

TPS, DED, Social Security, etc.: A FoSL Update

July 2004

This is an update of Friends of Sierra Leone's (FoSL's) advocacy activities since its meeting held on December 5, 2003. **The minutes of that meeting are attached.**

FoSL (through the combined efforts of Jim Sheahan, Don Mooers, Judy Figi and Peggy Murrah) has continued working on several different fronts to secure assistance for those affected by the elimination of TPS. In early January 2004, FoSL presented a case for Deferred Enforced Departure (DED) to the office of Congressman Chris van Hollen (representing Maryland's 8th District). In March, FoSL solicited help from the office of Senator Zell Miller to help gain White House support for DED. On April 30, a response from the Department of Homeland Security stated that FoSL's request for DED status was not approved.

Additionally, FoSL has: (1) held personal meetings with staff members of the offices of Representatives Frank Wolf, and Patrick Kennedy; had contact with (2) Senator Feingold's office; (3) Senator Saxby Chambliss' office; (4) the *Washington Post*; (5) State Department officials working on Sierra Leone's affairs, (6) former U.S. Ambassador to Sierra Leone Joseph Melrose and (7) the Senate Sub-committee on Immigration, Border Security and Citizenship (which is part of the Judiciary Committee). FoSL has also liaised with the *Atlanta Journal-Constitution* and a TV station (in Georgia) regarding the plight of certain Sierra Leoneans (whose TPS has expired, but are still residing in the state of Georgia).

In spite of its flurry of activities, days before its June annual meeting held in Freetown, it was reiterated to FoSL that **neither TPS nor DED will be granted** to Sierra Leoneans. Additional action is being contemplated.

Minutes of a meeting (pertaining to **immigration issues**)
convened by Friends of Sierra Leone (FoSL) and held at
Bethel World Outreach Ministries Church,
8242 Georgia Avenue, Silver Spring, Maryland.
Date and time: Friday, December 5, 2003, 5:30–8:00 PM

PANELISTS:

- (i) **David Cleveland:** a staff attorney at Catholic Charities of Washington, DC, since 1998, he has done asylum trials in Arlington, Baltimore, Newark, New York City, and in Houston. He is co-chair of the Asylum Committee of the Washington, D.C. chapter of the American Immigration Lawyers Association and is a contributing writer to *Immigration Law Today*.
- (ii) **Donald Mooers:** former FoSL board member and State Department employee. After a successful career in international development, he gave up traveling and now practises law in Maryland. Don now heads his own law firm -- Law Offices of Donald Mooers. He is available for consultation on immigration matters, but, not for asylum cases. Don works closely with Montgomery County Public Schools to improve services to immigrant families and children. While residing in Sierra Leone, Don lived and worked in Matotoka, Tane Chiefdom.

From The Department of Homeland Security

(iii) **Jonathan Mills:** responsible for coordinating U.S. Citizenship and Immigration Services' (CIS) TPS policy. Prior to his current position, he served as an immigration attorney for a community-based organization (CBO) and then a private law office. Other experience includes working with Congress and the executive branch agencies. The son of an English Speaker of Other Languages (ESOL) teacher, he finds the multi-national and multi-cultural aspects of his position particularly rewarding.

From the U.S. State Department

- (iv) **Scott Busby:** director of the policy and resource planning office in the Bureau of Population, Refugees and Migration at the U.S. Department of State, where, among other things, he oversees preparation of the State Department's recommendations to the Department of Homeland Security on Temporary Protected Status (TPS) and Deferred Enforced Departure (DED). A lawyer by training, Scott has also held positions with the Immigration and Naturalization Service and the National Security Council.
- (v) **Taiya Smith:** program officer in the Office of Admissions in the Bureau of Population, Refugees and Migration at the U.S. Department of State, where she oversees the US Refugee Program operations in West Africa. Taiya spent six months last year traveling in West Africa, during which time she served as the Department of State's Refugee Coordinator in Accra and Abidjan.
- (vi) **Anne Chiorazzi:** is currently serving as a program officer in the policy and resource planning office in the Bureau of Population, Refugees and Migration at the U.S. Department of State, where she assists with the preparation of the State Department's recommendations to the

Department of Homeland Security on Temporary Protected Status and Deferred Enforced Departure. Anne is on temporary detail to the State Department from the Department of Homeland Security -- Office of Refugee, Asylum and International Operations.

