

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 :
 v. :
 :
 OMAR CHRISTOPHER MILLER, :
 :
 Defendant. :
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MEMORANDUM & ORDER
15-CR-0580 (WFK)

WILLIAM F. KUNTZ, II, United States District Judge:

On August 26, 2016, Omar Christopher Miller (“Defendant”) was convicted by a jury of one count of visa fraud, in violation of 18 U.S.C. § 1546(a). The Court now sentences him and provides a complete statement of reasons pursuant to 18 U.S.C. § 3553(c)(2) of those factors set forth by Congress and the President and contained in 18 U.S.C. § 3553(a). For the reasons discussed below, Defendant is hereby sentenced to twelve (12) months of incarceration served], 3 years of supervised release, and payment of a \$100.00 special assessment.

BACKGROUND

On May 12, 2015, the United States filed a Complaint against Defendant, alleging he had knowingly subscribed as true false statements with respect to material facts in an immigration application and knowingly presented an application containing false statements. *See* Compl. at 1, ECF No. 1. On November 12, 2015, the United States indicted Defendant on one count of visa fraud, in violation of 18 U.S.C. § 1546(a). *See* Indictment, ECF No. 15. On August 26, 2016, after a trial before this Court, a jury found Defendant guilty of the sole count of the Indictment. *See* Verdict Sheet, ECF No. 63. This Court personally observed the testimony, both oral and documentary, as well as the demeanor of all the witnesses. Those witnesses included Mr. Andrew Daehne, a foreign service office employee by the United States Department of State, Detective Inspector of the Jamaica Constabulary Force who had worked for the JCF for more than twenty-six (26) years at the time of the trial; Mr. Percival Anderson, Deputy Superintendent of the JCF who at the time of the trial had been employed more than twenty nine

years and four months; Mr. Derrick Powell, Inspector of The JCF who had been an Inspector with the JCF for more than sixteen years at the time of trial and who had been with the JCF for thirty-five years at the time of trial; Mr. Carmine Borges who served as the Supervisory Customs and Border Protection Officer at the time of the trial; Mr. Eric Klausmann, Special Agent for the United States Diplomatic Security Service of The State Department of the United States; and Valerie Neita-Robertson, an Attorney licensed to practice in Jamaica called by The Defendant who when asked by this Court at page 347, lines 7 through 19 of the trial transcript the following questions gave the following answers:

“The Court: If you are arrested and then you subsequently are acquitted, does that mean you were never arrested?”

“The Witness: if you – no. If you are arrested and charged.

“The Court: Yes.

“The Witness: And then you are acquitted.”

“The Court: Yes.”

“The Witness: It means you were arrested and charged you went before a court.”

“The Court: Okay. You can be acquitted, but you still would have been arrested.

“The Witness: Technically speaking, yes.”

This Court entered judgment of guilty on the unanimous jury verdict returned in this case.

The Court now sentences the Defendant and sets forth its reasons for Defendant’s sentence using the rubric of the § 3553(a) factors pursuant to 18 U.S.C. § 3553(c)(2).

DISCUSSION

I. Legal Standard

18 U.S.C. § 3553 outlines the procedures for imposing sentence in a criminal case. If and when a district court chooses to impose a sentence outside of the Sentencing Guidelines range, the court “shall state in open court the reasons for its imposition of the particular sentence, and . . . the specific reason for the imposition of a sentence different from that described” in the Guidelines. 18 U.S.C. § 3553(c)(2). The court must also “state[] with specificity” its reasons for so departing “in a statement of reasons form[.]” *Id.*

“The sentencing court’s written statement of reasons shall be a simple, fact-specific statement explaining why the guidelines range did not account for a specific factor or factors under § 3553(a).” *United States v. Davis*, 08-CR-0332, 2010 WL 1221709, at *1 (E.D.N.Y. Mar. 29, 2010) (Weinstein, J.). Section 3553(a) provides a set of seven factors for the Court to consider in determining what sentence to impose on a criminal defendant. The Court addresses each in turn.

II. Analysis

A. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant

The first § 3553(a) factor requires the Court to evaluate “the nature and circumstances of the offense and the history and characteristics of the defendant.” 18 U.S.C. § 3553(a)(1).

