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Agreement

between the Government of the United Kingdom of Great Britain and
Northern Ireland and the Government of the United States of America for
the Sharing of Visa, Immigration, and Nationality Information

Queenstown, 18 April 2013

[The Agreement entered into force on 8 November 2013]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
January 2014*

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**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE
SHARING OF VISA, IMMIGRATION, AND NATIONALITY
INFORMATION**

PREAMBLE

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America (hereinafter referred to as "the Parties");

NOTING the importance of a new approach to migration that takes into account the global patterns of both regular and irregular migration and the increasingly sophisticated methods for identity fraud and abuse of our countries' immigration laws;

RECOGNIZING that border security and border management are significantly enhanced by cooperation and collaboration, with due regard to international human rights obligations;

EMPHASIZING that it is critically important to have timely access to current and accurate information to inform inadmissibility assessments or other immigration and nationality-related determinations that are vital to the common security of the United States of America and the United Kingdom;

CONSIDERING that the effective administration and enforcement of the immigration and nationality laws of the United States of America and the United Kingdom are important to protect the health and safety of their populations, to maintain the security of their societies, and to promote international justice and security by denying access to their territories to persons who are criminals or security risks;

ACKNOWLEDGING that identification of individuals who are inadmissible under their respective immigration laws enhances their ability to facilitate the travel of bona fide visitors;

CONVINCED that greater cooperation through the exchange of information can make their actions in achieving these objectives more effective, particularly given the noted phenomena of immigration offenders seeking to enter both countries;

HAVE AGREED as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement,

- (a) “Information” means data on Nationals of a Third Country seeking authorization to transit through, travel to, work in, live in, or take citizenship of, the United Kingdom (UK) or the United States (U.S.), and other immigration and nationality-related data about Nationals of a Third Country, including data from admissibility, immigration or nationality compliance actions and/or decisions rendered in accordance with the immigration and nationality laws of the respective Parties. Information may consist of personal data, statistical data, or both. The particular types of Information to be shared, and categories of Nationals of a Third Country about whom such Information is to pertain, shall be described in relevant implementing arrangements developed by the Parties pursuant to Article 4.
- (b) “National of a Third Country” means a person who is neither a UK nor a U.S. citizen or national. The UK will hold limited, if any, Information about European Economic Area nationals and their family members due to their free movement rights under European Union (EU) law.
- (c) “Domestic law” includes, in relation to the United Kingdom, European Union law.

ARTICLE 2

SCOPE AND PURPOSE

1. This Agreement specifies the terms, relationships, responsibilities, and conditions for the regular sharing of Information between the Parties.
2. The purpose of this Agreement is to assist in the effective administration and enforcement of the respective immigration and nationality laws of the Parties regarding Nationals of a Third Country who are the subjects of Information by:
 - (a) Using Information in order to enforce or administer the immigration and nationality laws of the Parties;
 - (b) Facilitating the Parties’ adjudication of applications for transit, a visa, admission, extension of stay, other immigration benefit, nationality, or determination of whether an individual is to be ordered removed by providing Information regarding the individual; and

- (c) Furthering the prevention, investigation, or punishment of acts that would constitute a crime rendering a National of a Third Country inadmissible or removable under the laws of the Party providing the Information.

3. Nothing in this Agreement is intended to change, modify, or limit the applicable laws and common law powers in the territory of either Party to share Information. The UK shall share Information under this Agreement in reliance on its common law powers to do so. The U.S. shall share Information under this Agreement in reliance on its authorities and powers. All Information exchanged under this Agreement shall be handled by a Party in accordance with the terms of this Agreement and its domestic laws.

4. No provision in this Agreement shall be interpreted in a manner that would restrict practices relating to the sharing of Information that are already in place between the two Parties.

5. This Agreement shall not give rise to rights, privileges or benefits on the part of any other party, private or public, including to obtain, suppress or exclude any evidence or to impede the sharing of personal data. Rights, privileges or benefits existing independently of this Agreement are not affected.

ARTICLE 3

EXCHANGE OF INFORMATION

The Parties shall provide each other with Information by means of a process, including systematic and case-by-case searches, for the purposes identified in Article 2, paragraph 2, as provided for in implementing arrangements pursuant to Article 4 and in so far as consistent with the domestic law of the Party providing the Information.

ARTICLE 4

IMPLEMENTING ARRANGEMENTS

1. The Parties shall develop, by mutual consent, implementing arrangements under this Agreement consistent with their respective domestic laws.

2. The implementing arrangements shall: set forth the data to be exchanged within each type of Information, the operational procedures to be followed, and the security mechanisms and other safeguards to be maintained; and set out the ways that such exchange of the particular data would be consistent with the purposes identified in Article 2, paragraph 2. The exchange, storage, and retention of Information as set forth in the implementing arrangements shall be subject to the obligations set forth in this Agreement.