From the Embassy of Sierra Leone:

(vii) **Hassan Conteh**, Deputy Head of Mission. A bachelor's graduate of (i) Fourah Bay College, Sierra Leone (areas of concentration: Philosophy, English and International Relations), and (ii) Princeton University (master's in international relations). He also holds a post-graduate diploma in government and politics (from St. John's University in New York).

(viii) **James Caulker**, Head of Chancery and Minister/Counselor. He is a graduate of Njala University College, Sierra Leone (majoring in agriculture). In preparation for foreign service, he underwent training at the Diplomatic Training Institute in Kenya. Prior to joining the foreign service, James Caulker taught in Bo, Sierra Leone.

(ATTENDING BUT NOT AS A PANELIST -- From the U.S. Congress:)

(ix) **Sarah Park**, congressional staffer in charge of immigration constituent services dealing with African countries, office of Congressman Chris Van Hollen (representing Maryland's 8th District).

Absent (with apologies):

(x) **John Wysham**, Desk officer for Sierra Leone and Togo, U.S. State Department.



Opening

Address:

The opening address was given by Daphne Sawyerr-Dunn, a FoSL member and a key advocate of FoSL's TPS lobbying efforts from its inception. In her opening remarks, she highlighted the following points (among others):

- The September 2003 announcement that TPS for Sierra Leone is slated to end on May 3, 2004 has caused much panic among Sierra Leoneans, especially now, that some TPS beneficiaries have begun receiving deportation notices. It is with this in mind that FoSL decided to convene tonight's meeting, which discussions will focus on: **TPS, refugee and diversity lottery** issues.
- Individuals, groups and even Sierra Leone government officials have lobbied (*unsuccessfully*) to get U.S. law-makers to overturn this end-of-TPS decision. Sadly though, the decision to end TPS is firmly in place, and the *clock keeps on ticking toward May 3, 2004*.

- Tonight's meeting is more of an information-gathering than a policy-making session. The panelists will explain the issues as they understand them and answer questions to the best of their knowledge during the question-and-answer session (at the end).

Prayer:

Speaking next was Bishop Darlingston Johnson, the overseer of Bethel World Outreach Ministries. (Noteworthy is the fact that the Bishop has offered his church [every time] as a venue for Sierra Leone-related functions, viz: (i) thanksgiving service and (ii) TPS discussions). Bishop Johnson expressed sadness that the end of TPS for Sierra Leone is in sight. He offered a prayer and turned over the podium to the moderator Michael Diliberti.

Discussions:

Michael ("Mike") Diliberti, the president of FoSL introduced each panelist and chaired the discussions. (Mike was a Peace Corp volunteer in Moyamba, Sierra Leone from 1974-1978). Following the introduction of each panelist, the discussions began in earnest.

Below is a synopsis of the important points.

Comments by lawyers:

