Akhtar v. Burzynski

United States District Court for the Central District of California, Southern Division
October 21, 2002, Decided ; October 21, 2002, Filed; October 22, 2002, Entered
CASE NO. SACV 02-0245 DOC (ANx)

Reporter: 2002 U.S. Dist. LEXIS 27282

Burhan Akhtar, Rechy Monzon Sese, and Emerson Angeles, Plaintiffs, v. James J. Burzynski, District Director of the Missouri Service Center of the Immigration and Naturalization Service; The Immigration and Naturalization Service; James Ziglar, Commissioner of the Immigration and Naturalization Service; and John Ashcroft, Attorney General of the United States, Defendants.

Subsequent History: Reversed by, Remanded by Akhtar v. Burzynski, 2004 U.S. App. LEXIS 20768 (9th Cir. Cal., Oct. 5, 2004)

Disposition: [*1] Plaintiffs' motion for summary judgment denied and Defendants' cross-motion for summary judgment granted.

Counsel: For Burhan Akhtar, Rechy Monzon Sese, Emerson Angeles, Plaintiffs: Robert J Dupont, LEAD ATTORNEY, Robert L Reeves & Associates, Pasadena, CA.

For Immigration and Naturalization Service, James Ziglar, John Ashcroft, Defendants: Assistant US Attorney SA-CR, Assistant US Attorney SA-CV, LEAD ATTORNEYS, AUSA - Office of US Attorney, Santa Ana, CA.

For Immigration and Naturalization Service, James Ziglar, John Ashcroft, James J Burzynski, Defendants: Katherine M Hikida, LEAD ATTORNEY, AUSA - Office of US Attorney, Los Angeles, CA.

For JAMES J. BURZYNSKI, Federal Defendants: DEBRA W. YANG, United States Attorney, LEON W. WEIDMAN, KATHERINE M. HIKIDA, Assistant United Attorneys, Los Angeles, California.

Judges: DAVID O. CARTER, United States District Judge.

Opinion by: DAVID O. CARTER

Opinion

ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Before the Court is Plaintiffs Burhan Akhtar, Rechy Monzon Sese, and Emerson Angeles' motion for summary judgment and Defendants James J. Burzynski, The Immigration and Naturalization [*2] Service, James Ziglar, and John Ashcroft's cross-motion for summary judgment. After reviewing the papers submitted in this matter, and for the reasons set forth below, the Court DENIES Plaintiffs' motion and GRANTS Defendants' motion for summary judgment.

I. BACKGROUND

A. General Background

United States citizens and lawful permanent residents may request a visa petition on behalf of specified relatives to gain them lawful permanent residency in the United States. The application form is known as the Form I-130 and its filing date is generally used to determine priority for obtaining a visa. It often takes several years after a Form I-130 is filed for the applicant to get a visa number, as the number of family-sponsored immigrants that are granted visas each year is strictly limited. [1] Congress has therefore set up a detailed system to govern visa petitions and numbers, with preference categories for different types of relatives.

[*3] The first preference category is for unmarried sons and daughters of United States citizens. [2] The second preference category, which is the subject of this action, relates to the family of legal permanent residents. It is divided into two subsections. *See generally* 8 U.S.C. § 1153(a)(2). The "2A" subcategory is for the spouses and children of lawful permanent resident aliens. 8 U.S.C. § 1153(a)(2)(A). Children are defined as unmarried and under the age of twenty-one. *8 U.S.C. § 1101(b)(1)*. The second subcategory, "2B," is for unmarried sons and daughters over the age of twenty-one of lawful permanent resident aliens. 8 U.S.C. § 1153(a)(2)(B). If a child in 2A

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[1] 8 U.S.C. § 1151(c)(1)(A) limits the total worldwide number of family-sponsored immigrants to 480,000 per fiscal year.

