

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 04 CR 661
)	
SAMI KOSHABA LATCHIN,)	Judge Rebecca R. Pallmeyer
)	
Defendant.)	

ORDER

Defendant Sami Koshaba Latchin is alleged to have acted as a “sleeper” spy for the Government of Iraq during the time that it was controlled by Saddam Hussein. The government seeks a pre-trial ruling recognizing the admissibility of certain documents the government expects to introduce at trial. As explained here, that motion (120) is granted in part and denied in part without prejudice.

The Charges

Latchin is charged in a five-count indictment. In Count I, the government alleges that when he applied for United States citizenship in July 1999, Latchin gave materially false answers to certain questions: specifically, he allegedly failed to disclose his employment by the Iraqi Intelligence Service (“IIS”); his association with the Ba’ath Party; or the purposes for his travel abroad in 1994, 1996, and 1997; all in violation of 18 U.S.C. § 1425(a). In Counts II and III, Latchin is charged with conspiring to act, and with acting, as an agent of the Government of Iraq without appropriate notice to the United States Attorney General, in violation of 18 U.S.C. § 951(a). Count IV charges Latchin with making false statements concerning his activities in an April 2, 2003 interview with the FBI, in violation of 18 U.S.C. § 1001(a)(2). Finally, in Count V, the government charges that Latchin engaged in a financial transaction with the Government of Iraq, transactions prohibited by Executive Orders Number 12722 and 12724 and Treasury Regulations implementing

those Executive Orders, all in violation of 50 U.S.C. §§ 1702 and 1705(b) and 31 C.F.R. §§ 575.201, 575.206, 575.211, and 575.408(c)(2).

The Documents at Issue

In support of its case, the government expects to offer nine groups of documents that it characterizes as original files of the IIS. According to the government, two Iraqi army officers discovered these materials among a “large amount of IIS documents in a Baghdad residence” in April 2003. (Government’s Proffer of an Evidentiary Foundation to Support the Introduction of Certain Documents Seized in Iraq, at 2 n.1.) “Individual I” seized the documents and furnished them to the FBI some time after April 2003. (*Id.*) The government characterizes eight of these groups of documents as “recruit files” because each of the files relates to an individual allegedly recruited by Mr. Latchin to obtain information concerning the activities of Iraqi opposition groups. The documents in the eight recruit files appear to be original documents. A ninth file contains photocopies of documents relating to Mr. Latchin himself.

The government asserts that these files are admissible in their entirety under one of three hearsay exceptions: FED. R. EVID. 803(6), for records of regularly conducted activity; FED. R. EVID. 803(8), for public records or reports; or FED. R. EVID. 807, the “residual exception” to the hearsay rule, for material that has circumstantial guarantees of trustworthiness, is more probative than any other available evidence, and whose admission serves the interests of justice. Defendant objects to the admission of any of these files. He challenges the authenticity of the documents, urging that the government has offered no basis for concluding that the files are “anything more than arbitrary groupings of sheets of paper.” (Defendant’s Response to Government’s Proffer, at 2.) He notes, too, that the files consist of hundreds of pages of documents; without identification of the specific pages the government seeks to introduce, he contends, it is not possible to make any determination of their relevance. Both parties agree that a pre-trial ruling on the admissibility of these documents is appropriate, and the court heard evidence on the matter over several days in the fall of 2006.

DISCUSSION

As the proponent of the challenged evidence, the government has the burden of establishing its admissibility. With respect to authenticity, that burden is a modest one. Federal Rule of Evidence 901(a) establishes that “the authentication requirement ‘is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.’ Rule 901 requires only a prima facie showing of genuineness and leaves it to the jury to decide the true authenticity and probative value of the evidence.” *United States v. Harvey*, 117 F.3d 1044, 1049 (7th Cir. 1997) (citing *United States v. McGlory*, 968 F.2d 309, 328-29 (3d Cir.1992); *United States v. Dombrowski*, 877 F.2d 520, 525 (7th Cir.1989); *United States v. Johnson*, 637 F.2d 1224, 1247 (9th Cir.1980).) With respect to other evidentiary standards—the prohibition against hearsay, for example—the government has the burden of establishing that the material is admissible by a preponderance. *Harvey*, 117 F.3d at 1050. In addition to the matter of authenticity, the court addresses Defendant’s concerns about the relevance of the documents and the hearsay nature of some of their contents.

