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May 1, 2013

Harold Geisel
Deputy Inspector General
Office of Inspector General
Department of State
(t) 202-663-0361

Re: Urgent Request for Immediate Investigation and Remedial Action - US Embassy in Moscow

Dear Mr. Geisel,

The attached article highlights the duplicity – and possibly fraudulent conduct - of consular officials at the US Embassy in Moscow in the processing of Russian Summer Work and Travel (“SWT”) visa applications. The Embassy has denied hundreds of 2013 Russian SWT applicants under false pretenses, with the refusal rate between 80 and 90% (in previous years, the rate was 8-42%). It has also deceived the staff of Senator Collins, who made inquiries into SWT refusals by the US Embassy in Moscow. Because of the breadth of these violations, systemic mismanagement, the egregious breaches of US law, the deliberate nature of this malfeasance, and the limited remaining time to remedy the situation, we request your office to take immediate action.

I. BACKGROUND

The SWT program is open to full-time university students who are seeking to travel to the United States to work and travel during their summer vacations. The requirements of the program are straightforward. The SWT applicant must be “sufficiently proficient in English to successfully interact in an English speaking environment; ...enrolled in and actively pursuing a degree or other full-time course of study at an accredited post-secondary educational institution outside the United States; have successfully completed at least one semester or equivalent of post-secondary academic study; and pre-placed prior to entry unless from a visa waiver country.”¹ Applicants pay visa application fees (\$160); incur significant

¹ <http://j1visa.state.gov/programs/summer-work-travel/>

expenses in order to travel to visa interviews;² and pay a variety of other non-refundable fees and expenses to participate in the program.

The SWT program has enjoyed enormous popularity in Russia. Tens of thousands of Russian students have participated in the program over the past five years. In 2008 alone, more than 25,000 Russian students received SWT visas.³ In 2012, the number of recipients remained substantial: more than 6,000 SWT visas were issued.⁴ American employer-sponsors include such companies as Busch Gardens and Morey's Piers, which hosted student-employees from more than thirty countries last summer.⁵

During the past decade, a cottage industry has developed in Russia around the SWT program. There are approximately 30 Russian SWT consulting agencies accredited with the US Embassy in Moscow.⁶ They actively participate in the promotion of the program by conducting informational seminars, screening applicants, testing their English language knowledge, arranging job offers, assisting the applicants through the visa process, making travel arrangements, and monitoring the return of the applicants from the United States.

Prior to the commencement of the 2013 SWT season representatives of these agencies met with consular officials as a part of the Embassy's outreach and promotional effort. Embassy officials did not alert these agencies to any prospective problems, and assured the agencies that as long as the applicants met the "3Rs" – real student, real English, real job – that they would be deemed qualified for the visa.⁷

In 2013, approximately 2,500 SWT applications were submitted to the US Embassy in Moscow.⁸

II. STATISTICS ON PAST AND CURRENT 2013 REFUSAL RATES

In past years, the approximate Russian SWT refusal rates⁹ were as follows:

Year	Refusal Rate
2008	13%
2009	8%
2010	11%
2011	33%
2012	42%

In 2013, the refusal rate at the US Embassy in Moscow is between 80 and 90 percent.¹⁰ Curiously, the SWT agencies report problems only with the US Embassy in Moscow, not the

² Some Russian applicants must travel thousands of miles to attend visa interviews in Moscow.

³ http://rbth.ru/multimedia/infographics/2013/04/12/statistics_us_embassy_rejects_work_and_travel_visa_ap_24979.html

⁴ Id.