[2] Immediate relatives of United States citizens-spouses, parents, and children under the age of twenty-one--are eligible for immediate immigrant visas and are not placed in a preference category.

turns twenty-one before a visa number becomes available, then he or she is transferred to the 2B waiting list. *See*8 C.F.R. § 204.2(i)(2). A third preference category is for married sons and daughters of United States citizens and a fourth for the brothers and sisters of United States citizens. Married sons and daughters of legal permanent residents are not placed in any preference category. Thus, if an [*4] unmarried son or daughter on the 2B list marries, his or her petition is automatically revoked. 8 C.F.R. § 205.1.

The Department of State administers a waiting list based upon these preference categories and the quotas set by Congress. Each month the Department issues a Visa Bulletin apprising applicants of the approximate waiting period for a visa number. The Bulletin publishes the cut-off date for receiving a visa number for each country. For example, the June 2002 Bulletin shows that visa numbers are available to preference category 2A applicants with a priority date earlier than March 1, 1997 for all countries except the Philippines (March 15, 1997) and Mexico (November 8, 1994). In other words, individuals in category 2A currently wait five years for a visa number.

In December 2000, President [*5] Clinton signed two separate bills encompassing the Legal Immigration Family Equity Act (LIFE) Act, which were approved by Congress in November of that year. Among other provisions, the LIFE Act added *8 U.S.C. § 1101(a)(15)(V)* which grants some family members a temporary visa, known as the V-Visa, to enter the country while they await their visa number. Individuals eligible for V-Visas are those that meet the definition of preference category 2A. *See8 U.S.C. § 1101(a)(15)(V)* (granting the temporary visa to "an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 1153(d)of this title) of a petition to accord a status under section 1153(a)(2)(A) of this title"); *see also*8 U.S.C. § 1153(a)(2)(A) (defining as qualified immigrants those "who are the spouses or children of an alien lawfully admitted for permanent residence"). Again, category 2A consists of spouses or children, under the age of twenty-one, of legal permanent residents.

V-Visa holders are entitled to a number of benefits, including employment authorization while they reside in the United [*6] States. *See*8 U.S.C. § 1184(q)(1)(A). The period of authorized admission terminates thirty days after one of the following petitions or applications is denied: (1) the visa petition filed under 8 U.S.C. § 1154, to accord a status under section 8 U.S.C. § 1153(a)(2)(A), (2) the immigrant visa application, or (3) the application for adjustment of status. 8 U.S.C. § 1184(q)(1)(B).

The LIFE Act took effect on December 21, 2000 and on April 16, 2001, the Department of State issued interim regulations, permitting consular officers to begin issuing V-Visas. *See generally* Visas: Nonimmigrant Classes; Legal Immigration Family Equity Act Nonimmigrants, V and K Classification (V and K Classification), 66 Fed. Reg. 19390-01 (Apr. 16, 2001). The Department of State addressed one potential age problem with the V-Visas. The Department was asked whether those who were eligible for V-Visas but who "aged-out" by reaching twenty-one would receive a V-Visa. V and K Classification, 66 Fed. Reg. 19390-01 at 19391. The answer was: "No. V-Visa classification clearly limits the class [*7] of qualifying aliens to beneficiaries of the Family 2A immigrant visa preference … The law only authorizes the issuance of visas to children who meet the INA definition of child. This rule reflects that limitation." In regard to the validity period of the V-Visa, the Department stated it would "issue visas to qualified applicants for the usual maximum full validity period of ten years, subject to issuance for a shorter period due to the possibility of age-out …."*Id.*

The INS subsequently developed regulations to address these issues. Title 8, section 214.15 of the Code of Federal Regulations states: "An alien admitted to the United States in V-2 or V-3 nonimmigrant status (or whose status in the United States is changed to V-2 or V-3) will be granted a period of admission not to exceed 2 years or the day before the alien's 21st birthday, whichever comes first." 8 C.F.R. § 214.15(g)(2). The Code sets forth a procedure for extending the V nonimmigrant status. Aliens may submit a Form I-539 request for extension of status but it will only be granted to aliens "who remain eligible for V nonimmigrant status for a period not to exceed [*8] 2 years, or in the case of a child in V-2 or V-3 status, the day before the alien's 21st birthday, whichever comes first." 8 C.F.R. § 214.15(g)(3). Likewise, V-Visa holders may apply for employment authorization but, under the INS regulations, it will only be granted to those who remain eligible for V nonimmigrant status. 8 C.F.R. § 214.15(h). A son or daughter of a legal permanent resident that is over the age of twenty-one is not eligible for V nonimmigrant status.

