



I.  
INTRODUCTION

1. This is an individual action for declaratory and mandatory relief, authorized by the Declaratory Judgment Act, 28 U.S.C. Section 1361, and the Administrative Procedure Act, et seq. This action challenges the policy of the Immigration and Naturalization Service of refusing to expedite (or delaying) the processing of Adjustment of Status Applications for otherwise eligible healthcare workers who desire to process their children as accompanying or following to join immigrants, prior to the child's twenty-first birthday, based on the newly enacted Section 212(a)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. Section 1182(a)(5)(C), as amended by the 1996 Immigration Reform Act (IIRAIRA). (Once a child turns 21 years old, the child is no longer categorized as an accompanying or following to join dependent, and is then subject to the filing of another petition by their parents for immigration benefits, which would be subject to the backlogs of the family second preference immigrant category, which is presently approximately six years for adult single children from the Philippines.)

II.  
JURISDICTION

2. This Court has jurisdiction over the present action pursuant to 28 U.S.C. Section 1331, Federal Question Jurisdiction; 28 U.S.C. Section 2201, the Declaratory Judgment Act; 5 U.S.C. Section 702, the Administrative Procedures Act; and 28 U.S.C. Section 1361, regarding an action to compel an officer of the United States to perform his duty.

III.  
VENUE

3. 28 U.S.C. Section 1391(e), as amended, provides that in a civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity, or under color of legal authority, or any agency of the United States, the action may be brought in any judicial district in which a defendant in the action resides. Plaintiffs, \_\_\_\_\_ and \_\_\_\_\_, are residents of the Central District of California, and Defendant IMMIGRATION AND NATURALIZATION SERVICE (INS) is an agency which operates within this district.

IV.  
PLAINTIFFS

4. Plaintiffs are applicants for Adjustment of Status to Lawful Permanent Residence of the United States pursuant to INA §245(i), who, at the time they requested their Adjustment of Status Applications be expedited by the Los Angeles District of the Immigration and Naturalization Service, were

eligible for Adjustment of Status benefits. \_\_\_\_\_ had an employment-based visa petition which had been approved by the Immigration and Naturalization Service with a current priority date. \_\_\_\_\_ is the child of \_\_\_\_\_ and was a direct dependent of \_\_\_\_\_ through whom she could derive such status. Both plaintiffs are persons of good moral character, in that neither of them has any criminal record, and both are upstanding members of the communities-in which they live. Each Plaintiff awaited notification from the Los Angeles District Office concerning scheduling of an interview and adjudication of the Application they had filed, and each Plaintiff had specifically requested that the Los Angeles District Office expedite the adjudication process of their application prior to the child's twenty-first birthday. Such expeditious handling would have enabled them to receive Lawful Permanent Residence prior to the child's twenty-first birthday. Upon the granting of the Adjustment of the Principal Beneficiary's Status, the dependent child's Adjustment of Status Applications could then be immediately adjudicated.

V.  
DEFENDANTS

5. Defendant, Doris Meissner, is the duly appointed Commissioner of the United States Immigration and Naturalization Service (INS). Richard Rogers is the duly appointed District Director of the Los Angeles District Office of the Immigration and Naturalization Service, who has failed to expedite processing (or act on the processing) of the instant Applications for Adjustment of Status, based on INS's current policy of holding in abeyance all adjustment applications for healthcare workers, due to the recent enactment of INA Section 212(a)(5)(C).

VI.  
INDIVIDUAL ACTION ALLEGATIONS

6. Plaintiffs bring this action on behalf of themselves, as applicants for Adjustment of Status to Lawful Permanent Residence of the United States, born in the Philippines, eligible for Adjustment of Status, and with a child turning 21 years of age prior to their expected date of Adjustment of Status, or as a derivative/dependent child turning 21 years of age prior to their expected date of Adjustment of Status. Since the Adjustment of Status process has not been expedited by the Immigration and Naturalization Service, the 21 year old child will not be able to obtain Lawful Permanent Residence in the United States through their parent's Petition as a derivative beneficiary, and will be subject to repetitioning by the parent in the family based second preference category, where the waiting time is approximately six years. Taking into consideration past movement of the Visa Availability Bulletin, the backlog will more likely be an additional twelve years prior to visa issuance.