⁵ <http://www.moreyspiers.com/work/summer-jobs/>

⁶ <http://moscow.usembassy.gov/nivswtlist.html>

⁷ Source: Star Travel, Moscow, Russia

⁸ Source: Star Travel, Moscow, Russia

⁹ Source: Star Travel, Moscow, Russia

other US consulates in Russia: St. Petersburg, Yekaterinburg, and Vladivostok.¹¹ The refusal rates at those consulates are approximately 13% (St. Petersburg, Vladivostok) and not more than 40% (Yekaterinburg).¹²

According to one agency, it has received 403 denials and 51 visas issued in Moscow, with 226 applications pending.¹³ Because of the imminent deadline for SWT participants to travel to the United States, unless immediate action is taken on these applications, they will be *de facto* denied, increasing the refusal rate above 90%. It appears that less than 500 SWT applicants in Moscow will receive visas.¹⁴

III. MOSCOW TIMES ARTICLES AND RUSSIAN MEDIA COVERAGE

As noted in the April 4, 2013 *Moscow Times* article,¹⁵ consular officers are denying applicants under a variety of false pretenses. For example, according to Irina Voronina, executive director of Prosto, one of the Russian agencies, “It looks like they’re looking for any excuse to refuse a visa. It would be more honest if they just closed the program.” According to the agencies, consular officers are raising a variety of bogus pretexts to refuse individuals, such as “shady” employers. Yet, when one applicant was denied because the employer could not be “identified”, the reporter did a simple Internet search and found that the restaurant had been in operation for 16 years and was voted best restaurant in Long Island. “Agencies feel that the employment issue is a red herring; the refusals are deliberate and students should have been warned.”¹⁶ As a result of the Embassy’s actions, applicants feel “cheated.”¹⁷

The Russian media has extensively covered this scandal. Since the beginning of May, *Kommersant*, *Komsomolskaya Pravda*, and Itar-Tass, three of Russia’s leading media outlets, have published articles. The following are links to articles that have appeared recently: <http://www.kommersant.ru/doc/2164511> - “This is Retaliation for the Russian Anti-Child Law” (April 5, 2013); <http://www.tass-press.ru/c8/310078.html> - “The State Department Explained the High Percentage of Refusals of Visas for Students from Russia: They Do Not Know English” (April 26, 2013); <http://www.kp.ru/daily/26065/2973424/> - “From American Gates – A U-Turn.”

As part of the Department’s public relations pushback, Tara Sonenshine, Under Secretary for Diplomacy and Public Affairs, spoke at the American Center in Moscow. She did not refute the percentage of refused applicants; rather, she justified the refusals by stating that the “health, security, and well-being” of the SWT applicants is the priority, “even if the numbers have had to come down a bit.”¹⁸ This acute concern that Russian students may be exploited by American companies contrasts sharply with the statement of Robin Lerner, Deputy

¹⁰ <http://www.themoscowtimes.com/news/article/quality-issues-led-to-work-and-travel-visa-crunch/478475.html>
For comparison purposes, the Russian refusal rate for visitors (B visa applicants) is 9.6%. The highest rate of visa refusals among populous countries is Senegal (67%) <http://www.travel.state.gov/pdf/FY12.pdf>

¹¹ <http://www.themoscowtimes.com/news/article/quality-issues-led-to-work-and-travel-visa-crunch/478475.html>

¹² Source: Star Travel, Moscow, Russia

¹³ Source: Star Travel, Moscow, Russia

¹⁴ Source: Star Travel, Moscow, Russia

¹⁵ <http://www.themoscowtimes.com/news/article/us-embassy-slams-door-on-student-workers/478125.html>

¹⁶ *Id.*

¹⁷ <http://www.themoscowtimes.com/news/article/quality-issues-led-to-work-and-travel-visa-crunch/478475.html>

¹⁸ <http://www.themoscowtimes.com/news/article/quality-issues-led-to-work-and-travel-visa-crunch/478475.html>

Assistant Secretary for Private Sector Exchange, who indicated that the instances of American employer abuse in the SWT program were rare.¹⁹

After reading the initial *Moscow Times* article, I contacted the Consul General of the Embassy in Moscow, Doron Bard, and the Chief of the Advisory Opinions Division of the Visa Office, Jeffrey Gorsky, to express my grave concern, and requested that immediate steps be taken to rectify the wrongdoing. Neither Mr. Bard nor Mr. Gorsky replied, nor have they taken any steps to remedy the situation.