B. Plaintiffs' Background

Plaintiff Burhan Akhtar is a native and citizen of Pakistan. He entered the United States on August 15, 2001, four days before his twenty-first birthday on August 19, 2001. Plaintiff Rechy Monzon Sese is a native and citizen of the Philippines. He entered the United States on July 14, 2001, about two months prior to his twenty-first birthday on September 25, 2001. Plaintiff Emerson Angeles is also a native and citizen of the Philippines. He entered the United States on August 14, 2001, the day before his twenty-first birthday.

Family members for all three Plaintiffs filed I-130 forms on their behalf, seeking visas to enter this country. [*9]

All three were under the age of twenty-one, and thus in preference category 2A, when the forms were originally filed: on September 3, 1997 for Burhan Akhtar, on October 8, 1996 for Rechy Monson Sese, and on May 8, 1997 for Emerson Angeles. All three entered the country under the V-Visa procedures of the LIFE Act shortly before their twenty-first birthdays. After entering the United States, and reaching the age of twenty-one, Plaintiffs applied for work authorization that is granted to holders of V-Visas. *See*8 C.F.R. § 214.15(h). The INS denied their applications on the basis that they had reached the age of twenty-one, [3] stating in two of the three denials: "You are now over 21 years old and no longer meet the definition of "child" in *Section 101(b) of the Act*. For this reason, this application cannot be approved, and must be denied. There is no appeal to this decision. This decision is final." (*See* Defs.' Mot. for Summ. J. Ex. C.) The INS has stated that Plaintiffs have overstayed their authorized period of admission and concedes that any Form I-539 application for an extension of stay would be denied. *See*8 C.F.R. § 214.15(g)(3) [*10] .

Plaintiffs claim that INS regulations terminating V-Visa benefits when the V-Visa holder reaches the age of twenty-one are contrary to the intention of the LIFE Act and deprive them of their *Fifth Amendment* right to due process. Plaintiffs contend that the LIFE Act only provides for the termination of a V-Visa in three specified circumstances, none of which refer to reaching the age of majority. Therefore, Plaintiffs request a judicial declaration that the INS regulations provide an incorrect interpretation and implementation of the LIFE Act and that denial of an application for employment authorization or any other limit on the V-Visa based upon reaching the age of twenty-one is contrary to and inconsistent with the *Fifth Amendment* and the *Immigration and Naturalization Act*. Additionally, Plaintiffs seek injunctive relief compelling Defendants to approve [*11] Plaintiffs' employment authorization applications, extending the term of Plaintiffs' V-Visas, and allowing Plaintiffs to remain temporarily in the United States awaiting the approval of their visa petitions.

II. LEGAL STANDARD

Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(c)*.

The Court must view the facts and draw inferences in the manner most favorable to the non-moving party. *United States v. Diebold, Inc.,* 369 U.S. 654, 655, 8 L. Ed. 2d 176, 82 S. Ct. 993, 994 (1962). However, the existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; to defeat the motion, the non-moving party must affirmatively set forth facts showing there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248-49, 91 L. Ed. 2d 202, 106 S. Ct. 2505, 2510 (1986). The moving party bears the initial burden [*12] of demonstrating the absence of a genuine issue of material fact for trial. *Id.* at 256, 106 S. Ct. at 2514. When the non-moving party bears the burden of proving the claim or defense, the moving party can meet its burden by pointing out the absence of evidence of a genuine issue of material fact from the non-moving party. *Musick v. Burke,* 913 F.2d 1390, 1394 (9th Cir. 1990). The moving party need not disprove the other party's case. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323-25, 91 L. Ed. 2d 265, 106 S. Ct. 2548, 2553-54 (1986).