Defendant was born on August 14, 1976, in Kingston, Jamaica, where he resided until 2013. *See* Presentence Investigation Report (“PSR”) ¶¶ 27, 29, ECF No. 65. Defendant’s parents are in a long-term partnership and, although they never married, continue to reside together and are in good health. *Id.* ¶ 27. Defendant and his five siblings were raised in a

middle-income household and provided with basic necessities. *Id.* ¶ 28. In 1992, Defendant graduated from Denham Town High School in Kingston with a high school diploma. *Id.* ¶ 42. From approximately 1994, when Defendant was eighteen, until 2013, Defendant was employed as a reggae music writer and artist and also worked as a club promoter in Kingston. *Id.* ¶ 44.

In 1996, at the age of nineteen, Defendant was arrested and charged with Shooting with Intent and Illegal Possession of a Firearm and Ammunition by the Jamaican Constabulary Force (“JCF”) in Kingston. *Id.* ¶¶ 5, 24. He was held in custody for approximately one year while awaiting trial and was released after being acquitted at trial in the Supreme Court of Jamaica in 1997. At the age of twenty-five, Defendant began smoking marijuana and used the drug once per day until approximately one year prior to his arrest for the instant offense. *Id.* ¶ 41. In 2010, Defendant surrendered to JCF officials after receiving a notice that the police were looking to question him in connection with two shooting incidents in Kingston, which had resulted in the deaths of four people. PSR ¶¶ 5, 25. He was detained for several weeks, Defendant was ultimately released without being charged with a crime. *Id.*

On February 7, 2013, Defendant entered the United States via John F. Kennedy International Airport in Queens, New York, on an O-2 visa that had been issued on April 23, 2012, by the U.S. Embassy in Kingston.¹ *Id.* ¶ 3. The Embassy had issued the visa so that

¹ An O-2 visa is a temporary visa for an individual to assist in a specific event or performance by another individual who has an extraordinary ability. PSR ¶ 3. In determining whether or not to issue visas, U.S. Department of State consular officials must make numerous determinations. *Id.* One finding the consular officials must make is whether the individual seeking the visa intends to use the visa to immigrate to the United States illegally and not for the stated purpose. *Id.* Consular officers must be satisfied that the applicant has overcome a presumption that the visa will be used for illegal immigration into the United States before issuing the visa. *Id.* Consular officials must also make determinations about the suitability of visa-seeking individuals, or entry into the United States, insofar as the safety and security of the American people and society. *Id.* In making such evaluations, consular officials examine visa applicants’ criminal histories, query intelligence databases, and verify information provided by applicants, among other things. *Id.*

Defendant and his band could perform a series of concerts in Florida. *Id.* ¶ 4. After his visa expired, Defendant failed to return to Jamaica as he was required to do. *Id.* Instead, he settled in Philadelphia, Pennsylvania, with Yolanda Miller (née Carchidi), whom he married in 2014. *Id.* ¶¶ 4, 29-30. Defendant has six children from five prior relationships. *Id.* ¶¶ 31, 34-37. Five of Defendant’s children reside with their mothers—four in Jamaica and one New Jersey—while his youngest son currently resides with Defendant in New Jersey, *id.* ¶¶ 29, 31, 34-37.

On March 15, 2015, Defendant submitted a false and misleading application to the U.S. Citizenship and Immigration Services (“USCIS”) for permanent residency. In the course of processing Defendant’s application, USCIS officials referred the matter to Homeland Security Investigations (“HSI”) for further investigation, particularly regarding the legitimacy of Defendant’s marriage. *Id.* During the investigation, HSI special agents discovered that Defendant had made false statements, deliberately lying on his application for permanent residency, his O-2 visa application, and a prior B1/B2 tourist visa application in 2009.² *Id.* Special agents with the Diplomatic Security Service (“DSS”) then joined the investigation. *Id.* On the aforementioned applications, Defendant had falsely denied any prior arrests and falsely denied being known by any other names or aliases. *Id.* ¶ 5. Those statements were lies. The investigation revealed that in truth the Defendant had been arrested twice before in Jamaica under the name Andy Fowl, *id.* ¶¶ 5, 24-25. Defendant deliberately lied seeking to hide the existence of these prior arrests and his use of the name Andy Fowl on his visa and permanent residency applications. *Id.* ¶ 5.

² The 2009 visa application was denied because the consular officer was not persuaded that Defendant was not going to immigrate to the United States illegally. PSR ¶ 4.

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