VII.  
FACTUAL ALLEGATIONS

7. Plaintiffs were eligible for expedited Adjustment of Status on the basis of humanitarian reasons, and \_\_\_\_\_, the Plaintiff whose 21st birthday is on September 18, 1997, should have been, or should now be, afforded adjustment of status on a nunc pro tunc basis, on the basis of humanitarian reasons.

8. Upon meeting all eligibility requirements for the issuance of their Adjustment of Status, the Plaintiffs both filed timely Applications for Adjustment of Status with the Los Angeles District Office, a regional office of the Immigration and Naturalization Service. Located in Los Angeles, California, specifically requesting the District Office to expedite the processing of their Applications, as the child was turning 21 years of age, and such child would thereafter be unable to adjust her status as an accompanying dependent, under her parent's employment-based petition.

9. Pursuant to Section 245(i) of the Immigration and Nationality Act, both of the Plaintiffs met the eligibility requirements for Adjustment of Status, and, had their applications been timely adjudicated by INS, could have been granted Adjustment of Status. At the present time, ordinary processing of Adjustment of Status interviews are one year or more after the initial Adjustment of Status Application is submitted, due to the acknowledged extensive backlog in the Los Angeles District Office.

10. The Plaintiffs each diligently followed up with the Immigration and Naturalization Service regarding the expedited Adjustment of Status on several occasions. The Defendants specifically considered each Plaintiff's claim for expeditious handling, and had sufficient information to determine Plaintiffs' eligibility requirements for Adjustment of Status. In each case, the Defendant failed to adjudicate the Plaintiffs' Adjustment of Status applications in timely fashion, thus not allowing sufficient time for the applications to be adjudicated before the dependent child turned 21 years of age, due to, inter alia, the recent passage of INA Section 212(a)(5)(C).

11. Plaintiffs also approached and inquired as to national policy with the Central Office of the Immigration and Naturalization Service in Washington, D.C., but were informed that there was a national policy of holding in abeyance all adjustment applications for healthcare workers, pending promulgation of regulations which INS, to date, has not promulgated, such that Plaintiffs would be required to comply with regulations which. to date do not exist

12. Plaintiffs have exhausted all administrative remedies available and have determined that no adequate remedies exist.

13. As a result of Defendants' willful and unreasonable delay in adjudicating Plaintiffs' Adjustment of Status Applications, Plaintiffs will be forced to be separated from each other for a period of anywhere from 6 to 12 years.

VIII.  
STATUTORY AND REGULATORY FRAMEWORK

14. Pursuant to Section 101(b)(1) of the Immigration and Nationality Act, the term "child," means an unmarried person, under the age of twenty-one years.

15. Pursuant to Section 203(d) of the Immigration and Nationality Act, 8 U.S.C. 1153(d), ". . . (a) . . . 'child' as defined in . . .

Section 101(b)(1), shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa . . . , be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the . . . parent.

16. Pursuant to Section 212(a)(5)(c) of the Immigration and Nationality Act, 8 U.S.C. Section 1182(a)(5)(C), as amended by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act:

(C) UNCERTIFIED FOREIGN HEALTH-CARE WORKERS. Any alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than a physician, is excludable unless the alien presents to . . . in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying-

- [i] the alien's education, training, license, and experience -
  - [I] meet all applicable statutory and regulatory requirements for entry into the United States under the classifications specified in the applications;
  - [II] are comparable with that required for an American health-care worker of the same type; and
  - [III] are authentic and, in the case of a license, unencumbered:
- [ii] the alien has a level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for healthcare work of the kind in which the alien will be engaged, as shown by an appropriate score in one or more nationally recognized, commercially, standardized assessments of the applicant's ability to speak and write: and
  - [iii] if a majority of States licensing the profession in which the alien intends to work recognize the test predicting the success on the profession's licensing and certification examination, and the alien has passed such a test.

For purposes of Clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review."

17. The adult Plaintiff had requested that the Adjustment of Status Applications for both her and her daughter be expedited to enable her to immigrate her daughter who is turning twenty-one years of age, and who would not be considered an accompanying dependent beneficiary immediately eligible for adjustment of status, until the principal beneficiary's Adjustment of Status was complete. The only alternative remedy is to wait for an additional six to twelve years for visa issuance in the Second Preference category.