I. Authenticity

A. *United States v. Dumeisi*

As both parties recognize, the Seventh Circuit addressed some of the matters at issue here most recently in *United States v. Dumeisi*, 424 F.3d 566 (7th Cir. 2005), *cert. denied*, 126 S.Ct. 1570 (2006). The court begins its analysis there. In *Dumeisi*, the Seventh Circuit affirmed the admission of documents similar in certain respects to the recruit files involved in this case. Dumeisi was convicted by a jury of acting as an agent of Saddam Hussein’s regime. *Id.* at 570. Born in Palestine, Dumeisi emigrated to this country in 1993 and began publishing, here in Illinois, an Arabic language newspaper that included a number of articles supportive of Saddam and critical of Iraqi opposition groups. *Id.* After a visit to Iraq in 1999, Dumeisi began receiving certain “instructions” from the Iraqi Mission to the United Nations (“IMUN”) and expressed to a colleague

his interest in “learning the identity and whereabouts of” members of Iraqi opposition groups. *Id.* at 570-71. Later, when a part-time employee of Dumeisi’s struck up a brief relationship with Fawzi Al-Shammari, a member of the Iraqi opposition in the United States, Dumeisi prepared a handwritten report in which he identified Al-Shammari and two of his associates, summarized a speech given by Al-Shammari, and provided photos of Al-Shammari. *Id.* at 571-72. This report, as well as lists of phone numbers called from Al-Shammari’s telephone, all appeared in a “larger collection of IIS records which came to be known as ‘the Baghdad File,’” a file that Dumeisi himself characterized as “‘the single most important piece of government evidence’” against him. *Id.* at 572, 574.

In addressing the admissibility of the Baghdad File, the Seventh Circuit first addressed the matter of authentication. Circumstances surrounding the discovery of the file are relevant to that issue. *Dumeisi*, 424 F.3d at 575 (citing *Harvey*, 117 F.3d at 1049; *United States v. Arce*, 997 F.2d 1123, 1128 (5th Cir. 1993)); FED. R. EVID. 901(b)(4). An American counterintelligence officer, John Andrews, had received the Baghdad File from a member of the Iraqi National Congress in June 2003 and turned it over to the FBI. *Dumeisi*, 424 F.3d at 572-73. The Seventh Circuit also referred to classified information surrounding discovery of the file that, in the court’s view, “bolster[ed] the contention that the file is what the government purports it to be.” *Id.* at 575. On appeal, Dumeisi conceded that many of the individual documents within the Baghdad File were indeed admissible as IIS documents, but challenged the notion that they had been found together in Baghdad. *Id.* at 576. The Seventh Circuit acknowledged that Dumeisi had raised a “valid question” about the timing of the file’s discovery; the FBI had questioned a witness as early as April 2002 about Al-Shammari’s telephone records, which was some time before John Andrews had obtained the file.¹ *Id.* The

¹ This court is uncertain of the timing; on page 576 of its opinion, the Seventh Circuit observes that the Baghdad File had been discovered in June 2002, a month or two after the FBI questioned a witness about Al-Shammari’s telephone records, while pages 572 and 573 of the
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court nevertheless affirmed a determination that the file was authentic and trustworthy, referring again to classified evidence. *Id.* at 576.

B. Government's Evidence of Authenticity

There is no similar timing discrepancy in this case, and the government argues with some force that the evidence that the "recruit files" at issue here are authentic is, if anything, stronger than the evidence of authenticity of the Baghdad File in *Dumeisi*. With certain reservations, the court agrees. Federal Rule of Evidence 901(b) explains that a document can be authenticated in a variety of ways, including the testimony of a "witness with knowledge . . . that a matter is what it is claimed to be" and by such distinctive characteristics as "[a]pppearance, contents, substance, [or] internal patterns. . . ." As in *Dumeisi*, the government here relies on both of these methods of authentication.