III. DISCUSSION

A. Review of Agency Regulations

"Substantial deference is accorded to the interpretation of the authorizing statute by the agency authorized with administering it." *Rust v. Sullivan,* 500 U.S. 173, 184, 114 L. Ed. 2d 233, 111 S. Ct. 1759, 1767 (1991). The interpretation need not be the only construction the agency could have used or even the one the court would have used. *Id.* Rather, the court should uphold the agency's interpretation if it is a "plausible construction of the plain language of the statute and does not otherwise conflict with Congress' expressed intent."*Id.* Thus, the INS's [*13] interpretation is "entitled to great deference and should be accepted unless demonstrably irrational or clearly contrary to the plain and sensible meaning of the statute." *Olivares v. INS,* 685 F.2d 1174, 1177 (9th Cir. 1982) (upholding INS and Department of State regulations involving visa quotas); *see also Coronado-Durazo v. INS,* 123 F.3d 1322, 1324 (9th Cir. 1997). A court's review should include the language of the statute, its legislative history, and its underlying purpose. *See Olivares,* 685 F.2d at 1177; *see also Chevron USA Inc. v. Natural Res. Def. Council, Inc.,* 467 U.S. 837, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984).

B. Language of Statute

If the plain meaning of the statute is unambiguous, then it is controlling. *Coronado-Durazo,* 123 F.3d at 1324. If the statute is silent or ambiguous on an issue, then the court grants deference to the agency interpretation.*Id.*

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[3] Akhtar's application was denied on December 14, 2001, Angeles' application on October 19, 2001, and Sese's application was denied on September 26, 2001.

A V-Visa holder is defined as "an alien who is the beneficiary … of a petition to accord a status under section 1153(a)(2)(A) …." *8 U.S.C. § 1101(a)(15)(V)*. Section 1153(a)(2)(A) refers to individuals in preference [*14] category 2A. *See*8 U.S.C. § 1153(a)(2)(A). Thus, only those that meet the criteria for preference category 2A are eligible for V-Visas. When a 2A son or daughter reaches the age of twenty-one, he or she is no longer the beneficiary of a 2A petition, but is transferred to the 2B preference category and waiting list. Thus, it follows that upon reaching the age of twenty-one, the alien is no longer eligible for a V-Visa. The LIFE Act also provides that the Attorney General shall provide employment authorization to a "nonimmigrant described in *section 1101(a)(15)(V)* … during the period of authorized admission." 8 U.S.C. § 1184(q). Only those eligible for a V-Visa, i.e. those in category 2A, shall be provided with employment authorization during their period of authorized admission.

Plaintiffs do not dispute the general assertion that only those in category 2A are eligible for entry with a V-Visa and they do not argue that those over twenty-one should receive a V-Visa to enter the United States. Rather, they argue that if an individual is at one time eligible for a V-Visa, the visa should not be revoked when the individual reaches the [*15] age of twenty-one. Instead, the individual should be allowed to remain in the United States until he or she receives his or her visa number. Although this may be preferential for the families and the individual immigrants, the INS's current interpretation has sufficient support in the language of the statute.

The V-Visa is only available to those under the age of twenty-one and, as the Government points out, to grant work authorization or other benefits to an individual in category 2B would go beyond the statute's explicit authorization. Employment authorization shall be accorded to those described in *section 1101(a)(15)(V)*, those individuals in category 2A. It is not arbitrary or against the plain-meaning of the statute to end a V-Visa holder's authorized admission on his or her twenty-first birthday.

Plaintiffs contend that because the LIFE Act lists three ways of terminating a V-Visa, any other termination of the visa is contrary to the statute. This argument is unpersuasive. The statute merely states that if one of these three applications is denied-the underlying visa petition, the immigrant visa application made pursuant to the petition, or the application for adjustment of [*16] status - the V-Visa terminates within thirty days. *See*8 U.S.C. § 1184(q)(1)(B). This does not preclude other limitations on the V-Visa status and is silent as to the possibility of the V-Visa holder reaching the age of majority. Thus, the INS's limitation on the duration of the V-Visa is not directly contrary to the statute nor is it irrational in the context of the explicit termination provisions.