- Individuals from State Department or Homeland Security are **not bad people**. Their job is to enforce the law. Unfortunately, immigration laws are very confusing: they could be more confusing than tax laws. At times, Americans invite foreigners; other times, they ask foreigners to leave.
- Immigration laws have specific points\elements. Every one of those points or elements is important. If you miss one point\element, if you are not consistent, or if you revert to begging, you may not have adequate grounds for your asylum request to be granted. Even evidence of suffering may not prove strong enough to win asylum.
- As a first step, to legalize one's status, it is advisable to work as individuals looking after families. Catholic Charities is one of many organizations working to help Sierra Leoneans. Sit with Catholic Charities colleagues and get help from them.
- Another option is to hire a lawyer, whose services may cost thousands of dollars. Those choosing this option should seek a lawyer who knows what s/he is doing. Stories abound of people whose cases were "badly" handled by lawyers.
- **Organize as a community.** Make a case on grounds that either Sierra Leone is ready (i) politically, (ii) economically or it is not. The strategy utilized in obtaining legal status should not be based on begging but on presenting the cold, hard facts. Look at the law; liaise with Salvadorans and Hondurans. Work on Deferred Enforced Departure (DED), and learn how to present a case for it. ***Put aside differences (between Temne, Krio, Mende and other Sierra Leone tribes) and try to work together.***

- Sierra Leoneans in Maryland are blessed with an individual like Congressman Chris van Hollen, who is willing to assist with immigration cases. Make every effort to work with your representatives -- both republicans and democrats -- and by May, the community may succeed in obtaining legal status.

Comments by State Department and Homeland Security:

- ***TPS***

The law establishing TPS was passed in 1990. TPS, which temporarily halted deportation for certain foreigners, is being viewed by some Americans as controversial. The decision to grant or extend TPS was being made at the sole discretion of the U.S. Attorney-General. Between 2001 and 2002, Congress established clear rules granting power for TPS (and other immigration issues) to the Secretary of Homeland Security (Mr. Tom Ridge).

Bases for TPS Designation

A TPS designation **must** be based on (i) armed conflict, (ii) environmental disaster, or (iii) extraordinary and temporary conditions. These bases are defined as follows:

(i) **Ongoing armed conflict:** an ongoing armed conflict within a foreign state that would seriously threaten returning nationals of that state.

(ii) **Environmental disaster:** an environmental disaster where (1) there is a substantial but temporary disruption of living conditions in the affected area, (2) the affected foreign state is temporarily unable to adequately handle the return of its nationals, and (3) the foreign state has officially requested TPS designation. Countries designated under this category include Honduras, Nicaragua and El Salvador.

(iii) **Extraordinary and temporary conditions:** extraordinary and temporary conditions in a foreign state that prevent nationals of that state from safely returning to the state, unless permitting such nationals to remain temporarily in the U.S. is contrary to the national interest of the U.S.

Why State Department and Homeland Security decided to end TPS for Sierra Leone

- The Secretary of State makes recommendations to the Secretary of Homeland Security. The U.S. has a presence in Sierra Leone and surrounding countries. The annual report on human rights situation plays a role in deciding on granting/extending TPS.
- In 1997, the war in Sierra Leone made the country eligible for TPS. Two years later (1999), it was recommended that the eligibility date be moved up from 1997 to 1999 (to benefit those who had not arrived in the U.S. prior to November 1997). TPS for Sierra Leone status has been in effect for many years. **Two years ago, Sierra Leone's war ended. Two years ago, the debate about whether or not to end TPS for Sierra Leone began in earnest.** The decision to keep extending was based on the fact that the peace Sierra Leone was experiencing was fragile and may not hold. During the past year, the situation in Sierra

Leone was reviewed -- again. It was noted that elections had taken place, elected officials were still in power and governing the country.

