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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

Ms. A¹ and C, a child, Portland,
Oregon,

Plaintiffs

v.

Jeh C. JOHNSON, Secretary of
Homeland Security, Washington,
D.C. 20528; Loretta LYNCH,
Attorney General of the United
States, 950 Pennsylvania Ave.,
NW, Washington, D.C. 20520;
Leon RODRIGUEZ, Director, U.S.
Citizenship and Immigration
Services, 20 Massachusetts
Avenue, NW, Washington, D.C.

Case No. 3:16-CV-1908

Complaint for Declaratory,
Mandamus, and Injunctive Relief
5 U.S.C. § 702 (Administrative
Procedures Act)

¹ True names redacted.

20520; Laura ZUCHOWSKI,
Director, USCIS Vermont Service
Center, 75 Lower Welden St.,
Saint Albans, VT 05479-0001;
Mark HAZUDA, Director, USCIS
Nebraska Service Center, 850 S.
Street, Lincoln, NE 68508,

Defendants

Introduction

1. This is an action for declaratory, mandamus and injunctive relief.
2. The plaintiffs are a mother and son residing in Oregon who were victims of a serious crime in 2007. They cooperated with Oregon law enforcement in the investigation of the crime. More than two years ago, they submitted an application for a special nonimmigrant status commonly called the “U Visa.” They have complied with all statutory and regulatory requirements for this special nonimmigrant status. The plaintiffs bring this action to obtain an order compelling the immigration agency, USCIS, to merely place their name on the U Visa waiting list as required by the plain language of the regulations and to issue work authorization pursuant to statute.

Subject Matter Jurisdiction

3. The court has subject matter jurisdiction pursuant to 28 U.S.C. §

1361. The mandamus statute vests original jurisdiction in the federal courts. It provides that “[t]he district courts shall have original jurisdiction of any action in the nature of mandamus.” 28 U.S.C. § 1361.

4. The court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question). The statute provides that “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” This action arises under the Immigration and Nationality Act which is a law of the United States.

5. The court has subject matter jurisdiction under 28 U.S.C. § 1346(a)(2) (United States as defendant). This is a civil action against the officers and agencies of the United States founded upon an Act of Congress and a regulation of an executive department.

6. Jurisdiction lies to grant declaratory relief pursuant to 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

Venue

7. Pursuant to 28 U.S.C. § 1391(e), venue is proper in the District of Oregon because the plaintiffs reside in Oregon. The statute provides that in an action in which a defendant is an officer or employee of the

United States, the action “may . . . be brought in any judicial district in which . . . the plaintiff resides if no real property is involved in the action.” *Id.* There is no real property involved in this action.

Parties

8. Plaintiff A is a native and citizen of Mexico. She was the victim of a serious crime, fully cooperated with Oregon law enforcement and has sought nonimmigrant status under § 101(a)(15)(U)(i) of the Immigration and Nationality Act (hereinafter INA), commonly called the U Visa program.

9. Plaintiff C is a native and citizen of Mexico. He is the 11-year-old minor child of Ms. A and, through her, is derivatively eligible for nonimmigrant status under the U Visa program. *See* INA § 101(a)(15)(U)(ii).

10. Defendant Jeh C. Johnson is the Secretary of Homeland Security and is the head of the U.S. Department of Homeland Security (DHS) and has ultimate responsibility for the administration and enforcement of the immigration laws. He is sued in his official capacity.

11. Defendant Loretta Lynch is the Attorney General of the United States and the head of the U.S. Department of Justice (DOJ). She

shares responsibility for the administration and enforcement of the immigration laws. She is sued in her official capacity.

12. Defendant Leon Rodriguez is the Director of U.S. Citizenship and Immigration Services, a component of DHS. In that capacity, he has direct authority over all USCIS policies, procedures, and practices relating to the processing and adjudication of applications for U nonimmigrant status. He is sued in his official capacity.

13. Defendant Laura Zuchowski is the Director of the USCIS Vermont Service Center in St. Albans, Vermont. She exercises authority over USCIS activities related to U nonimmigrant applications. She is sued in her official capacity.

14. Defendant Mark Hazuda is the Field Office Director of the USCIS Nebraska Service Center in Lincoln, Nebraska. He exercises authority over USCIS activities related to U nonimmigrant applications. He is sued in his official capacity.

Legal Framework

The U Visa Program, INA § 101(a)(15)(U)

15. On October 28, 2000, Congress created the U Visa program. *See* Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA),

Pub. L. No. 106-386, Title V, § 1513, 114 Stat. 1464, 1533 (2000).