1. Muhammed Al-Dani

In *Dumeisi*, a witness using the pseudonym "Sargon" had been employed by IIS from 1979 to 2003, assigned to posts outside Iraq, and had "knowledge of the IIS missions as well as the organizational structure of the IIS." *Dumeisi*, 424 F.3d at 575. Sargon claimed he could positively identify documents within the Baghdad File as IIS documents. *Id.* at 574-75. Here, the government called Muhammed Al-Dani who, like Sargon, held high-ranking positions within IIS, including at one time a post as director of its Washington, D.C. bureau.

Muhammed Al-Dani was employed by the IIS for more than twenty years, beginning with

¹(...continued)

opinion refer to the file's discovery as occurring in 2003, a month after Andrews was assigned to Baghdad. Andrews reportedly obtained the file as part of his work for the "Iraq Survey Group, an interagency organization created for the purpose of exploiting documents and locating weapons of mass destruction *following* the invasion of Iraq." *Dumeisi*, 464 F.3d at 572 (emphasis supplied). The court takes judicial notice that the United States invasion of Iraq began in March 2003. Whether the file was first discovered in June 2002 or was instead first discovered a whole year later, in June 2003, its discovery post-dated the May 2002 questioning of a government witness about the telephone records that appeared in that file.

his graduation from Baghdad University. (Tr. 59-60.) Mr. Al-Dani described the organization of IIS; he identified various directorates within IIS including, most importantly, "M5," the directorate responsible for counterespionage, and "M4," the directorate responsible for secret foreign service. (Tr. 63.) Within M4, Mr. Al-Dani explained, are five divisions: D1, he testified is "for other countries. D2 for Iran and Turkey. D3 for Israel. D4 for America and Europe and South Asia." (Tr. 66.) The divisions, in turn, are subdivided; within D4 there are the "American desk," as well as a desk for East Europe, one for West Europe, and one for South Asia. (Tr. 66-67.) Mr. Al-Dani explained that until 1990, IIS conducted espionage activities under the "official cover" of embassies throughout the world, including the Iraqi embassy in Washington, and under certain "unofficial covers," including, for example, the Iraqi Airline. (Tr. 69,70.) Mr. Al-Dani began his career with IIS in 1976 as a "case officer" in the "American desk" (Tr. 73) and was the senior officer, or chief, in the Washington station from 1984 through 1987, working in the Iraqi Embassy. (Tr. 74.) From 1994 through 1996, Mr. Al-Dani served as director of the "American desk" in Baghdad, responsible for supervising all intelligence activities within the United States. (Tr. 88-89.) He defected to the United States in 1990, and at that time adopted the name he now uses. (Tr. 90, 303-04)

Like Sargon, Mr. Al-Dani had "regular contact and information exchange" with the IIS directorate responsible for intelligence on opposition groups within and outside Iraq. (Tr. 75-79.)

Compare Dumeisi, 464 F. 3d at 575. Significantly, Sargon had no personal knowledge of the contents of the Baghdad File. Mr. Al-Dani, in contrast, testified that he was responsible in part for supervising the individuals Latchin is alleged to have recruited. (Tr. 97-98.) Mr. Al-Dani himself authored or at least signed certain of the documents within the eight recruit files and was able to identify his own handwriting or that of other ranking officials on those documents. (Tr. 52-55, 56, 62-63, 65-66, 72-73, 93, 136-37, 141, 143, 147, 148, 161, 165, 169-70, 172, 174, 176, 179, 184, 186, 199, 206, 207, 208, 209, 210, 227, 228, 229, 231, 232, 237, 241, 242, 247, 249, 250, 253, 255, 261, 263, 264, 268, 270, 277, 278, 282.) Mr. Al-Dani described the procedure for maintaining

copies of correspondence between various IIS offices. Further, as Sargon did, Mr. Al-Dani identified distinctive characteristics of the documents, including symbols, abbreviations, letterhead, and serial numbers assigned to the documents. (Tr. 122, 123, 126-27, 129, 132, 334-35, 360-61.)

