



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

By ECF

November 26, 2013

The Honorable Catherine O'Hagan Wolfe
Clerk of Court
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, New York 10007

Re: *Hizam v. Kerry*, 12-3810
Argued September 30, 2013, before Judges Newman, Pooler, and Livingston

Dear Ms. Wolfe:

This Office represents the defendants-appellants (the "government") in the above-named appeal. We are writing respectfully in response to the Court's inquiries at oral argument, regarding the means by which the State Department "will continue to support other lawful means to provide relief to [plaintiff-appellee Abdo] Hizam, including a private bill in Congress should one be introduced." (Brief for Defendants-Appellants 33; *accord* Reply Brief for Defendants-Appellants 25).

At present, no private bill has been introduced in the Congress. The rules of the House of Representatives preclude action on private bills while litigation concerning the proposed beneficiary's immigration status is pending.¹ However, as the government represented in its brief, should the Court reverse the district court's judgment in this matter, the State Department will support private legislation and other means of providing relief to Mr. Hizam. As the government noted in the briefs and at oral argument, the State Department has already sent a letter to Senator Kirsten Gillibrand dated June 28, 2013, a copy of which is enclosed. In the letter, the State Department noted that the introduction of a private bill on behalf of Mr. Hizam is a means of providing him with relief.

¹ See U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration and Border Security, *Rules of Procedure and Statement of Policy for Private Immigration Bills*, 113th Cong., at ¶ 3 ("No private bill shall be scheduled for Subcommittee action until all administrative and judicial remedies are exhausted."), available at <http://judiciary.house.gov/hearings/pdf/113privimmigbills.pdf>.

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In the future, the State Department would continue its support for private legislation and other means of relief by providing briefings and information on this case to members of Congress who request it. Finally, although it is not possible for the State Department to endorse the enactment of a bill before reviewing its particular language, the Department will continue to express its support to members of Congress for a bill that appropriately provides U.S. citizenship or status as a lawful permanent resident to Mr. Hizam.

Thank you for your consideration.

Respectfully,

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United States Attorney

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cc: Meredythe Ryan, Esq. (by email and ECF)



United States Department of State

Washington, D.C. 20520

JUN 28 2013

Dear Senator Gillibrand:

Last year your office inquired about the case of your constituent, Abdo Hizam, whose Consular Report of Birth Abroad of a U.S. Citizen (CRBA) and U.S. Passport were revoked by the Department of State (Department) in 2011 after it was discovered that those documents had been issued in error. This letter provides an update on the case, which is on appeal in the Second Circuit. We also note that although Congress has authority to determine how persons born abroad may acquire U.S. citizenship, the Department of State may only determine whether the statutory requirements set by Congress have been met; unless they have been met, the Department cannot simply deem anyone, including Mr. Hizam, a U.S. citizen.

Having exhausted all possible avenues of relief for Mr. Hizam within the Department, I am reaching out to your office both to provide you with an update on your constituent's case and to note that a private bill conferring lawful permanent resident status upon Mr. Hizam is one alternative means of relief for him.

As we informed you in response to your previous inquiry on this case, Mr. Hizam's father, a U.S. citizen, applied for a CRBA and U.S. passport for Mr. Hizam at the U.S. Embassy Sana'a in 1990. Although the Embassy issued a CRBA and U.S. passport to Mr. Hizam, it is undisputed that Mr. Hizam did not acquire U.S. citizenship at birth because, as is evident on the face of the CRBA application, Mr. Hizam's father did not meet the statutory ten-year physical presence requirement necessary to transmit U.S. citizenship to Mr. Hizam at his birth in Yemen in October 1980. Because Mr. Hizam did not acquire U.S. citizenship by birth abroad to a U.S. citizen, he is not entitled to a CRBA or a U.S. passport and, therefore, the Department was obligated to revoke those documents.

The Honorable
Kirsten E. Gillibrand,
United States Senate.

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As you know, Mr. Hizam challenged the Department's action in federal court. In July 2012, the U.S. District Court for the Southern District of New York ruled in Mr. Hizam's favor and ordered the Department to return the CRBA to Mr. Hizam. Although the Department reissued Mr. Hizam a CRBA, which he then used to obtain a U.S. passport, the Department appealed the decision to the U.S. Court of Appeals for the Second Circuit on the grounds that, first, the district Courts' ruling misconstrued the Department's authority to revoke erroneously issued CRBAs and U.S. passports and, second, that Mr. Hizam is not entitled to hold proof of U.S. citizenship when he has not established any claim to U.S. citizenship. Should the Second Circuit reverse the district court's judgment, the Department will once again be obliged to revoke Mr. Hizam's CRBA and U.S. passport.

The Department acknowledges that neither Mr. Hizam nor his father were to blame for the initial erroneous issuance of the CRBA and U.S. passport, and recognizes the unfortunate detrimental effect such a ruling will have on Mr. Hizam, particularly with respect to his ability to lawfully remain in the United States and to legally petition for his wife and two sons to immigrate. Nevertheless, although the Department has the authority to make certain citizenship determinations in connection with adjudicating applications for CRBAs and U.S. passports, it does not have the authority to confer citizenship itself or to disregard situations in which non-U.S. citizens hold documentary proof of U.S. citizenship that were issued in error. Accordingly, because its authority is limited to issuing citizenship documents to U.S. citizens, the Department is not in a position to offer Mr. Hizam any relief at this time.

The Department of State appreciates your concern for Mr. Hizam, and we hope that this update on his case is helpful.

Thank you for your consideration of this matter.

Sincerely,



Thomas B. Gibbons
Acting Assistant Secretary
Legislative Affairs