IV. LAW

9 Foreign Affairs Manual 41.121 N7 states: “It is the policy of the US Government to give the applicant every reasonable opportunity to establish eligibility to receive a visa.”

This policy was reiterated in 01 State Cable 102813, noting that it is in keeping with the American system of fairness and justice. This cable underscored the sacred importance of the interview process, that visa applicants shall not be denied a visa without a substantive interview:

In line with this policy, consular officers should not refuse a visa application on substantive grounds (i.e., grounds other than 221(g)) without first calling the applicant in for an interview. This policy is based on the fundamental principle of fairness that the alien should be given an opportunity to be heard and to personally make his/her case to a consular officer... This policy also helps ensure that our visa determinations are sound and as accurate as possible and reflects the unique ability of the consular officer to resolve questions of credibility based on first-hand interview of the applicant.

The State Department’s Customer Service Statement promises that each visa applicant will be treated as an “individual” and his case as “unique”.²⁰ The Statement promises that each visa applicant will be treated with “dignity and respect”.²¹ “Fitting a certain demographic profile (“young, single, etc...”) is not grounds for a visa refusal. In a 214(b) refusal, the denial must always be based on a finding that the applicant’s specific circumstances failed to overcome the intending immigrant presumption.” 9 FAM 41.121 N2.3-9.

The common law definition of fraud is: false representation or willful omission of a material fact; knowledge of the falsity; an intention to induce reliance; action taken in reliance on the representation; and damages suffered as a result of the reliance.²²

5 U.S.C. § 706 prohibits government action that is “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” 3 FAM 4137 and 4138 govern the conduct of foreign service employees; specifically, they may not engage in conduct that “can reasonably be expected to interfere with effectively carrying out the policies and programs of the U.S. Government, including the responsibility to present a favorable impression abroad of

¹⁹ <http://www.themoscowtimes.com/news/article/us-embassy-slams-door-on-student-workers/478125.html>

²⁰ http://travel.state.gov/visa/visa_2796.html

²¹ http://travel.state.gov/visa/visa_2796.html

²² See *Schiff v AARP*, 697 A.2 1193, 1198 (D.C. 1997)

the United States...[and] clearly shows poor judgment or lack of discretion which may reasonably affect an individual or the agency's ability to carry out its responsibilities or mission." 3 FAM 4137(2), 4138(11).

V. DISCUSSION

As specified in 01 State 102813, the interview requirement is not merely a formality: it lies at the heart of a fair adjudication process and reflects our system of justice. Applicants are to be given the opportunity to establish their eligibility. But here the US Embassy has perverted the interview requirement, using it as "window dressing" for its visa predeterminations.

The US Embassy in Moscow has consciously decided to engage in deceptive conduct. Consular officials knew, in advance of the SWT visa processing season, that it would be refusing SWT applicants *en masse*. On the first three days of interviews, 90% of the visa applicants received denials.²³ The refusal rate has hovered between 80-90% since then. As noted in the *Moscow Times* article, the Embassy has devised pretexts for these refusals, all the while continuing to fill the coffers of the US Government with visa fees from applicants. Accepting these fees knowing in advance that it would be denying up to 90% of the applicants is a *per se* violation of the Department's Customer Service Statement to treat each applicant as an "individual" and "unique". The wholesale 214(b) refusals are not grounded in each applicant's specific circumstances, as required by 9 FAM 41.121 N2.3-9.