ARTICLE 5

USE AND DISCLOSURE OF INFORMATION

1. The Parties shall hold Information received under this Agreement in strict confidence and shall use it only for purposes identified in Article 2, paragraph 2. A Party may also for those purposes disclose such Information to appropriate domestic authorities responsible for pursuing those purposes where necessary to carry out their official duties. The Parties shall ensure that domestic authorities to whom Information is disclosed shall protect the Information, and shall limit its use and subsequent disclosure, in accordance with this Agreement.

2. Except as authorized under this Agreement or as otherwise expressly consented in writing by the Parties, a Party may not disclose Information received under this Agreement to any private party, the public, a third party foreign government, an international organization, a court, or in a judicial proceeding.

3. A Party may disclose Information received under this Agreement with the express consent, in writing, of the Party providing the Information, subject to any caveats, restrictions or conditions imposed by the Party providing the Information, to:

- (a) A domestic court or in a domestic judicial proceeding, for the purposes identified in Article 2, paragraph 2; or
- (b) A government of a third country, for the purposes of verifying identity or establishing the provenance of identity documents, in connection with re-documentation or return of an individual to that country. However, the Party disclosing the Information shall make best efforts to ensure that the disclosure of Information:
 - (i) Could not cause the Information to become known to any government, authority or person from which the subject of the Information is seeking or has been granted protection under domestic laws implementing the Convention relating to the Status of Refugees done on 28 July 1951¹ (the “1951 Refugee Convention”) or the Protocol relating to the Status of Refugees, done on 31 January 1967² (the “1967 Protocol”), or who has made a claim for protection against torture in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done on 10 December 1984³ (the “Convention against Torture”), or under either Party’s domestic laws implementing the relevant Conventions or Protocol;

¹ Treaty Series No.039 (1954) Cmd 9171

² Treaty Series No.015 (1969) Cmnd 3906

³ Treaty Series No.107 (1991) Cm 1775

- (ii) Does not occur in circumstances where, by virtue of the government, authority or person becoming aware of such Information, it is reasonably foreseeable that the subject of the Information may become eligible for the protections set out in paragraph 3(b)(i) above;
- (iii) Does not occur if it is reasonably foreseeable that, as a result of such exchange, use or disclosure, the subject of the Information or his or her family members may be placed at risk of refoulement, or any other type of harm contemplated under the 1951 Refugee Convention, the 1967 Protocol, or the Convention against Torture.

4. The Parties shall not interpret this article to restrict, including by requiring express consent, the use or disclosure of Information in accordance with the domestic law of the Parties in an immigration proceeding, which is a purpose within Article 2, paragraph 2.

5. The Parties shall not interpret this article to preclude the use or disclosure of Information to the extent that there is an obligation to do so under the domestic law of the Party that received the Information. In these circumstances, the Party requiring such use or disclosure shall, where not infeasible, notify the Party providing the Information in advance and provide details of any such use or disclosure. In the exceptional case where advance notice is infeasible, the Party using or disclosing the Information shall notify the other Party as soon as possible.

6. In order to prevent the unauthorized disclosure, copying, use, or modification of Information received under this Agreement, each Party shall restrict access to that Information to those individuals who need access to it for the purposes set out in Article 2, paragraph 2, and use recognized security mechanisms such as passwords, encryption, or other reasonable safeguards to prevent unauthorized access.

7. Each Party shall notify the other promptly, but no later than forty-eight (48) hours after becoming aware, of any material accidental or unauthorized access, use, disclosure, modification or disposal of Information received under this Agreement and shall furnish all necessary details of the material accidental or unauthorized access, use, disclosure, modification or disposal of that Information as appropriate.

8. A Party shall notify the other by telephone or in writing, to include electronic mail, promptly and in any event no later than forty-eight (48) hours thereafter, if there is a situation that disrupts the intended transfer of Information between them .

9. Each Party shall take appropriate administrative action, including under the civil and/or criminal law, in the event of misuse, unauthorized alteration, or deletion of, or unauthorized use or disclosure of, any Information shared under this Agreement.

ARTICLE 6

ACCURACY OF INFORMATION

1. Each Party shall provide the other Party with the most current and accurate Information available.
2. In the event that one Party has reason to believe that the other Party is using or relying on inaccurate Information provided under this Agreement, it shall promptly notify the other Party, in writing, and provide correcting Information, if it is available.
3. When a Party receives correcting Information, the Party shall destroy or correct any inaccurate Information and any Information derived from it. The Party shall notify the other Party, in writing, that it has made the corrections.

