

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	No. 22-cr-392 (DLF)
	)	
ABU AGILA MOHAMMAD	)	
MAS'UD KHEIR AL-MARIMI,	)	
Defendant.	)	

DEFENDANT'S RESPONSE TO
GOVERNMENT'S SUPPLEMENTAL CERTIFICATIONS OF
FOREIGN RECORDS

The defendant, Abu Agila Mohammad Mas'ud Kheir Al-Marimi, respectfully submits this response to the Government's Supplemental Certifications of Foreign Records, ECF 450.

I. Objections to Exhibits 901 and 902.

The government now proposes to offer Exhibits 901 and 902, Czech visa materials, as foreign records of regularly conducted activity without a live witness and pursuant to § 3505 certifications. As such, the defendant reasserts all arguments previously set forth in his briefing regarding the inadequacy of the government's § 3505 certifications. *See* ECF Nos. 173, 229, 255.

The defendant further objects to the admissibility of Exhibits 901 and 902 on the ground that certifications 901-c and 902-c are facially incomplete. Section 3505 requires that the certifying declaration be made by a "qualified person," defined as one who regularly makes or has custody of the record, or who supervises the making or custody of the record. 18 U.S.C. § 3505(b). Certifications 901-c and 902-c fail to provide sufficient information regarding the length of time the certifying witness held

the relevant role as a police officer within the passport control department at the airport. Without that information, the Court cannot assess whether the certifying witness's familiarity with the record-keeping practices at issue is genuine and of sufficient duration to establish the requisite foundation. This omission goes directly to the trustworthiness of the certifications and, by extension, the admissibility of the underlying records. *See* 18 U.S.C. § 3505(a)(1)(E) (requiring that the certified foreign record be shown to be trustworthy). While the government has offered a second certification that does not suffer from the same problem, both certifications omit detail that Mr. Al-Marimi maintains is required under § 3505.

The government also contends that Exhibits 901 and 902 are not hearsay because the documents do not “assert” any “facts.” Mr. Al-Marimi has addressed this misunderstanding in his briefing on the Rule 404(b) issues. *See* ECF 430, at 21; ECF 457, at 15. A visa application states that the applicant has a particular name and other biographic data and seeks a visa for a certain period. *See United States v. Biaou*, No. 24-CR-323, 2026 WL 221768, at *12 (D.D.C. Jan. 28, 2026) (agreeing loan application records contained hearsay: “the information provided by the applicant” and the “assertion that the applicant did in fact provide that information”); *Ali v. Rubio*, No. 1:22-CV-02786, 2025 WL 901287, at *3 (D.D.C. Jan. 24, 2025) (identifying statements “in passport applications” as hearsay); *United States v. McIntyre*, 997 F.2d 687, 704–05 (10th Cir. 1993) (finding application for cellular phone service was offered to establish a person had a cellular phone and, as such, was “offered for the truth of the matter asserted and [] hearsay”).

II. Objections to Exhibits 1549, 1550, 1551, 1552, 1558, 1559.

As an initial matter, Exhibit 1552 was never previously submitted to the Court for a ruling, and the defendant reserves the right to challenge its admission on that basis as well as any other applicable grounds. With respect to Exhibits 1549, 1550, 1551, 1558, and 1559 generally, the Court has already declined to admit these records under the public records exception. The government now seeks their admission, along with Exhibit 1552, as foreign records of regularly conducted activity under § 3505, relying on certifications executed by the same individual who previously certified these records under a different evidentiary theory. While the new certifications purport to track the language of § 3505, Mr. Al-Marimi maintains the certifications are inadequate and reasserts all arguments previously set forth in his briefing regarding the inadequacy of the government's § 3505 certifications. *See* ECF Nos. 173, 229, 255. And again, visa applications assert facts and qualify as hearsay.

III. Objections to Exhibits 905 and 908.

The Court previously expressed concern regarding the admissibility under 18 U.S.C. § 3505 of Exhibit 908, a Libyan letter produced by the InterContinental Hotel in Prague, specifically noting the absence of any marks of intake or processing that would indicate the letter was regularly retained by the hotel as a business record. The Court directed the government to produce evidence that the hotel regularly retained records of this nature. The government offers a June 1991 statement and an April 2026 declaration to address the Court's concerns with Exhibit 908 (and also Exhibit 905, a similar document). These statements, however, fail to address the Court's concerns.

Witness Legner’s 1991 statement that the letter and similar documents were produced from “our records” adds nothing of substance beyond what was already before the Court. Based on that statement, the government asks the Court to draw inferences—that because law enforcement obtained the letter from the hotel, the hotel must have retained it in the ordinary course of business. *See* ECF No. 326, at 4–5.

Recently, the government supplied an April 2026 declaration in which witness Legner added, “during the late 1980s, it was the regular practice of the hotel to retain letters such as those in the documents with coversheets ‘DZ7’ and ‘DZ12’ because it would often be necessary to refer back to those letters to carry out the business of the hotel.” Gov. Exh. 905-c2, ¶ 7. This assertion is still conclusory and falls short of the foundational showing § 3505 demands. The declaration does not identify with any specificity what category of letters was regularly retained, what business purpose required retention of this particular type of correspondence, how long such letters were customarily kept, or what retention system was in place, if any. Without more, the declaration does not establish that a letter of this specific character was regularly retained as a matter of institutional practice rather than selective preservation.

Moreover, the Court's original concern has not been cured. The physical documents—Exhibits 905 and 908—still bear no marks of intake, processing, or filing that would corroborate the existence of a systematic retention practice. Witness Legner’s statement is entitled to limited weight on a foundational question the Court has already specifically flagged. The government, as the proponent of Exhibits 905

and 908, bears the burden of establishing admissibility, and a vague, litigation-driven declaration is insufficient to satisfy it. *See* Fed. R. Evid. 104(a); *Bourjaily v. United States*, 483 U.S. 171, 175 (1987).

IV. Position regarding Exhibits 1013 and 1024.

The government's latest briefing on Exhibits 1013 and 1024 should not change the Court's mind on the nested hearsay issues or the documents' admissibility. The government tries to reframe the statements at issue into commands, and it rejects any requirement to provide evidence of a statement's effect on a listener, despite claiming to be interested in that effect more than the truth of the statement. But its arguments simply disagree with the correct interpretation already adopted by the Court. The government has not put forward a sufficient basis for reconsideration; it does not even cite the applicable standard.

The government alternatively argues Exhibits 1013 and 1024 are admissible as ancient documents. But as the government acknowledges, the ancient-documents exception does not necessarily permit the admission of a document with multiple layers of hearsay. Instead of briefing that issue, the government instead contends that Exhibits 1013 and 1024 do not contain any nested hearsay. Simply examining the statements, however, disproves this contention. As just one example, the statement, "FAA Salizar has granted X ray as and [sic] alternative to searching pass. baggage" clearly reports a different out-of-court statement about the grant.

CONCLUSION

The Court should decline to admit the government's foreign hearsay documents.

Respectfully submitted,

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