Defendant is critical of Mr. Al-Dani, characterizing him as “absolutely incredible.” (Defendant’s Post-Hearing Memorandum Regarding Admissibility of Documents [hereinafter, “Def.’s Post-Hearing Memo”], at 8.) Indeed, Mr. Al-Dani was obviously reluctant to answer a number of questions on cross-examination, including questions about his reasons for defecting to the United States and the nature of his agreement with the government. (Tr. 287-89, 292-96, 508, 510, 511, 516, 517, 523, 525.) He initially denied that any such agreement existed and acknowledged that it did only after the government pressed him to do so. (Tr. 312, 313, 321.) Worse, Mr. Al-Dani lied about the dates on which he had first reviewed the recruit files with government agents and explained that he had deliberately hidden the truth because he believed (for no obvious reason) that the fact that he had seen the files a year earlier would somehow get the government into “trouble.” (Tr. 349, 352.) Even where Mr. Al-Dani appeared to be making an effort to be fully forthcoming, his choppy English was difficult to comprehend.² With respect to the subject matter of the hearing,

² For example, when asked a question about the practice for assigning serial numbers to file documents, Mr. Al-Dani responded as follows:

A. I am M4. I don’t care where if puts 100 number. This is not important for me. Something – administration or microfilm or belong to computer. But the number which I think here, which number of the letter and which date and who signed it. This is – that means original. Otherwise, any number outside of this number – and this 3165, you know, December 10th, 1983, this is intelligence. This is – that means number of station. Whatever outside, all it is administration, either for serial number in headquarters or in microfilm or computer section. For M4 it doesn’t mean anything for me. This is administration number.

(Tr. 459.) As the court interprets this testimony, Mr. Al-Dani is explaining that in his role as chief of the Washington office, a division of M4 (the division responsible for intelligence in the United States), he paid little attention to the serial numbers; those numbers had more relevance for administrative staff, who were responsible to maintain copies (perhaps in microfilm) of such

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however—the authenticity of the files—Mr. Al-Dani was forthcoming and candid. He frankly acknowledged that although IIS officers were expected to maintain the files in certain ways, they did not always do so, and that IIS record-keeping practices varied to some degree from one officer to another. (Tr. 121, 363.) He explained, for example, that each recruit file should contain a document recording certain identifying information concerning the recruit, including the identity of the intelligence officer who recruited him. (Tr. 421-23.) Yet no such document appears in many of the files the government seeks to introduce.³ He also recognized that at least in some instances, the index of documents within the recruit files did not appear to have been maintained contemporaneously with the creation of the documents themselves. (Tr. 371-375.) In several instances, Mr. Al-Dani acknowledged that he did not recognize all the signatures or identities of the authors of certain documents, (Tr. 187, 188, 190, 221-22, 223-24, 243, 245, 282-83), and, although he testified that he has known Defendant Latchin for many years, in several instances he testified that he did not recognize Mr. Latchin’s signature. (Tr. 251, 258.)

2. Contents of the Recruit Files

In any event, the court concludes that concerns about Mr. Al-Dani’s credibility do not defeat the government’s showing that the recruit files are authentic. As noted, the documents themselves bear significant indicia of authenticity.⁴ Many of the documents contain internal references (by number and date) to other documents within the file, such that a chain of correspondence emerges.

²(...continued)

documents. For obvious reasons, however, the court has no confidence that it accurately understood the witness, in this instance and several others.

³ Defendant asserts that none of the files contains such a document, (Def.’s Post-Hearing Memo, at 13), but the court presumes that the document titled “Sources Program/Basic Information” that appears in the recruit file for Adwar Mikho Jeto is an example. (Adwar Mikho Jeto.pdf1, page 8.)

⁴ For purposes of this discussion, the court limits its consideration to those documents within each file that make some reference to Sami Koshaba Latchin. Defendant has not challenged the accuracy of the translations of the documents to English.

Each file contains information relevant to the purported activities of a single individual. For example, the recruit file concerning Zuhair Jarjes Shaony includes documents from 1984, when Mr. Shaony initiated plans for publishing an Arabic-language newspaper, "Hammurai," in California. Initially, the "Hostile Activity Section" of the IIS committed to financing the publication. (See Zuhair Jarjes Shaony.pdf3, page 20.) A December 31, 1986 memo observed that by that date, Mr. Shaony was no longer receiving financial support for the newspaper and had ceased publishing it. (*Id.* .pdf2, page 10.) A January 10, 1987 memo referred to the December 31, 1986 correspondence by file number, summarized Mr. Shaony's history, and recommended that Mr. Shaony be advised the time was not right for further financial support for a newspaper, and "we will assist him in another time." (*Id.* .pdf2, page 9.)