ARTICLE 7

ACCESS AND RECTIFICATION

Each Party confirms that it has in place a system by which individuals, regardless of their nationality or country of residence, can request Information about themselves that was received under this Agreement, and that, to the extent specified in its domestic law that such Information is releasable to the individual, the individual may request correction or notation of that Information. Any release of Information received under this Agreement to the individual whom the Information concerns is subject to the provisions of paragraphs 2, 3, 4 and 5 of Article 5, to the extent consistent with the relevant Party's domestic law and any applicable statutory or regulatory exemptions. Each Party confirms that it has in place a system by which individuals, regardless of their nationality or country of residence, can seek redress in the event of a refusal to provide, correct or notate Information. Any refusal shall be in writing, shall include the basis for the refusal and set out the options for redress.

ARTICLE 8

PROTECTION OF INFORMATION

1. The Parties shall use, transmit, store, handle, and protect Information exchanged within the framework of this Agreement in accordance with the terms of the Agreement, and their respective domestic law, including national security and privacy laws and regulations, as applicable.

2. Personal Information received by the United Kingdom under this Agreement is to be treated as “Restricted”, and Information received by the United States under this Agreement is to be treated as “Sensitive But Unclassified”, “For Official Use Only” or “Controlled Unclassified” unless the Party providing the Information requests otherwise.

ARTICLE 9

RETENTION AND DISPOSITION

1. Each Party shall retain the Information received under this Agreement in an orderly and secure system, only for as long as is necessary, and in accordance with applicable domestic law. Each Party shall also operate a system of database and document control that provides for the orderly and secure disposition of Information that has been received under this Agreement when it is no longer needed, and in accordance with the relevant Party’s domestic law.

2. A Party shall destroy, as soon as practicable, any data received under this Agreement that it determines is not relevant to an intended query or that is otherwise erroneously provided.

ARTICLE 10

EXEMPTIONS

1. If a Party determines that sharing Information under this Agreement would be inconsistent with its domestic laws, or detrimental to its national sovereignty, national security, public policy, or other important national interest, the Party may decline to provide all or part of the Information, or offer to provide the Information in whole or in part subject to such terms and conditions as it may specify.

2. This Agreement is made within the context of the United Kingdom and United States being parties to important treaties of the United Nations on human rights, including the International Covenant on Civil and Political Rights done on 16 December 1966⁴ and the Convention against Torture; and, in the case of the UK, additionally the European Convention on Human Rights done on 4 November 1950⁵. The Parties affirm that this Agreement shall be implemented consistent with their obligations under those treaties and any domestic legislation implementing those treaties, as applicable.

⁴ Treaty Series No.006 (1977) Cm 6702

⁵ Treaty Series No.071 (1953) Cmd 8969

ARTICLE 11

REQUESTS FOR ADDITIONAL INFORMATION

If, based on access to Information provided under Article 3, a Party has reason to request additional data not covered by this Agreement and its implementing arrangements, such request shall be governed by existing laws, regulations, arrangements, or agreements.

ARTICLE 12

FINANCIAL ARRANGEMENTS

Unless otherwise mutually agreed, each Party shall be responsible for the costs and expense it incurs in connection with the fulfilment of its obligations under this Agreement.

ARTICLE 13

REVIEW AND CONSULTATION

1. The Parties shall designate points of contact and require them to consult regularly to promote the effective implementation and administration of this Agreement and to settle disputes, as necessary.
2. The Parties shall, through their points of contact, jointly review this Agreement and its implementation. The first review shall take place not earlier than one year from the date of the entry into force of this Agreement, and not later than 5 years from the date of its entry into force, and as the Parties mutually decide thereafter.
3. A Party shall advise the other of changes to its law, regulations, policies, technology, or systems that may affect the implementation or administration of this Agreement.

ARTICLE 14

SETTLEMENT OF DISPUTES

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt to arrive at a mutually satisfactory resolution of any matter that might affect its implementation or administration.
2. If the Parties cannot, through consultations, come to a mutually satisfactory resolution of a dispute regarding the interpretation or application of this Agreement, they shall resolve the dispute through diplomatic channels.

ARTICLE 15

MODIFICATION AND TERMINATION

1. The Parties may amend this Agreement by mutual consent, in writing.
2. A Party may terminate this Agreement at any time by giving notice in writing to the other Party. The termination is effective 90 days after receipt of such notice. Articles 5, 6, 7, 8 and 9 shall continue to apply to Information exchanged pursuant to this Agreement, even after the Agreement is terminated.

ARTICLE 16

ENTRY INTO FORCE

This Agreement shall enter into force on the date of the last note in an exchange of diplomatic notes in which the Parties notify each other of the completion of their respective internal procedures necessary for the entry into force of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement:

Signed at Queenstown, this eighteenth day of April, 2013, in duplicate, in the English language.

**For the Government of the United
Kingdom of Great Britain and
Northern Ireland:**

JEREMY OPPENHEIM

**For the Government of the
United States of America:**

DAVID HEYMAN



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