16. Concerned that “[i]mmigrant women and children are often targeted to be victims of crimes committed against them in the United States” and that “[a]ll women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes[,]” Congress acted to establish the U Visa program in order to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute” certain serious crimes “while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.” *See* VTVPA § 1513(a), 114 Stat. 1533.

17. The U Visa program creates a mechanism for noncitizen victims of serious crime to safely engage law enforcement and, likewise, for law enforcement to engage immigrant communities to deter, prevent, and prosecute criminal activity for the betterment of United States.

18. The U Visa was created to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such

crimes without the immediate risk of being removed from the country. By providing victims of crime with an avenue for regularization of their immigrant status, the U Visa encourages victims to work and cooperate with law enforcement agencies. Congress also aimed to strengthen relations between law enforcement and immigrant communities by increasing cooperation and removing some of the fear of deportation held by many undocumented migrants. *See, e.g., U and T Visa Law Enforcement Resource Guide*, DEPARTMENT OF HOMELAND SECURITY (January 4, 2016) https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.

19. A noncitizen is eligible for status under the U Visa program if (1) she suffered substantial physical or mental abuse as a result of having been a victim of one of the enumerated crimes; (2) she possesses or possessed information concerning the criminal activity; (3) she has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting the criminal activity; and (4) the criminal activity violated the laws of the United States or

occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States. *See* INA § 101(a)(15)(U).

20. A statutory cap limits the grant of U Visas to 10,000 per fiscal year. INA § 214(p)(2)(A). *See* INA § 214(p)(2)(A); 8 C.F.R. § 214.14(d)(1). The statutory cap only applies to principal applicants and does not apply to derivative applicants. INA § 214(p)(2)(B).

21. A wait list was created by regulation to provide deferred action to an eligible petitioner whenever the statutory cap is reached within a given fiscal year. *See* New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53027 (Sept. 29, 1995) (codified at 8 C.F.R. § 214.14(d)(2)). Deferred action provides several important protections to petitioners that include, among others, eligibility for work authorization. 8 CFR § 214.14(d)(2) (“USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members.”).

The U Visa Administrative Process

22. The administrative processing to accord U nonimmigrant status to eligible petitioners is tightly prescribed and regulated.

23. First, a petitioner must obtain a certification from a law enforcement official that she was the victim of a crime, the crime is a recognized crime under the U Visa program, and that she was, is or likely to be helpful in the investigation, or prosecution of the criminal activity. The USCIS has prescribed that law enforcement officials make this certification on a particular form, USCIS Form I-918 Supplement B, U Nonimmigrant Status Certification. *See* 8 C.F.R. § 214.14(a)(12).

24. Second, on submission, the USCIS makes a completeness check to verify that all required initial evidence is present. The petition must include Form I-918, Petition for U Nonimmigrant Status; Form I-918, Supplement B, U Nonimmigrant Status Certification; Form I-192, Application for Advance Permission to Enter as Nonimmigrant, if there are any inadmissibility issues; a personal statement describing the criminal activity of which the applicant was a victim; and evidence to establish each eligibility requirement.

25. Third, USCIS either adjudicates the petition by according U-nonimmigrant status or, in most cases, places the petitioner on the wait-list status for an adjudication. *See* 8 C.F.R. § 214.14(d)(2).

26. If the statutory cap has not been reached, the USCIS adjudicates

the petition for U nonimmigrant status.

27. If the statutory cap has been reached, the USCIS *must* place the petitioner on the waiting list until an adjudication can be made. 8 C.F.R. § 214.14(d) (“All eligible petitioners who, due solely to the cap, are not granted U-1 nonimmigrant status must be placed on a waiting list and receive written notice of such placement.”).

28. Once the individual has been granted deferred action, he or she may apply for and receive employment authorization by submitting Form I-765.

Bona Fide Screening

29. Congress granted USCIS the authority to grant work authorization for petitioners with pending, bona fide applications. INA § 214(p)(6) (“The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 101(a)(15)(U)”).

30. A bona fide application means an application where there appears to be no instance of fraud in the application, the application is complete, properly filed, contains an LEA endorsement, includes completed fingerprint and background checks, and presents prima facie

evidence to show eligibility for U nonimmigrant status. *See, e.g.*, 8 C.F.R. § 214.11(k) (defining “bona fide” for related statutory nonimmigrant program).