Nothing about the contents of the recruit files suggests any effort to manufacture or magnify evidence of Mr. Latchin's rank within, or contribution to, the activities of the IIS. To the contrary, as Defendant observes, many of the documents within each file "identify the subject as an asset of the IIS, but complain that the asset has not produced much information of any value." (Def.'s Post-Hearing Memo, at 2.) The fact that the files contain little in the way of information concerning Mr. Latchin's own activities (or those of his alleged recruits) militates against the conclusion that the files were altered or "doctored" in such fashion as to falsely implicate Mr. Latchin.

Nor does the advanced age of many of the file documents defeat a finding of authenticity. Indeed, although the government has not invoked it, Federal Rule of Evidence 901(b)(8) may be relevant here. The Rule provides for authentication of "ancient documents" by introduction of evidence that the documents are in such condition as to create no suspicion concerning their authenticity and were found in a place where, if authentic, they would likely be. A document is "ancient" within the meaning of this Rule if it is at least twenty years old, a definition that covers many of the documents in question. A large number of the documents are originals, many of them handwritten. Defendant notes that the United States Department of Defense has created a

guidebook for verifying the authenticity of IIS documents, (Def.'s Post-Hearing Memo at 9-10; Exh. C); but Defendant has not identified any ways in which the documents at issue here fail the tests set out in that guidebook.⁵ The circumstances of their discovery—in a private residence in Baghdad—are admittedly murky. But the United States gave clear public notice of its intention to invade Baghdad in 2003, and it does not seem unlikely that intelligence officers aligned with Saddam Hussein would have removed evidence of their activities from government offices before that invasion. In fact, Mr. Al-Dani testified that during the Gulf War and other “crises,” senior officers of IIS “move[d] all the important files to the safe houses” for safekeeping. (Tr. 87-88.)

The characteristics of the documents within the recruit files support a finding of authenticity.

3. Hilal Issa Zakerya

Al-Dani's testimony, and the court's confidence in the authenticity of the recruit files, were reinforced by the testimony of Hilal Issa Zakerya. Zakerya, who will also be a trial witness, is one of the individuals allegedly recruited by Latchin. Born in Iraq, Mr. Zakerya immigrated to the United States in September 1982 and is currently employed teaching the Iraqi dialect of Arabic, and Iraqi culture, to American soldiers through a contract with the Department of Defense. (Tr. 610.) Zakerya testified that he grew up in the house next door to Mr. Latchin's. After his move to the United States, in 1983, Mr. Latchin approached Mr. Zakerya and asked him to “collect some

⁵ The only evidence of forgery that Defendant has identified is the January 31, 2005 statement made by alleged recruit William George Potros to the FBI. According to the FBI Form 302 summarizing that statement, Potros was shown a document signed by him, proclaiming his loyalty to “the Party and the Revolution in Iraq,” that appeared within his recruit file, and told the FBI that much of the information contained in that document was false. (Defendant's Addendum to his Post-Hearing Memorandum, Exh. A.) In a subsequent interview, however, Potros retracted that statement and acknowledged having written and signed the report. (Defendant's Second Addendum, at 1.) Defendant observes that “the FBI 302 offers no explanation as to why Potros completely changed his story,” (*id.*), but the court has little difficulty understanding what might have motivated an Iraqi expatriate in January 2005 to falsely deny having expressed loyalty to the Saddam Hussein government. The government has announced its intention to call several of the alleged recruits as witnesses. If Mr. Potros is among them, he can of course be cross-examined about any prior inconsistent statements he has made.

information about Assyrian parties, organizations, newspaper, radios, any information to collect from them” and mail the information to Mr. Latchin in Greece. (Tr. 615, 616.) Mr. Zakerya complied; he collected materials, including magazines, newspapers, and the minutes of meetings of the Assyrian Democratic Party in Chicago and mailed them to Mr. Latchin in Greece. (Tr. 617, 619-20.) Some time—perhaps three or four years—later, Mr. Latchin told Mr. Zakerya that Mr. Zakerya should from then on report to another individual, someone by the name of Adnan who was stationed in the Iraqi embassy in Washington. (Tr. 625-626.) During the time that Mr. Zakerya was sending information to Mr. Latchin, Latchin paid him, by check, approximately \$600 every other month. (Tr. 630-31.)