- On the other hand, the economic situation in Sierra Leone is still fragile. Yes! Liberia and Cote d'Ivoire are unstable. No! Sierra Leoneans can no longer claim that there is an ongoing civil war. The current situation poses **no threat** to people who should return to Sierra Leone. The Bureau has just finished financing repatriation of Sierra Leoneans in neighboring countries. **And, based on the support for the refugee return program, there is confidence among U.S. officials that peace has taken hold, and there is no longer any physical threat to individuals returning.** That does not mean the situation in Sierra Leone is ideal. The economic situation there differs from that in the U.S.
- Sierra Leoneans on TPS have established roots in the U.S. For example, their children are in school, and some have landed good jobs. This makes the process of returning challenging. It is hard to bring one's self to it; it's a compelling situation. But, legally, the economic plight of people affected by the decision not to extend TPS is not a basis for changing the decision on TPS. There is entry into a new zone with many other situations at play. Issues at play are political.
- Sierra Leone's current Ambassador, Ibrahim Kamara, the former ambassador John Leigh, government and current Sierra Leone Embassy officials have lobbied the Administration to continue extending TPS. However, *it is not within the discretion of State Department to do what is being requested.*
- Lastly, it should be noted that when terminating TPS, the decision was made to provide Sierra Leoneans with six more months of notice in addition to the required two months (*making a total of 8 months*). Granting an additional six months was **discretionary** and was not an **obligation** on the part of the Administration.

- ***Refugee Program***

- The administrators of the refugee program know there is a story behind each person. Some seeking refugee status had applications submitted by family members in the U.S. During the war in Sierra Leone, the U.S. helped thousands to come to the States: they are eligible to stay permanently. To qualify for the refugee program, one must reside outside one's own country and be ready to make a claim of persecution. Those whose applications are still pending will be interviewed to see if they have genuine claims.
- The International Office for Migration (IOM) helps relocate refugees. After December 31, 2002, the Priority Three (P3) program for Sierra Leoneans ended. There are still a lot of individuals waiting for interview in Guinea, Ghana and The Gambia. Those whose applications were made **before** the program closed **will** be considered.
- ***Recently, more stringent guidelines were adopted. Upward of 70% fraudulent applications came through and all applications are being checked thoroughly. Who really should be coming through the refugee program? Those who have JUST been separated from their families.*** Prospective immigrants who have already been interviewed and have not yet been

cleared for travel may be undergoing security check. If that goes through, they will receive letters informing them they have been approved.

- Some cases were conditionally approved before September 11, 2001, but, were later denied. In some instances, it could take more than a year to finalize decisions on refugee applications.
- **What should relatives do in the meantime?**
Sit tight, feel comfortable, and **STOP SUBMITTING FRAUDULENT DOCUMENTS IN ORDER TO HELP OTHERS RELOCATE TO THE U.S.**

- ***Diversity (or Green Card) Lottery Program***

Visas (of any type) are not being issued in Sierra Leone. Instead, the U.S. Embassy in the Ivory Coast is conducting interviews for Sierra Leoneans, who won the Diversity Lottery. But, due to the instability in the Ivory Coast, the U.S. Embassy there is unable to process winning entries from Sierra Leone. To help facilitate the process for Sierra Leoneans, at one point, a U.S. Embassy officer from Benin traveled to the Ivory Coast, picked up Sierra Leoneans' winning entries and took them to Benin for processing.

If conditions in the Ivory Coast do not improve, Sierra Leone winners will probably have to go to Benin for processing of their papers.

- ***Comments by Sierra Leone Embassy officials (on the role of the Sierra Leone Embassy in Washington, D.C.)***
- Regrets were expressed for Ambassador Ibrahim Kamara's inability to attend tonight's meeting (he had just returned from a trip to Sierra Leone).
- Embassy officials thanked and commended FoSL for arousing enough interest in Sierra Leoneans to the point of getting them to attend this meeting. On various occasions, the Embassy had attempted to meet with, and apprise Sierra Leoneans of certain situations, but, it has not succeeded in generating enough interest on the part of the Sierra Leone community.

Since many Sierra Leoneans have questioned the role of their embassy and accused its officials of not helping Sierra Leoneans in the U.S., the embassy representatives used this opportunity to focus on the role it has played in making a case for the extension of TPS.

- Ninety days before the termination of TPS was made public, Sierra Leone Embassy representatives met with officials at Homeland Security, the State Department and the Attorney-General's office to persuade them to extend TPS. On a recent trip to the U.S., Sierra Leone's Vice President Solomon Berewa appealed for the extension of TPS, though he did not refute the fact that the war in Sierra Leone had ended. V.P. Berewa spoke with Messrs. Armitage, Lawson and Royce, among others.