The actions of the consular officers are arbitrary, capricious and otherwise not in accordance with law, in violation of 5 U.S.C. § 706. They violate the above-mentioned provisions of law, and cannot be rationalized in any way whatsoever. Indisputably, the consular officers' conduct "interfere[s] with effectively carrying out the policies and programs of the U.S. Government, including the responsibility to present a favorable impression abroad of the United States...[and] clearly shows poor judgment or lack of discretion which may reasonably affect an individual or the agency's ability to carry out its responsibilities or mission." 3 FAM 4137(2), 4138(11). The affected Russian students, their parents, friends, and consulting companies, as well as the general Russian public, have been left with a strongly negative impression of the United States. The poor judgment of these officers will most certainly affect the ability of the Embassy to carry out its mission.

Consular actions should also be reviewed in the context of the common law definition of fraud. By opening up the program to SWT applicants, the US Embassy represented that it would engage in fair visa adjudication and abide by the Department's rules and regulations. This Embassy representation was material, as without such a promise the students would not have submitted SWT applications. By engaging in public outreach, the consular officials actively sought to attract SWT applicants and knew that the representation would induce reliance and be acted upon.

Relying on the Department's rules and regulations requiring fair visa adjudication, the track record of the US Embassy in Moscow in operating the SWT program, and the past experiences of Russian SWT applicants, approximately 2500 Russian students submitted SWT applications to the US Embassy in Moscow this year. As discussed above, the Embassy's representation that it would adjudicate the applications in a fair manner was false, and consular officials were aware that this representation of fair adjudication was false. When

²³ Exhibit 4

they submitted their applications, the Russian students were unaware of the falsity of the representation and they rightfully relied on the false representation.

Finally, the applicants suffered substantial financial damage: according to the Russian Tour Operators Association, in the first three days of interviews alone, students and their parents had lost more than \$1.5 million.²⁴ This does not take into account the immeasurable emotional damage endured by the students and their parents.

It is not just the applicants who have suffered. Dozens of SWT consulting agencies around Russia have a substantial financial stake in the success of the program. They relied on the integrity of the US government in the conduct of the program; it is undeniable that this integrity has gone missing in 2013. These agencies have suffered tremendous damages and have had their reputations irrevocably tarnished as a result of the malfeasance of the Embassy in Moscow.

Chalking these mass refusals up to ensuring the “health, security, and well-being” of the applicants, as the Under Secretary has done, is patently absurd. If to take this statement at face value, the Under Secretary is only concerned with the “health, security, and well-being” of applicants to the US Embassy in Moscow, not any of the Russian SWT applicants at the consulates in St. Petersburg, Yekaterinburg, and Vladivostok, where there have not been reports of problems. Further, this position of “We are refusing you for your own good” reeks of arrogant condescension, and conveniently omits the fact that the US government is collecting money from these refused applicants.

The Embassy has not only deceived the applicants, the agencies, and the public; it has deliberately misled the staff of Senator Collins. In response to an inquiry from Senator Collins’ office about numerous refusals, the Embassy – through the Department’s congressional liaison – advised that the applicants needed to better prepare for their interviews; to have greater knowledge about their employers and job tasks; and “provide a good point of contact that will answer the Embassy’s requests when they attempt to confirm an applicant’s employment.”²⁵ As discussed above, the agencies diligently screen and prepare applicants for their interviews. How is it that in years past the applicants, prepared by most of the same agencies, were prepared for their interviews; knew their employers and job tasks; and provided reliable contact information, but now up to 90% of the applicants in Moscow – only in Moscow, not in Vladivostok, St. Petersburg or Yekaterinburg – have not done so? By positing such disingenuous reasons, the Embassy has made a mockery of the congressional liaison system, with consular management in Moscow²⁶ emboldened by a sense of unaccountability to obfuscate the true state of affairs.