Mr. Zakerya’s testimony was straightforward and lucid, and Defendant does not challenge his credibility. Zakerya recognized within his “recruit files” only a small number of documents that he himself had drafted, (Tr. 618, 620, 624-25, 626-27; Hilal Zakerya.pdf, pp. 52-55, 63, 65-66, 72-73), and was apparently unaware of the existence of the file until 2003. (Tr. 636, 646.) His testimony about his contacts with Mr. Latchin, however, corroborates the accuracy of documents within that file. For example, a memorandum dated September 25, 1984 records information provided by Mr. Zakerya, purportedly “through Comrade Sami Koshaba,” concerning the activities of an Assyrian Students’ Association. (Hilal Zakerya.pdf, p. 41.) A memorandum dated July 20, 1985 reports that Mr. Zakerya had “[t]ried to join the Assyrian Party, newly formed in America” and had provided minutes from a party meeting he had attended; Nasser Thamir, the writer of the memorandum, notes that he “could not understand a thing of the meeting minutes.” (*Id.* p. 31.) Documents dated September 24, 1986 and October 4, 1986 refer to Mr. Zakerya’s assertion that Mr. Latchin had paid him \$600 for his efforts. (*Id.* pp. 49, 10.) The September 24 document refers to copies of “hostile publications” collected by Mr. Zakerya. (*Id.* at 49.) Mr. Zakerya’s testimony thus serves to confirm that his own recruit file is more than an “arbitrary grouping” of documents; it in fact constitutes a record of his activities and communications with IIS. The court concludes that

the government has met its minimal burden, a prima facie showing, that the recruit files are authentic.

4. Sami Latchin's "File"

A striking exception to the recruit files described above is the "file" concerning Mr. Latchin himself. The recruit files consist of original documents maintained in paper folders, bound on one side by a tie that resembles a shoelace. Mr. Latchin's own "file" consists only of copies, apparently printed from microfiche, and consists of just five items: a handwritten receipt from 1984; two handwritten notes from April 1990; a typed note from 1984; and a post-marked envelope. The court agrees with Defendant that the sparseness and randomness of this file raises concerns about its authenticity. The government can not reasonably argue that this small number of documents represents the complete file for an individual who allegedly worked for IIS for many years, particularly where the files for persons allegedly recruited by Mr. Latchin are so much larger. Absent further foundation, Defendant's objection to the admission of these documents as a "file" will be sustained. And the court accepts the government's invitation to reserve until trial a ruling on the admissibility of certain travel voucher records reflecting alleged payments to Defendant in August 2001. (Government's Response to Defendant's Post-Hearing Memorandum, at 7.)

II. Hearsay and Relevance

The determination that the recruit files meet the test of authenticity does not end the inquiry. Defendant has raised relevance objections to many of the documents in the recruit files, and argues that the contents of all of them are inadmissible hearsay. The government argues that the files are admissible under any of three hearsay objections: the exception for records of regularly conducted activity (sometimes referred to as the "business records" exception), FED. R. EVID. 803(6); the exception for public records, FED. R. EVID. 803(8); and the residual exception, FED. R. EVID. 807. In the government's view, "[a]dmission at trial of the recruit files under any of those rules moots the defendant's continuing hearsay objection to those documents." (Government's Response to

Defendant's Post-Hearing Memorandum, at 7.)

As described above, the government offered Muhammed Al-Dani's testimony to establish the foundation for introduction of the recruit files under these hearsay exceptions. Mr. Al-Dani testified regarding the procedures for maintaining the files and the circumstances in which many of the documents were created. He recognized the handwriting and signatures that appeared on numerous originals in several of those files. In response to the prosecutor's questions using the "magic words," Mr. Al-Dani stated that the files were kept in the ordinary course of business activity of the IIS, and that it was the practice of the IIS to make and maintain the recruit files. (Tr. 195.) With respect to the documents he himself had created, Mr. Al-Dani testified that they appeared to be in their original condition and that there was no evidence of forgery. (*Id.*) He explained, as well, that it was his responsibility, when he served as station chief in Washington, to provide information conveyed to Baghdad on those documents, concerning the value of the sources of information recruited by IIS officers. (Tr. 210-11.) He testified that it was the practice of IIS to record such biographical information concerning those sources as appears on file documents. (Tr. 215.) Where a document referred to more than one recruit, Mr. Al-Dani testified, a copy was created for each recruit's file, (Tr. 274-75), a practice confirmed in the court's observations of file documents. (*Compare* Dawod.pdf1, p. 32 *with* Zakerya.pdf. p. 44. Though the English translations of these documents are slightly different, their content is substantially identical; and both are dated 6/2/1984 and carry the serial number Sh9 334.)