Ms. A’s Victimization

31. Plaintiff Ms. A is a citizen of Mexico. She was born in 1974.

32. Plaintiff C, Ms. A’s minor child, is a citizen of Mexico and was born in 2004.

33. Ms. A has lived in the United States for 10 years.

34. C has lived in the United States for 10 years.

35. Ms. A has one additional United States citizen child, D, born in 2001.

36. Ms. A and her husband, Mr. B, are both from Queretaro, Mexico, which is where they met.

37. Ms. A and Mr. B were in a relationship and had their first child, D in 2001.

38. Later, Ms. A and Mr. B were married on April 21, 2004.

39. Their second child, C, a plaintiff in this action, was born in November 2004 in Mexico.

40. Mr. B was controlling and abusive in the relationship toward the plaintiffs.

41. Mr. B began to beat C for crying, despite Ms. A 's attempts to defend him.

42. Mr. B was furious that their son C was still using diapers and would insist on putting him in underwear, stating he was too old for diapers.

43. Because C was not fully toilet trained, he would pee his pants. Mr. B would grab him, beat him, and throw him in a cold shower. If Ms. A attempted to defend C, Mr. B would push or throw her out of the way.

44. On one occasion, Mr. B pushed Ms. A so hard that she fell onto the floor in the living room, on top of a number of toys.

45. Mr. B also used abusive and threatening language to control Ms. A and the children.

46. Mr. B would not permit Ms. A to use the phone to call her family or allow her to spend time with anyone else.

47. At the same time, Mr. B did not provide for his family and would not buy the family necessities.

48. Ms. A was able to obtain a job at a fast food restaurant to begin making enough money to cover her and her children's expenses. She also began to help pay for rent and purchased a phone for the apartment.

49. Mr. B used Ms. A's immigrant status and her lack of information about U.S. laws as a way to threaten her, telling her that if she called the police on him, she would be deported.

50. He would also threaten to call the police and tell them about her lack of status to get her deported.

51. He also told her that he would get her deported so that she would never be able to see her sons again.

52. On one occasion, Ms. A attempted to call the police when Mr. B was hitting C, but Mr. B pulled out the cord and disconnected the telephone, yelling at her and calling her crazy.

53. Mr. B would frequently go out to clubs and bars at night, sometimes up to five times per week, and would not get home until very late at night. He would brag about his sexual exploits to Ms. A and would describe this to Ms. A as his right because she belonged to him and he could do as he pleased with her.

54. On June 17, 2007 while Ms. A was at work, Mr. B became angry at C for peeing his pants.

55. Mr. B grabbed C by the face and mouth area and then hit him with a belt.

56. When Ms. A arrived home from work, Mr. B told her he was going to go out dancing. Before leaving he pulled C, crying and afraid, into the bedroom.

57. Ms. A told him that if he was going to go dancing to just leave so she could feed the children dinner. He ignored her and continued to pull C to the bedroom where he was abusive and denigrating to C.

58. Later, C awoke crying and repeated, "my head, mommy, my head hurts. My dad hit me."

59. Ms. A was scared that her son had suffered a fracture or concussion to the head and so she called 911.

60. Ms. A suffered substantial psychological and physical abuse as a result of the ongoing assaults.

61. Ms. A remains deeply traumatized and fearful from the attack and threat from Mr. B.

62. Ms. A also suffered substantial physical abuse from Mr. B. He would push and throw her when she attempted to defend her son.

63. C also suffered substantial physical and mental abuse at the hands of Mr. B.

64. After moving out, Ms. A sought psychological help for herself and her children.

65. Mr. B manipulated the relationship with D by teaching him that it was Ms. A's fault that his father no longer lived with them.

66. Following the June 17, 2007 interaction, Ms. A attempted to find a place for just her and the two boys.

67. Mr. B would show up at the apartment and claiming he still had rights to Ms. A because she was still his wife. He would force her to have sex with him. He would threaten her by telling her that he was going to call the police and get her deported, thus gaining full custody of the children.

Law Enforcement Cooperation, Investigation

68. On the night of June 17, 2007, Ms. A contacted 911 and fully cooperated with the responding officers. She answered all of their

questions. *See* I-918, Supplement B, U Nonimmigrant Status Certification.

69. Ms. A also cooperated with Department of Health and Services investigators. *See* I-918, Supplement B, U Nonimmigrant Status Certification.

70. Ms. A possesses information about the crimes and was helpful with the investigation of criminal activity.

71. Ms. A was subpoenaed for and appeared for Grand Jury. *See* I-918, Supplement B, U Nonimmigrant Status Certification.