- The government of Sierra Leone (GoSL) has made efforts (though **unsuccessfully**) to get TPS extended. GoSL realizes that some TPS beneficiaries are breadwinners for family members residing in Sierra Leone. Sierra Leone is already saddled with refugees returning from neighboring countries. If forced to return to Sierra Leone when TPS expires, those living in the U.S. will be more morose and will find it difficult to adjust than the returning refugees who are used to surviving under difficult conditions.
- The Department of Homeland Security has indicated that it will not normally “run after” a national of Sierra Leone, who will have no immigration status after May 3, 2004 unless the person is a national security or public safety risk. But, when a Sierra Leonean runs afoul of the law or is otherwise encountered by DHS, s/he will have to face the consequences. As of now, there are 10 Sierra Leoneans facing criminal charges ready to be deported to Sierra Leone.
- Embassy representatives have realized that after making efforts (**unsuccessfully**) to get TPS extended, the only way out is for Sierra Leoneans to adjust their status. For example, those who have the means or capability should register with schools and request student visas. The government will treat each application on a case-by-case basis. If granted student visas, TPS holders will be able to maintain legal status.
- As a last resort, Ambassador Kamara will be making a formal request to the Administration for some form of reprieve.

Question-and-Answer Session

Of all the questions raised, the following were the most significant:

Q: When will the U.S. Embassy *consular* office in Freetown reopen?

A: The U.S. government is working on it, but, the location of the Embassy poses a security problem. As of now, no definite date has been set for its reopening.

Q: If someone leaves the country, what happens to his/her Social Security benefits?

A: If you were working with a valid social security number, then you legally earned the money. To receive U.S. Social Security benefits, an individual must have an assigned social security number and a social security card for work purposes, meaning it cannot say “Not Valid for Purposes of Employment”. Pursuant to the Social Security Protection Act of 2004, P.L. 108-203, an alien who applies for social security benefits after January 2004, must have been in an immigration status that permitted employment or granted employment authorization by DHS/INS AND issued an SSN card for work purposes at some time during his/her stay in the U.S. to be entitled to Social Security benefits.

The status of an individual's social security benefits once they move outside of the United States depends on their country of citizenship and residence. Detailed information can be found on the internet at:

www.ssa.gov/international/your_ss.html

For citizens of Sierra Leone, who return to that country, individuals will continue to receive social security benefits if: -the worker on whose record the benefits are based lived in the United State for 10 years; or -s/he earned 40 earnings credits under the U.S. social security system.

In the case of non-U.S. citizens receiving dependent or survivor benefits: -s/he lived in the United States for at least five years; and -the family relationship existed for those five years. -Children who cannot meet the residency requirement on their own will be considered to meet the residency requirement if the worker and other parent (if any) do. - Children who are adopted outside of the United States, will not receive U.S. social security benefits outside of the United States even if they meet the residency requirement.

The residency requirement does not apply to citizens of Sierra Leone who are receiving dependent or survivor benefits if: -s/he was initially eligible for monthly benefits before January 1, 1985; or -s/he is entitled on the record of a worker who died while in the U.S. military service or as a result of a service-connected disease or injury.

For citizens of Sierra Leone who reside in Sierra Leone and do not meet any of the above criteria, his/her payments will stop once s/he has been outside of the U.S. for six full months, unless: -s/he was eligible for monthly Social Security benefits for December 1956; or -s/he is in active military or naval service for the U.S.; or -the worker on whose record his/her benefits are based had railroad work which was treated as covered employment by the Social Security program; or -the worker on whose record his/her benefits are based died while in the U.S. military service or as a result of a service-connected disability and was not dishonorably discharged.

