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United States District Court,
D. Minnesota.

Venantius Nkafor NGWANYIA, et al., Plaintiffs,
v.
John ASHCROFT, Attorney General, et al., Defendants.

No. Civ. 02–502 RHK/AJB. | Oct. 10, 2002.

Attorneys and Law Firms

James K. Langdon II, Dorsey & Whitney, Minneapolis, Minnesota; Nadine Wettstein, J. Traci Hong, and Mary Kenney, American Immigration Law Foundation, Washington D.C.; and Iris Gomez, Massachusetts Law Reform Institute, Boston, Massachusetts; for Plaintiffs.

Thomas B. Heffelfinger, United States Attorney, and Fred Siekert, Assistant United States Attorney, Minneapolis, Minnesota; Robert D. McCallum, Jr., Assistant Attorney General, United States Department of Justice, Margaret J. Perry, Senior Litigation Counsel, United States Department of Justice, and Greg Mack, Trial Attorney, United States Department of Justice, Washington D.C.; for Defendants.

Opinion

MEMORANDUM OPINION AND ORDER

KYLE, J.

Introduction

***1** This matter is a putative class action involving asylees[1] with applications for lawful permanent residence pending before the Immigration and Naturalization Service ("INS"). Defendants John Ashcroft, the United States Attorney General, James Ziglar, the Commissioner of the INS, and the INS (collectively, "Defendants") move the Court to transfer venue under 28 U.S.C. § 1404(a). Because the Court finds that Defendants have failed to demonstrate that the balance of factors is strongly in their favor, *see Graff v. Qwest Communication Corp.,* 33 F.Supp.2d 1117, 1121 (D.Minn.1999) (Doty, J.), the motion will be denied.

[1] Both parties use the term "asylees" to refer to individuals granted asylum in the United States.

Background

Under § 209(b) of the Immigration and Nationality Act, the Attorney General may, at his discretion, adjust the status of an alien granted asylum. 8 U.S.C. § 1159(b). At or near the beginning of each fiscal year, the Attorney General may confer lawful permanent resident status upon no more that 10,000 asylees who apply for adjustment. (*Id.*) If applications from asylees who wish to adjust their status exceed the number of permanent resident spots available for the fiscal year, a waiting list is established on a priority determined by the date the application was filed. 8 C.F.R. § 209.2(a) (2001). Plaintiffs assert there is a backlog of more than 60,000 asylees awaiting adjustment of status, and yet the INS has not been distributing all 10,000 available adjustment allotments. (*See* Complaint ¶ 20.) Plaintiffs are seeking to represent a class consisting of all asylees in the United States who have applied for adjustment of status to lawful permanent residence and whose applications remain pending. (*Id.* ¶ 277.) Five named plaintiffs reside in the District of Minnesota. (*Id.* ¶ 8.) In the present motion, Defendants have moved for a transfer of venue to the United States District Court for the District of Columbia ("D.C. District Court").

Analysis

Under 28 U.S.C. § 1391(e), a civil action against an officer or employee may be brought in any judicial district in which (1) the defendant in the action resides, (2) a substantial part of the events or omissions giving rise to the claim occurred, or (3) the plaintiff resides. In the present matter, Plaintiffs assert that venue is proper in the District of Minnesota because several of them are Minnesota residents and events and omissions giving rise to their claim occurred in this judicial district. Because Plaintiffs only need satisfy one of these conditions, Defendants concede that venue is proper in this district. (Defs.' Supp. Mem. at 5.)

Where, as here, venue is proper, § 1404(a) permits a party to move the district court to transfer a case to another judicial district. Transfer under § 1404(a) "should not be freely granted." *In re Nine Mile Ltd.,* 692 F.2d 56, 61 (8th Cir.1982). Instead, transfer is only appropriate if certain conditions are met: "For the convenience of the parties

and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). This statutory language encompasses three general factors: (1) the convenience of the parties, (2) the convenience of the witnesses, and (3) the interests of justice.[2] *Terra Int'l, Inc. v. Mississippi Chemical Corp.,* 119 F.3d 688, 691 (8th Cir.1997). The Court's consideration, however, is not limited to these factors and may be based upon a case-by-case evaluation of the particular circumstances at hand. *Id.* The party seeking transfer bears the burden showing that the balance of factors "strongly" favors the movant. *United Mortgage Corp. v. Plaza Mortgage Corp.,* 853 F.Supp. 311, 315 (D.Minn.1994) (Doty, J.). Here, Defendants move to transfer venue to the D.C. District Court on the grounds that this action has a tenuous connection with Minnesota and involves issues that are national in scope.

2 While Defendants analyze this action under the framework laid out by the D.C. Circuit and provide ample citations to D.C. District Court, the Court notes that it is bound by caselaw of the circuit in which it is situated, to wit, the *Eighth* Circuit.