Finally, Plaintiffs point to the new Child Status Protection Act (CSPA), enacted August 6, 2002. H.R. 1209, 107th Cong. (2002) (enacted). It addresses the Plaintiffs' "age-out" problem in limited circumstances. In determining whether or not the son or daughter of a legal permanent resident qualifies as a "child," the statute requires the INS to take "the age of the alien on the date on which an immigrant visa number becomes available for such alien … but only if the alien has sought to acquire the status of an alien lawfully admitted for permanent residence within one year of such availability; reduced by the number of days in the period during which the applicable petition described in paragraph (2) was pending." 8 U.S.C. § 1153(h)(1). [*17] For those in category 2A, the relevant petition is the "petition filed under section 1154 of this title for classification of an alien child under subsection (a)(2)(A) of this section." 8 U.S.C. § 1153(h)(2). This is the Form I-130 visa petition.

Plaintiffs argue that the CSPA thus reduces their "legal age" to approximately sixteen (as each of them filed their Form I-130 visa petitions about five years ago), making them children under the terms of the LIFE Act and eligible for V-Visa status. Plaintiffs misinterpret the CSPA. Plaintiffs assume that the petition is pending until they receive a visa number. The Department of Justice and the INS issued a Memorandum commenting on the new law. It explains that the petition is only pending until the Form I-130 is adjudicated, either approved or denied. (*See* Def.'s Opp'n to Mot. for Summ. J. Ex. E at 2.) The issuance of a visa number is separate from the grant or denial of the visa petition, referenced in the CSPA. Therefore, Plaintiffs' visa petitions were only pending until they were approved. Akhtar's petition, for instance, was filed on September 3, 1997 and approved on January 14, 1998. (*See* Dupont Decl. [*18] Ex. 5 (stating: "The above petition has been approved … this completes all INS action on this petition.").) Although his petition was filed over five years ago, Akhtar has not yet received his visa number. His visa petition, however, was pending for less than four months. Similarly, Sese's petition was pending for less than two months, from October 8, 1996 to November 26, 1996 when it was approved. (*Id.)*

Plaintiffs broad view of the CSPA and their assertions regarding "legal age" impermissibly expand the scope of the legislation. The CSPA requires the INS to determine the alien's age at the time a visa number becomes available and the alien has requested a change of status. *See*8 U.S.C.. § 1153(h)(1). Only at that point does the INS calculate the alien's age by reducing his or her age by the amount of time the visa petition was pending. *Id.* There is

no mention of V-Visas. The issuance of V-Visas and employment authorization to holders of V-Visas is completely separate from a petition for adjustment of status after receiving a visa number. The statute provides no guidance for extending this particular age calculation to the determination of V-Visa [*19] eligibility. Thus, the CSPA does not support Plaintiffs' contention that the INS regulations contradict the intent of the LIFE Act or other governing law. Instead, it may actually undermine Plaintiffs' argument. Passage of the CSPA shows that Congress was aware of the "age-out" problem but chose to address it in only limited circumstances, none of which involve the V-Visas.

C. Legislative History and Underlying Purpose

The INS regulations are also not contrary to Congress's expressed intent and the underlying purpose of the statute.

On December 15, 2000, Senators Spencer Abraham and Edward M. Kennedy published a Joint Memorandum Concerning the Legal Immigration Family Equity Act of 2000 and the LIFE Act Amendments of 2000. The Congressional Record states in relevant part:

> The original LIFE Act sought to address two problems. First, it sought to provide a new mechanism to address the problem created by the long backlog of immigrant visa applications for spouses and *minor children* of lawful permanent residents, who are currently having to wait many years for a visa to become available to them …. The LIFE Act creates a new temporary "V" visa under which these spouses [*20] (and their children) can come to the United States and wait for their visa here, if their immigrant petition has been pending for more than three years …. The purpose of the "V" and "K" visas is to provide a speedy mechanism by which family members may be reunited. We expect the Department of State and the INS to work together to create a process in keeping with the temporary nature of the visa that does not require potential beneficiaries to wait for months before their visas are approved.146 Cong. Rec. S11850-02, at S11851 (Dec. 15, 2000) (emphasis added).

