain in effect as long as either Party remains in possession of any such records or any information derived from the other Party.

XV. FINAL PROVISIONS:

This MOU is not intended and should not be construed to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the parties, their parent agencies, the United States, or the officers, employees, agents or other associate personnel thereof.

The foregoing represents the understanding by the Department of State and the Department of Defense, Defense Intelligence Agency.

SIGNATURES

MH

**Maura Harty
Assistant Secretary
Bureau of Consular Affairs
Department of State**

Date 12/16/07 MH

Philip R. Roberts

**Philip R. Roberts
Chief of Staff
Defense Intelligence Agency**

Date 27 March 2008

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