18. The State Department of the United States had previously instructed the various offices throughout the United States and the Consular Posts outside of the United States, that applicants who are about to turn twenty-one years of age should be considered "emergency" cases, or "truly compelling humanitarian" cases. In State Department Cable 95-State-266463 (which dealt with the budget crisis in Washington) the State Department specifically instructed Consular Posts which were involved in the government shutdown that the processing of such applications should be "deemed essential, and are to be provided even though the Consular Posts were closed to most other processing. The cable indicated that emergency cases included situations where a child was to turn twenty one years of age, and would otherwise lose eligibility for a certain preference status. The cable specifically indicated "include visa services in truly compelling humanitarian cases, ea. the issuance of an immigrant visa to an applicant about to turn 21 who would otherwise lose status."

19. Thus, the Department of State had specifically singled out twenty-one year olds' cases as being essential, and as being cases with truly compelling humanitarian circumstances.

20. The Los Angeles District Office has maintained a policy of expediting the Adjustment of Status process on a case by case basis. The Immigration and Naturalization Service should have considered a child turning twenty-one years of age as being eligible for an immigrant visa as being a truly compelling reason to expedite the Adjustment of Status for the Plaintiffs, despite the recent passage of INA Section 212(a)(5)(C).

VI.  
CLAIM FOR RELIEF

21. Defendants willfully, and unreasonably, delayed and refused to adjudicate, the Adjustment of Status Applications of the Plaintiffs, thereby depriving \_\_\_\_\_ of the benefit of having her child join her in the United States as a Lawful Permanent Resident and to allow \_\_\_\_\_ and her daughter, \_\_\_\_\_), peace of mind, to which Plaintiffs are entitled under the Immigration and Nationality Act.

22. Defendants owe Plaintiffs the duty to act upon their Adjustment Applications, and have unreasonably failed to perform that duty. Plaintiffs have provided all relevant information and facts in each case, particularly showing that the "aging out" of the children of Lawful Permanent Residents makes a tremendous difference between the Family Accompanying dependent category and the Family Second Preference category, and that Lawful Permanent Residents are subject to extensive backlogs in the Family Second Preference Category, and are greatly harmed by the opportunity not to be able to obtain their Adjustment of Status Benefits, when eligible for them, prior to their twenty-first birthday.

23. Strong humanitarian factors genuinely exist in these circumstances. The twenty-one year old child is unable to adjust her status along with the rest of her family, and is left waiting for anywhere from six to twelve years before she can do so, because of the tremendous backlog. This family is truly suffering, as they feel they have let down their child, and know of no other legal avenue to enable this child to adjust to lawful permanent residence in the United States. Such feelings are the direct result of the refusal by the Immigration and Naturalization Service to take such compelling facts into consideration, and agree to expedite the Adjustment Applications as a compelling humanitarian case, especially as they have been identified by the State Department to be a truly compelling humanitarian case.

24. Plaintiffs have exhausted any administrative remedies that may exist. No other remedy exists for Plaintiffs to resolve Defendant's delay.

WHEREFORE, Plaintiffs pray that the Court:

- (1) Assume jurisdiction of this cause.
- (2) Enter an order that this cause be maintained as a individual action.
- (3) Declare that INS's holding in abeyance and/or refusal to expedite "age-out" cases which are dependents of healthcare workers, is contrary to the provisions of "Family Unity", "Humanitarian" reasons, and Immigration and Naturalization Service's own rulings.
- (4) Declare that Defendants' actions are an arbitrary and capricious abuse of discretion.
- (5) Compel Defendants and those acting under them to perform their duty to act upon the Applications for Adjustment of Status owed to Plaintiffs;
- (6) Declare that regardless of the date of the Court's decision, the Plaintiff \_\_\_\_\_ be deemed eligible to adjust her status as a derivative dependent, despite being over the age of 21;
- (7) Grant such other and further relief as this Court deems proper under the circumstance; and
- (8) Grant attorneys fees and costs of court.

Dated: .

Respectfully,

/s/ Attorney for Plaintiffs