***2** Defendants have not demonstrated that the convenience of the parties requires a transfer. Section 1404(a) provides for transfer to a more convenient forum, "not to a forum likely to prove equally convenient or inconvenient, and a transfer should not be granted if the effect is simply to shift the inconvenience to the party resisting the transfer." *Graff,* 33 F.Supp.2d at 1121 (citing *Van Dusen v. Barrack,* 376 U.S. 612, 646 (1964)). While Defendants argue that the relevant papers concerning the administration and oversight of the asylees adjustment process are located in the D.C. District Court, Defendants also concede that "the consolidation of the dispensation of adjustment numbers" is done at the Nebraska Service Center. (Defs.' Supp. Mot. at 6.) These documents, at the heart of the present matter, would have to be transferred to the D.C. District Court even if Defendants' motion were granted. Defendants have come forward with no evidence explaining why they could easily transfer these and other documents to the D.C. District Court but not to the District of Minnesota. Without affidavits or similar evidence to support the contention that the D.C. District Court would be more convenient for the *parties,* the Court is left with the impression that who a transfer of venue would really be convenient for is Defendants' *counsel.* Needless to say, that reason is insufficient to overcome the strong "presumption in favor of a plaintiff's choice of forums." *See K–Tel Int'l, Inc. v. Tristar Products, Inc.,* 169 F.Supp.2d 1033, 1045 (D.Minn.2001) (Frank, J.) (citing *Christensensen Hatch Farms, Inc. v. Peavy Co.,* 505 F.Supp. 903, 911 (D.Minn.1981) (Renner, J.)).

Likewise, Defendants have not demonstrated that a transfer to the D.C. District Court would enhance the convenience of witnesses. The party seeking the transfer must clearly specify the essential witnesses to be called and must make a general statement of what their testimony will cover. *Nelson v. Master Lease Corp.,* 759 F.Supp. 1397, 1402 (D.Minn.1991) (MacLaughlin, J.) (citing Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3851 at 425). In determining the convenience of the witnesses, the Court must examine the materiality and importance of the anticipated witnesses' testimony and then determine their accessibility and convenience to the forum. *Reid–Walen v. Hansen,* 933 F.2d 1390, 1396 (8th Cir.1991). Here, Defendants have not produced any evidence by which the Court could conduct this analysis. Defendants neither identify their prospective witnesses nor describe what their testimony might be.[3] Instead, Defendants assert that their witnesses will be "officers and employees of the government." (Defs.' Rep. Mem. at 4.) This appears to represent a fairly large pool of potential witnesses–including government employees already located in the District of Minnesota–and does not provide anything close to the level of specificity required for the Court to balance the hardships on non-party witnesses. Accordingly, Defendants have failed to carry their burden as to this factor.

3 Plaintiffs have indicated they are unlikely to call non-party witnesses (*see* Pls.' Opp'n Mem. at 6.)

***3** Finally, Defendants argue that a transfer to the D.C. District Court serves the interests of justice. The interest of justice factor is weighted very heavily. *Radisson Hotels Int'l, Inc. v. Westin Hotel Co.,* 931 F.Supp. 638, 641 (D.Minn.1996) (Kyle, J.). Among the considerations that may be relevant in analyzing this factor are the relative familiarity of the two courts with the law to be applied, the relative abilities of the parties to bear the expenses of litigating in a distant forum, judicial economy, the plaintiff's choice of forum, obstacles to a fair trial, and each party's ability to enforce a judgment. *See Terra,* 199 F.3d at 696. Defendants do not argue that any of these factors require a transfer; rather, they assert that the D.C. District Court is best positioned to handle issues that are "national in scope." (Defs. Supp. Mem. at 2.) As Defendants' Memorandum states, "the District of Columbia has a greater degree of interest in ensuring that government officials within its district are complying with the Constitution and laws of the United States." (Defs.' Supp. Mem. at 8.)[4]

4 Defendants' argument, in pertinent part, is as follows:
> If a court were to grant relief to Plaintiffs, which it should not, the relief should be administered, and therefore monitored by a judicial district in which

> the INS headquarters is situated, to wit, the United States District Court for the District of Columbia. Finally, pre-trial matters concerning Defendants' witnesses and papers may be readily addressed with access to a local forum, to wit, the United States District Court for the District of Columbia. Accordingly, the District of Columbia has a greater degree of interest in ensuring that government officials within its district are complying with the Constitution and laws of the United States.
>
> (Defs.' Supp. Mem. at 8.)

Defendants' argument here is devoid of citation and common sense. This Court has precisely the same "degree of interest" as the D.C. District Court in ensuring the government and its officials "are complying with the Constitution and laws of the United States."[5] Whether this is a responsible argument for the Department of Justice to make is a matter for others to consider. It is sufficient here to state that while the existence of a national policy issue that may involve testimony by policymakers is a factor that may be considered by the district judge in determining whether transfer is appropriate under § 1404(a), it must be weighed against other factors such as the preference given the plaintiff's choice of forum. *See Starnes v. McGuire,* 512 F.2d 918, 929 (D.C.Cir.1974). Where, as here, Defendants fail to list the policymakers who might be called to testify, to indicate where they are located, and to outline their expected testimony, such a bare showing cannot upset the traditional presumption granted Plaintiffs' choice of forum. Because Defendants have failed to demonstrate that a transfer would do anything other than "shift the inconvenience to the party resisting the transfer," *Graff,* 33 F.Supp.2d at 1121, they have not demonstrated that the balance of factors strongly supports a transfer.

[5] That "degree of interest" is not affected by the residence of the affected government officials.

Conclusion

Based on the foregoing, and all of the files, records, and proceedings herein, IT IS ORDERED that Defendants John Ashcroft, United States Attorney General, James Ziglar, Commissioner of the Immigration and Naturalization Service, and Immigration and Naturalization Service's Motion for Transfer (Doc. 13) is DENIED.