Q. What are the steps in the deportation process?

A: Please realize that the Department of Homeland Security has three main immigration components: **(i) U.S. Citizenship and Immigration Services (USCIS)**, which processes applications for immigration benefits, **(ii) Immigration and Customs Enforcement (ICE)**, which enforces immigration and customs laws within the U.S., and **(iii) Customs and Border Protection (CBP)**, which is responsible for security at and near U.S. borders and ports of entry. **In addition, the U.S. Department of Justice Executive Office of Immigration Review (EOIR) is responsible for running the Immigration Courts, which conduct removal proceedings.**

An out-of-status individual may receive a Notice to Appear (NTA) in Immigration Court. If you do receive an NTA, get an attorney and respond promptly. ***If you fail to appear, you may be tried and ordered deported in absentia.***

A person in deportation proceedings may be eligible to apply to the Immigration Judge for "Cancellation of Removal" based upon (i) living 10 years in the U.S., and (ii) removal causing exceptional and extremely unusual hardship to the person's U.S. Citizen or Lawful Permanent Resident spouse, parent, or child. **Note: Only 4,000 persons per year may be granted cancellation of removal.**

An Immigration Judge sometimes grants a person voluntary departure from the U.S. in place of an immigration order. Compliance with the terms of the voluntary departure allows the

person to avoid the negative consequences of a deportation order. However, there may be other serious, negative consequences stemming from prior unlawful entry into the U.S., prior unlawful presence in the U.S., criminal convictions, or other aspects of the person's case.

Someone who is being issued an NTA will, at times, be detained, usually if he/she is a criminal.

Note: even a Lawful Permanent Resident may have his/her status revoked by an Immigration Judge.

Advice: liaising with Catholic Relief Services and working with your Congressman on putting in place new legislation are viable options. Issues to focus on: (i) asking for reprieve; (ii) requesting suspension penalty to employers till President Bush's proposal passes; (iii) if the proposal fails to pass, request a re-instatement of TPS.

Q: How can one get to talk to a Congressman?

A: Congressman Chris van Hollen (whose office is represented in this meeting by a staffer) is willing to help. If you are not in the Congressman's jurisdiction, through his office you could get information on how to reach *your* Congressman.

- ***Advice by Lawyers***

Delayed Amnesty Program

Between February and March 2004, there will *perhaps*, be some big announcement. **If all efforts to reinstate TPS for Sierra Leone fail, the best hope is for a delayed amnesty program.** A good strategy is for Sierra Leoneans to get together with many Salvadorans and Hondurans so Mexico will not be the only focus of the US discussions. Getting involved politically is the best hope of getting to stay beyond TPS.

What now?

For some, there is no way to obtain legal status, so the end of TPS will leave them without status. If someone has not already applied for asylum, it is difficult to try doing so now.

Some possible remedies

- One could adjust status through employment; family sponsorship; refugee program; asylum or lottery. (Immigration lawyers may take advantage of you, so please be aware).
- Talk to Catholic Charities to see what benefits are available under U.S. law. Talk to Congressmen, reputable organizations and advocacy groups for a political solution to the situation.

Any Other Business/Closing

As the meeting drew to a close, the president of FoSL reminded/informed the participants about two issues:

(i) *Membership in FoSL --*
is open to all at an annual cost of \$20.00 per person.

(ii) *Renovation of the Sierra Leone Embassy*
FoSL plans to work with Sierra Leone organizations to start raising funds to renovate the Sierra Leone Embassy in Washington, D.C.

At this juncture, there being no further business to discuss, the meeting adjourned sine die. It is hoped that in light of the foregoing discussions, people will have a much better understanding of the issues at stake.



Note: these minutes were **compiled by:**

- (1) Donald Smythe-Macaulay, Sr.**
- (2) Dr. Jonathan Peters**
and
- (3) Daphne Sawyerr-Dunn .**

They were **cleared by:**

- (1) U.S. Department of State**
and
- (2) Department of Homeland Security.**