

United States Department of State (“Department of State” or “DOS”). By February 25, 2013, all four Plaintiffs’ applications for visas to enter the United States had been granted. *See* Declaration of Baher Azmy, Esq., dated April 5, 2013 (“Azmy Decl.”) at ¶ 6. Counsel proceeded to schedule depositions and take all necessary steps, including purchasing airline tickets, for all Plaintiffs to travel to the United States to appear for their depositions. To date, one of the four Plaintiffs (Salah Hasan Al-Ejaili, who currently resides in Doha, Qatar) has appeared in the United States for his deposition. Azmy Decl. at ¶ 7.

As set forth in detail in Plaintiffs’ March 22, 2013 Memorandum in Support of Plaintiffs’ Motion to Enlarge Time to Complete Plaintiffs’ Depositions [Dkt # 232], the remaining three Plaintiffs, Suhail Najim Abdullah Al-Shimari, Asa’ad Hamza Hanfoosh Al-Zuba’e, and Taha Yaseen Araq Rashid, who currently reside in Iraq (collectively, the “Baghdad Plaintiffs”), were nonetheless unable to appear as scheduled for their depositions on the week of March 15, 2013. Azmy Decl. ¶ 12-13. At the time of their scheduled travel, Plaintiffs’ counsel had communicated the Baghdad Plaintiffs’ travel plans only to the Defendant’s counsel and to local officials at the Transportation Safety Administration (based on an offer from a TSA official to facilitate their entry into the U.S.), Azmy Decl. ¶ 8,11. Plaintiffs had no reason to doubt that the Baghdad Plaintiffs would appear in the United States as scheduled.

Indeed, the Baghdad Plaintiffs had been issued boarding passes and were about to board their flight when they were unexpectedly prevented from traveling to the United States. Azmy Decl. ¶ 13. The Baghdad Plaintiffs were subsequently informed by DOS officials that the required government inter-agency coordination related to their travel failed to occur, as it should

have. Azmy Decl. ¶ 15-16.² To date, that coordination remains on-going. Azmy Decl. ¶ 24, 27, 28.

When it became clear that the Baghdad Plaintiffs would not be able to appear at their previously scheduled depositions, Plaintiffs' counsel took immediate steps to inform Defendant's Counsel. That day, on March 22, 2013, Plaintiffs filed a motion with this Court, seeking an enlargement of time to complete Plaintiffs depositions, until April 5, 2013. [Dkt #232]. Plaintiffs emphasized in their motion papers that, while Plaintiffs believed that setting an April 5, 2013 deadline would be useful in getting the relevant government agencies to act quickly, Plaintiffs had no assurance that the process would in fact be completed by April 5, 2013. As such, Plaintiffs noted that, should the process carry beyond April 5, 2013, Plaintiffs would keep the Court apprised of developments and requested that granting of an extension should not be without prejudice to a subsequent request for additional time. Specifically, Plaintiffs stated in the Memorandum of Law Supporting the Motion:

Plaintiffs understand that while a reasonable deadline – which Plaintiffs suggest would be April 5, 2013 – would put necessary pressure on the U.S. government to act on Plaintiffs' visa applications, there is a possibility that the applications may not be fully processed in time for Plaintiffs to appear by April 5. Accordingly, Plaintiffs would respectfully request that an order setting the deadline not preclude a subsequent enlargement of time, should Plaintiffs be able to represent that Plaintiffs' entry and appearance for depositions could occur after the April 5th deadline.

Dkt # 232, at 6; *see also id.* at 7 (“Plaintiffs respectfully request that the Court grant Plaintiffs' motion, and extend the period of time by which the Baghdad Plaintiffs must make themselves

² Plaintiffs' counsel has not been specifically informed of which agency or agencies the Department of State is coordinating the Baghdad Plaintiffs' entry to the United States with, and for this reason, find it particularly curious that Defendant CACI claims to know more in its Response of Defendant CACI Premier Technology to Plaintiffs' Motion to Enlarge Time to Complete Plaintiffs' Depositions, Dkt # 245 (filed under seal) at 5. Plaintiffs also object to Defendant's gross mischaracterization of documents produced by the government concerning the Plaintiffs and the entirely improper inferences it drew from those documents. *See id.* at 4-5.

available for deposition to April 5, 2013, without precluding Plaintiffs from seeking a subsequent enlargement if it appears that approval for Plaintiffs' entry into the United States is delayed beyond April 5, 2013 without fault of Plaintiffs.").

The Court granted the motion on March 27, 2013 and entered an order extending the deadline to April 5, 2013. [Dkt. # 244].

Plaintiffs' counsel immediately provided DOS with a copy of the Court's March 27, 2013 Order. Since then, the Baghdad Plaintiffs and their counsel, in consultation with DOS, have taken every measure to ensure the Baghdad Plaintiffs' arrival in the United States as quickly as possible. Azmy Decl. ¶¶ 15-18, 22-26. As Plaintiffs' counsel informed the Court would likely be the case during the hearing on March 29, 2013, however, additional time is required to facilitate the processing of the Baghdad Plaintiffs' applications to enter the United States. Azmy Decl. ¶ 24.