As noted, the *Dumeisi* court addressed the admissibility of a file apparently similar to the ones at issue here. The Court of Appeals affirmed the district court's conclusion that the file was admissible under the "residual exception," and therefore did not reach the government's alternative argument that it was admissible under Rule 803(6), as well. The court did, however, observe that there was evidence of "the same circumstantial guarantees of trustworthiness that justify the admission of business records," for example, "Sargon's testimony that IIS officers had a duty to

accurately record their own activities and the information received from their sources.” 424 F.3d at 576-77. Rule 803(6) permits the introduction in evidence of a “memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness” FED. R. EVID. 803(6). Mr. Al-Dani provided testimony similar to what Mr. Sargon offered in *Dumeisi*; in fact, with respect to dozens of the documents, Mr. Al-Dani’s testimony went beyond an explanation that the documents were typical of those created in the ordinary course of IIS activity: he was able to identify his own signature and that of other IIS officers on numerous documents and describe the circumstances in which they were actually created. The court concludes that the government has a substantially firmer foundation here than it did in *Dumeisi* for admission of the documents as records of the regularly conducted activity of the IIS. The recruit files are generally admissible pursuant to Rule 803(6).

The court notes, however, an important caveat: The fact that the government has laid a foundation for admission of the recruit files does not require the conclusion that every statement in those documents is admissible. Where statements within the recruit file documents themselves constitute hearsay, those statements are not admissible unless they fall within an exception to the hearsay rules. FED. R. EVID. 805.

This principle is particularly important in this case. As described above, the documents in the files largely constitute correspondence between IIS offices concerning the intelligence activities of the recruits in question. In some instances, the correspondence refers to materials or publications prepared or gathered by the recruit and forwarded to IIS headquarters. In other documents, IIS personnel comment on the value of the information provided by the recruit, set forth plans or directions for the recruit’s further activities, or refer to the propriety of compensating the

recruit for his efforts. Defendant has raised a relevance objection to this material; he notes that of dozens of documents within each recruit file, only a small number of pages make any mention of Mr. Latchin himself. The references to Mr. Latchin's activities within those pages are properly admissible only if the documents were not only "prepared in the normal course of business," but also were "made at or near the time of the events [they] record," and are "based on the personal knowledge" of the person who prepared the document, or of someone who had a "business duty to transmit the information" to that person. See *Datamatic Servs., Inc. v. United States*, 909 F.2d 1029, 1032 (7th Cir. 1990). A small number of pages in the files refer to the recruit as having been recruited by Mr. Latchin, but they provide no indication of how the writer of the document obtained or verified that information. There is no suggestion that any of the persons who prepared the documents were present when Mr. Latchin allegedly engaged in his recruiting efforts. Nor is there any suggestion that Mr. Latchin's alleged recruiting activity happened at or near the time that the documents were created. Absent some further foundation—for example, the anticipated testimony of individuals allegedly recruited by Mr. Latchin—the references within the file documents to Mr. Latchin as having recruited certain sources are likely inadmissible.

CONCLUSION

For the reasons explained here, the court concludes the government has met its minimal burden to establish the authenticity of the eight recruit files it seeks to introduce, but sustains the objection to introduction of Mr. Latchin's own "file." The court finds, further, that the testimony of Muhammed Al-Dani supports admission of the recruit files as records of regularly conducted activity

pursuant to FED. R. EVID. 803(6). That finding does not dictate that the files are admissible for all purposes, however; in particular, statements within the files that Mr. Latchin recruited certain sources of information appear to be "hearsay within hearsay," inadmissible absent further foundation testimony.

ENTER:

Dated: January 22, 2007

A handwritten signature in cursive script, appearing to read "Rebecca R. Pallmeyer", written in black ink.

REBECCA R. PALLMEYER
United States District Judge