²⁴ Exhibit 4

²⁵ Exhibit 3

²⁶ Consular management in Moscow is well-known to the author. Bill Bistransky, the Chief of the Nonimmigrant Visa Unit in Moscow, is responsible for the SWT operation in Moscow. He was recently quoted in the Russian press admitting that his office discriminates against young female visa applicants: “It is true, statistically speaking, that young women more often remain in the United States in comparison to other categories of tourists, and we see that, when after a year or more later they encounter some problems. That, of course, affects the result of review of similar cases.” *Moskovskiy Komsomolets*, December 24, 2012. In addition, he and his staff regularly ignore the Department’s rules and regulations governing the processing of visa re-applications; fail to provide Department-mandated information about visa refusals; impermissibly readjudicate USCIS-approved petitions; and compel Russian grandmothers to immigrate to the US just to visit their grandchildren. Representative articles on these topics can be found at <http://discuss.ilw.com/content.php?1215-Article-7-Interviews-1-Visa-by-Kenneth-White>; <http://blog.visarefusal.com/?p=341> <http://blog.visarefusal.com/?p=341>

Under Secretary Sosenshine has sought to “justify” the denials by coating the Embassy’s actions in maternal semantics, seeking to offer solace to the SWT applicants that the Department only has their best interests in mind. If the Department truly had the applicants’ interests in mind, it would have cancelled the Russian program for 2013 – before the start of the SWT season. Rather than stringing applicants and agencies along for months and raising their hopes and expectations, the Embassy and the Department should have notified the Russian public that it would not be accepting applications in 2013. The applicants would not have wasted their money and could have made arrangements to travel to other countries. The agencies would not have invested tens of thousands of dollars in manpower and promotion on a program that, for all intents and purposes, does not exist in 2013 for SWT applicants in Moscow.

Instead, the US Embassy in Moscow did not cancel the program. It decided that it would “throw the students out with the bathwater.” By continuing with the program, it ensured a steady cash flow in visa application fees to the Department and wreaked havoc with the finances and emotions of applicants and agencies alike.

VI. REQUESTED REMEDY

It is not too late to rectify these problems. The Department and the Embassy should immediately:

- 1) finalize the processing of pending SWT applications so that the Embassy does not run out the SWT clock on these applicants;
- 2) issue visas to applicants who meet the eligibility criteria set out in 9 FAM 41.62 N4.12;
- 3) re-open and objectively review the denials of the SWT applicants;
- 4) for those denied applicants whose cases are not re-opened, refund their application fees;
- 5) pay damages to those whose cases were not re-opened and do not receive a visa;
- 6) pay damages to the affected agencies;
- 7) take appropriate disciplinary action against the officials involved; and
- 8) take other steps to ensure that such a travesty does not happen again.

The deadline for travel to the United States for many students is May 15; others require action by early June. Therefore, time is of the essence and immediate action is required.

VII. CONCLUSION

Ironically, a program established by the US government to engender good will and people-to-people diplomacy has in the span of two short months alienated thousands of Russians: students, their parents, their friends, individuals employed in the SWT industry, and the general public, who have read about these events in the Russian press. They now know the US government as an untrustworthy partner. The students believe that the US government has ripped them off – charging them money for a service not provided. While no one promised visas to these individuals, they were promised a fair visa adjudication process. This promise was torn asunder by the deliberate malfeasance of consular officials at the US Embassy in Moscow, with the imprimatur of the Department.

Thank you in advance for your swift action. Please contact me with any questions you have.

Sincerely,

Kenneth White



Exhibits:

1. "U.S. Embassy Slams Door on Student Workers," *Moscow Times*, April 4, 2013
2. "'Quality Issues' Led to Work-and-Travel Visa Crunch," *Moscow Times*, April 11, 2013
3. Department of State and Office of Senator Collins correspondence
4. April, 16, 2013 Russian Tour Operators Association Letter to Russian Ministry of Foreign Affairs

cc:

John Kerry, Secretary of State
Robin Lerner, Deputy Assistant Secretary for Exchange
Edward Ramotowski, Deputy Assistant Secretary for Visa Services
Vincent Beirne, Deputy Director, Office of Legislations, Regulations and Advisory Assistance
Sergey Viktorovich Lavrov, Minister of Foreign Affairs of the Russian Federation
Sergey Ivanovich Kislyak, Russian Ambassador to United States
Senator Collins
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