In other legislative history, a House Report on the Activities of the Committee on the Judiciary states:

> There are more than one million spouses and *minor children* of permanent resident aliens who are on a waiting list for the limited number of immigrant visas available to them each year. Currently, they must wait for up to six years for visas to become available, making them endure long separations from their loved ones (as they generally cannot visit the United States while on the waiting list). The Attorney General may grant V visa holders work authorization. If the immigrant's visa petition, application [*21] for immigrant visa, or adjustment of status application is denied, a V visa holder's period of authorized admission ends 30 days after the denial. Entry without admission, unlawful presence, and certain other grounds for inadmissibility do not apply to V visa applicants.H.R. Rep. No. 106-1048, at 171 (Jan. 2, 2001) (emphasis added).

Clearly, the purpose of the LIFE Act is to reunite families as they await visa numbers and permanent entry into the United States. Equally clear is the fact that spouses and minor children, not children over the age of twenty-one, were Congress's primary focus when enacting the LIFE Act. Limiting admission to the period of minority is not contrary to the goal of reuniting minor children with their parents.

Plaintiffs cite to one other portion of the Congressional Record as support. In a December 15, 2000 session, Congressman John Conyers, Jr. stated: "We sought to restore section 245(i) of the Immigration Act. This would let *all immigrants* who have a legal right to seek permanent resident status to stay in this country with their families while they await a decision. Because Congress failed to extend section 245(i) in 1997, families who have [*22] a right to be together here in the United States are being torn apart for up to 10 years." 146 Cong. Rec. H12442-03, at 12499 (Dec. 15, 2000) (emphasis added). The Congressman continued, noting that the legislation is limited because it only extends section 245(i) for four months instead of the desired action, reinstatement. *Id.*

In light of the more detailed and in-depth statements in the House Report and Joint Memorandum, this piece of legislative history is not especially persuasive. It generally references "all immigrants" but even Plaintiffs concede that not all immigrants awaiting permanent resident status are eligible for V-Visas. This broad reference to the LIFE Act's purpose will thus be accorded little weight in regard to the intricacies of who, when and for how long individuals may remain in the country will awaiting a decision. Further, this statement was made in the context of the Representative's opposition to the LIFE Act and

related legislation because it "failed to correct some of the most basic inequities in our immigration code." *Id.* This too undermines the Court's reliance on the Congressman's statement as an accurate reflection of the purpose, intent and [*23] reach of the LIFE Act.

D. Conclusion

1. Invalidity of Regulations

The INS regulations terminating V-Visa eligibility and related benefits when the V-Visa holder reaches the age of twenty-one are not contrary to either the language of the statute or the legislative purpose as evidenced by the Congressional Record. Unquestionably, Congress sought to reunite families during the long and frustrating wait for a visa. Yet, it is equally clear that Congress was primarily concerned with spouses and minor children. The statute itself distinguishes between children over and under the age of majority, limiting initial V-Visa eligibility to those under the age of twenty-one. This is a rational, common-sense distinction. Minor children are more in need of their parents' protection and support than adult children. The INS regulations simply fill in a gap left by Congress-what to do with those that were eligible for V-Visas but reach the age of majority before their priority date for a visa number is reached. Although it may mean that individuals are only granted limited entry, the V-Visa program is only a temporary salve for limited groups. Despite some of the broad Congressional language, [*24] it was never meant to allow full family reunification or to completely solve the problem of the lengthy waits for a permanent visa.