The Department of State advised Plaintiffs' counsel to make travel reservations for the Baghdad Plaintiffs' three weeks from the date of sending the proposed itinerary, i.e., April 19, 2013, to allow all necessary coordination in Washington to be completed. Plaintiff's counsel has done so, and sent an itinerary to this effect to DOS. Azmy Decl. ¶24. Pursuant to that travel itinerary, the Baghdad Plaintiffs would arrive in Washington, D.C. on April 19, and return to Baghdad on April 27. *Id.*

The Baghdad Plaintiffs have previously offered to make themselves available immediately for depositions outside this District, in accordance with Local Rule 30, in Istanbul, Turkey. Defendant's counsel steadfastly rejected this proposal on the grounds that Istanbul is too dangerous. Local Rule 30 contemplates "special circumstances" in which a deposition can occur outside this district, and Plaintiffs current situation may so qualify. The Baghdad Plaintiffs

renew the proposal that their depositions occur in Istanbul, Turkey. Alternatively, Plaintiffs can also be available for a video deposition, obviating a need for Defendants' counsel to travel.

ARGUMENT

Plaintiffs have made diligent and continuous efforts to comply with this Court's Orders in regard to Plaintiffs' appearances for their depositions. As previously explained to the Court, the current delay in the Baghdad Plaintiffs' travel cannot be attributed to Plaintiffs as they had secured valid visas and purchased their tickets, but were prevented from boarding their flight at the last minute due to an apparent failure of the required inter-governmental coordination in the United States to occur. Azmy Decl. ¶¶6-14. Neither the Baghdad Plaintiffs nor their counsel had any indication that the Baghdad Plaintiffs would not be permitted to travel as planned on March 15, 2013.

Since March 15th, Plaintiffs' counsel have been working diligently with its DOS contacts to remediate this problem, and have taken every measure advised by DOS to facilitate the Baghdad Plaintiffs' travel to the U.S. Azmy Decl. ¶¶ 14-26.

Specifically, despite already possessing valid U.S. visas, the Baghdad Plaintiffs immediately re-applied for visas to the United States and appeared once again for interviews at the U.S. Embassy in Baghdad in order to allow for the necessary inter-agency communication and coordination that had failed to occur when their visas were first issued in February. Azmy Decl. ¶¶ 16-17. Plaintiffs' counsel has also remained in regular telephone and email contact with DOS in Washington, D.C. regarding the Baghdad Plaintiffs' visas and anticipated travel to the United States. Azmy Decl. ¶ 18-19, 23-27. The Department of State advised Plaintiffs' counsel that at least two weeks, and preferably three weeks, is required to allow for all coordination in Washington, D.C. to occur. Azmy Decl. ¶ 24-25. Accordingly, Plaintiffs' counsel sent an

itinerary to the Department of State for the Baghdad Plaintiffs to travel from Baghdad to Washington, D.C. on Friday, April 19, 2013 (leaving the United States on April 27, 2013). Azmy Decl. ¶ 25. Plaintiffs' counsel has also continually inquired with DOS about updates or the need for additional information from the Baghdad Plaintiffs to facilitate the required inter-agency coordination. Azmy Decl. ¶ 26. As of this afternoon, Plaintiffs' counsel was informed that there is no update regarding approval for Plaintiffs' travel. Azmy Decl. ¶ 27-28.

Plaintiffs' counsel has communicated with Defendant's counsel regarding the delay and the inability of Plaintiffs to appear by the current, April 5, 2013 deadline. Defendant does not agree to Plaintiffs' proposed extension; Defendant has moved to impose sanctions against the Baghdad Plaintiffs, including dismissal of their claims. [Dkt. 258]. The Baghdad Plaintiffs will respond to Defendant's motion in a timely manner.

The Baghdad Plaintiffs and Plaintiffs' counsel have continued to take all measures suggested and available to them to ensure the Baghdad Plaintiffs' timely arrival in the United States for their depositions. The Baghdad Plaintiffs seek additional time from the Court to allow the time they understand is required for the United States to coordinate their entry.

In the alternative, the Baghdad Plaintiffs remain ready to appear for live depositions outside this District, in Istanbul, Turkey – a major, safe tourist destination – should the Court so order. *See* Local Civil Rule 30. *See also E.I. DuPont de Nemours & Co. v. Kolon Indus.*, Civil Action No. 3:09cv58, 2011 U.S. Dist. LEXIS 106767 (E.D. Va. Sept. 20, 2011). Should Defendant's counsel wish not to travel, Plaintiffs can be available for video depositions.

CONCLUSION

Plaintiffs respectfully request that the Court grant Plaintiffs' motion and extend the period of time by which the Baghdad Plaintiffs must make themselves available for deposition to

April 26, 2014, or alternatively, permit Plaintiffs' depositions to occur outside of the United States or by video deposition.

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Respectfully submitted,

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