72. A No Complaint was filed because the only witness to the crime was Ms. A's older child, D who was unable to testify at Grand Jury. Because he was the only witness to the crime, the case could not proceed without his testimony. *See* I-918, Supplement B, U Nonimmigrant Status Certification.

73. Ms. A has never refused or failed to help the police and she is willing to help them in any future investigations.

Law Enforcement Prosecution

74. Mr. B was investigated for the crimes of criminal mistreatment in

the first degree, assault in the third degree, and felony assault in the fourth degree in violation of Oregon state law.

The Application for U Nonimmigrant Status

75. Ms. A sought U nonimmigrant status to better protect herself and her children. Mr. B had used her immigration status to manipulate and threaten her. Ms. A wanted to make sure that this would not be something he could ever use against her again. She decided that she wanted the protections offered by U nonimmigrant status. She will be able to work and support her children. Having deferred action or U nonimmigrant status will also create a more secure and certain future for Ms. A because she will not have to be concerned about possible removal from the U.S.

76. The Washington County District Attorney certified that Ms. A was helpful in the investigation. *See* Form I-918A U Nonimmigrant Status Certification.

77. On September 12, 2014 both Ms. A and C submitted a complete and substantively approvable application for U nonimmigrant status to the USCIS Vermont Service Center. 8 C.F.R. § 214.14(c)(1).

78. There is no evidence of fraud in the applications and Ms. A

attached compelling evidence showing eligibility for U nonimmigrant status.

79. On September 19, 2014 USCIS received the forms at the Vermont Service Center. *See* Form I-797C, Notice of Action/Receipt Notice Dated September 27, 2014.

80. USCIS will only issue Receipt Notices for petitions that are complete.

81. On October 29, 2014, Ms. A complied and attended a biometrics appointments to complete all required background checks.

82. Both Ms. A and C submitted form I-765, Application for Employment Authorization, received on September 19, 2014 at the Vermont Service Center. *See* Form I-797C, Notice of Action/Receipt Notice, Dated Sept. 25, 2014.

An Unreasonable Delay

83. More than two years have elapsed since the filing of her complete and approvable application for U nonimmigrant status.

84. The Defendants have taken no action on the petition for Ms. A and her son since it was properly filed on September 19, 2014.

85. The delay has harmed Ms. A and her son. Ms. A has been harmed in her ability to maintain a livelihood and support her children. Ms. A is unable to obtain a driver license or work authorization among other daily activities.

Claims for Relief

Count I

Unreasonable Delay in Agency Action

5 U.S.C. § 555(b)

86. All previous paragraphs are incorporated as though fully set forth herein.

87. The Defendants have a statutory obligation to process the petitions for Ms. A and her son for U nonimmigrant status and waitlist placement within a reasonable time. 5 U.S.C. § 555(b).

88. The Defendants delay in excess of two-years is unreasonable and therefore violates 5 U.S.C. § 555(b).

Count II

Mandamus

28 U.S.C. § 1361

89. All previous paragraphs are incorporated as though fully set forth herein.

90. The Mandamus Act, 28 U.S.C. § 1361, grants authority to courts to compel defendants to perform a duty owed to plaintiff.

91. The Defendants have a regulatory, ministerial obligation to place all eligible petitioners for U nonimmigrant status on the waiting list. 8 C.F.R. § 214.14(d).

92. The Defendants have a duty to place Ms. A and her son on the waiting list.

93. The Defendants failure to perform this duty for more than two years violates the regulation.

Count III
Unreasonable Delay in Agency Action
Bona Fide Work Authorization

94. All previous paragraphs are incorporated as though fully set forth herein.

95. Under INA § 214(p)(6), the Defendants have an obligation to issue, within a reasonable time, work authorization for individuals who have presented bona fide petitions for U nonimmigrant status.

96. The Defendants have failed to issue work authorization to Ms. A for more than two years.

97. The Defendants failure to issue work authorization to Ms. A violates INA § 214(p)(6) and 5 U.S.C. § 555(b).

Request for Relief

WHEREFORE, Plaintiffs request that the Court grant the following relief:

- A. Declare that Defendants have a duty to place Ms. A and her son on the waiting list for U nonimmigrant status and grant deferred action;
- B. Order Defendants to comply with 8 C.F.R. § 214.14(d)(2) and place Plaintiffs on the U Visa waitlist;
- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 2412; and
- D. Award all other relief to Plaintiffs that it deems just, equitable, and proper.

Respectfully submitted this 29th day of September, 2016.

/s/ Stephen W Manning
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