The Court, therefore, upholds the INS regulations. Plaintiffs' claims challenging the validity of the regulations fail as a matter of law.

2. Due Process Claim

The United States has broad authority to regulate in the area of immigration. *E.g., Walters v. Reno,* 145 F.3d 1032, 1037 (9th Cir. 1998). It is also well-established, however, that aliens facing the possibility of deportation are entitled to due process rights under the *Fifth Amendment*. *Id.* As the Court stated in *Landon v. Plasencia,* "once an alien gains admission to our country and begins to develop the ties that go with permanent residence his constitutional status changes accordingly." 459 U.S. 21, 32, 74 L. Ed. 2d 21, 103 S. Ct. 321, 329 (1982). Resident aliens "stand[] to lose the right 'to stay and live and work in this land of freedom.'" *Id.* at 34, 103 S. Ct. at 330 (quoting *Bridges v. Wixon,* 326 U.S. 135, 154, 89 L. Ed. 2103, 65 S. Ct. 1443, 1452 (1945)).

Plaintiffs due process argument is limited to the premature concern that they be accorded [*25] the right to appear before an Immigration Judge for deportation proceedings. [4] It does not appear from either Plaintiff's motion for summary judgment or their related reply that Plaintiffs seriously contest the V-Visa procedures. *(See* Pls.' Mot. for Summ. J. & Reply to Summ. J. (no mention of due process claim).) There is one reference to an insufficient basis to appeal the unjustified denial of benefits in Plaintiffs opposition to Defendants' motion for summary judgment. *(See* Pls.' Opp'n to Defs.' Mot. for Summ. J. at 11.) Plaintiffs' sole claim, however, is the invalidity of the INS regulations. This issue has been raised and considered by this Court. Without more guidance from Plaintiffs, the Court cannot properly analyze or even divine a separate due process claim. There is not genuine issue of material fact in relation to Plaintiffs' due process claim and summary judgment for Defendants is appropriate on this claim as well.

[*26] **IV. DISPOSITION**

For the reasons set forth above, the Court DENIES Plaintiffs' motion for summary judgment and GRANTS Defendants' cross-motion for summary judgment.

IT IS SO ORDERED.

DATED: October 21, 2002

DAVID O. CARTER

United States District Judge

PROOF OF SERVICE BY MAIL

I am over the age of 18 and not a party to the within action. I am employed by the Office of United States Attorney, Central District of California. My business address is 300 North Los Angeles St., Ste. 7516, Los Angeles, CA 90012. On August 23, 2002, I served a copy of: JUDGMENT GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [PROPOSED] on each person or entity named below by enclosing a copy in an envelope addressed as shown and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary office practices. I am readily familiar with the practice, of this office for collection and processing correspondence for mailing. On the same day

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[4] Deportation proceedings have not yet been instituted and Plaintiffs have provided no basis for the suggestion that they would not be accorded sufficient due process when the proceedings are actually commenced. This is unrelated to the crux of Plaintiffs' argument, the invalidity of the V-Visa regulations.

that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

[*27] Date of mailing: August 23, 2002. Place of mailing: Los Angeles, California. Person(s) and/or Entity(s) to Whom mailed:

To: Robert J. Dupont, Esq.

Robert L. Reeves & Associates

2 North Lake Avenue, Suite 950

Pasadena, California 91101

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose directions the service was made. Executed on: August 23, 2002, in Los Angeles, California.

MARGARET BARCELA

JUDGMENT GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants' Motion for Summary Judgment having come on regularly for hearing on October 21, 2002, before this Court, and plaintiffs and federal defendants appearing through their counsel, this Court having considered the pleadings, evidence presented, and the oral argument at the time of the hearing, and in accordance with the Court's order of October 21, 2002 entered herein,

IT IS ORDERED, ADJUDGED, AND DECREED that defendants' Motion for Summary Judgment be, and hereby is GRANTED.

Costs are taxed in the amount of $

DATED: October 21, 2002.

David [*28] O. Carter

UNITED STATES DISTRICT JUDGE