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UNITED STATES DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

BOARD OF IMMIGRATION APPEALS

In The Matter Of:	Case No. A89-726-558
Ms. Jyoti R. PATEL	
(Petitioner)	
In Visa Certification Proceedings	

SUPPLEMENTAL BRIEF REGARDING THE APPLICATION OF SECTION 203(h)(3) OF THE IMMIGRATION AND NATIONALITY ACT

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I.

ISSUE PRESENTED FOR REVIEW

Whether, under section 203(h)(3) of the Immigration and Nationality Act ("INA"), Mr. Vishal Kumar Patel ("V. Patel"), as an adult beneficiary of a Petition for Alien Relative ("I-130"), is entitled to benefit from the priority date previously accorded to his mother, Ms. Jyoti R. Patel ("Ms. Patel"), on the Immigrant Petition for Alien Worker ("I-140") filed by Vimco Corporation ("Vimco") on her behalf.[1]

II.

STATEMENT OF JURISDICTION

The Board of Immigration Appeals ("Board") may review this petition pursuant to Title 8, Code of Federal Regulations ("C.F.R.") § 1003.1(c) This regulation permits any "duly authorized officer of the Service" to certify any case "arising under paragraph (b) of this section" to the Board. Id. The regulation at 8 C.F.R. § 1003.1(b)(5) permits appeals from decisions filed in accordance with section 204 of the Immigration and Nationality Act ("INA"). In this case, the I-130 arises under INA § 204 and has been certified by the Service Center Director, a duly authorized officer. Jurisdiction over this case is therefore proper.

III.

PROCEDURAL HISTORY

On February 24, 2006, Ms. Patel, a lawful permanent resident ("LPR"), filed an I-130 on behalf of V. Patel, her unmarried son. USCIS accorded that I-130 the priority date of the date of filing. On March 27, 2008, the Patels filed suit seeking relief related to their interpretation of INA § 203(h)(3), which would have granted them an earlier priority date.[2] Recognizing that the Board had issued several unpublished cases[3] addressing the application of INA § 203(h)(3), the parties agreed to dismiss the lawsuit in order to present the issue to the Board. The case was dismissed on June 20, 2008. In response to the June 25, 2008 Notice of Certification ("I-290C"), Ms. Patel filed both a brief and a request for oral

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[1] Ms. Patel's brief dated June 25, 2008 misstates, "[t]he instant petition should be given the priority date of the first I-130 petition where V. Patel was a derivative beneficiary." Petitioner Brief at 3.

[2] Patel v. Poulos, No. CV08-00292 (S.D..Ohio., dismissed June 20, 2008).

[3] Matter of Maria T. Garcia, A79-001-587 (BIA July 16, 2006) (unpublished); Matter of Elizabeth Francisca Garcia, A77-806-733 (BIA July 24, 2007) (unpublished); Matter of Francisco Drilon Yang, A79-638-092 (BIA September 7, 2007) (unpublished)); Matter of Stuti Chaitanya Patel, A88-124-902 (BIA April 18, 2008) (unpublished).

argument before the Board. On July 21, 2008, USCIS filed a motion before the Board requesting a precedent decision, oral argument, consideration by a three-member panel, and permission to submit a supplemental brief. USCIS submits this agency brief in order to address the inadequacies of Ms. Patel's interpretation of INA § 203(h), as well as to explore the proper statutory application of INA § 203(h) in light of the appropriate interpretive and historical context of the Child Status Protection Act ("CSPA").

IV.

STATEMENT OF FACTS

On January 16, 1998, Vimco filed an Application for Alien Employment Certification ("ETA-750") on behalf of Ms. Patel. The ETA-750 was approved on August 14, 2000. The subsequent I-140, filed June 2, 2003, was accorded a priority date of January 16, 1998. On June 2, 2003, Ms. Patel also filed an Application to Register Permanent Resident or Adjust Status ("I-485").[4] On both June 2, 2003, when the I-140 was filed, and November 19, 2003, when it was approved, V. Patel was eighteen years old, and the Department of State Visa Bulletin ("Visa Bulletin") indicated that the employment-based third preference immigrant visa was available.

Ms. Patel listed V. Patel as her child in "Part 3," section "B" of her I-485 and further indicated that V. Patel would apply for status with Ms. Patel. However, Ms. Patel failed to file an Application for Action on an Approved Application or Petition ("I-824")[5] on V. Patel's behalf within one-year of the approval of her I-140, as required by CSPA.[6]

On November 10, 2005, V. Patel turned 21 years of age. Three months later, on January 12, 2006, USCIS approved Ms. Patel's I-485.[7] Because V. Patel was over 21 at the moment of approval, he no longer satisfied the definition of "child" under INA § 101(b) and could not derive status. On April 25, 2007, V. Patel attempted to secure an immigrant visa as a following-to-join derivative beneficiary. The

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[4] V. Patel was born on November 10, 1984, and was 18 years old when the both the I-140 and the Form I-485 were filed.

[5] Department of State Guidance, Child Status Protection Act: ALDAC #2, Ref 02 State 163054, 123775 – in cases involving a derivative seeking to follow to join a principal who adjusted in the United States, the derivative can benefit from the CSPA if the principal filed a Form I-824 for the beneficiary within one year of a visa availability.

[6] Ms. Patel did not file the Form I-824 over 32 months after the I-140 was filed and the visa was available – and after V. Patel had turned 21 years old. See Patel's "Priority Date Retention Request" dated January 23, 2008.

[7] INA § 203(d) – if at the time of Plaintiff's adjustment, V. Patel qualified as a child pursuant to INA § 101(b), he would, "be entitled to the same status... if accompanying or following to join."

consulate denied his immigrant visa on April 25, 2007, finding that he had "aged out." The Patels have not challenged the Department of State's determination that V. Patel was not eligible as a following-to-join derivative beneficiary.

Meanwhile, in 2006, Ms. Patel had filed an I-130 on behalf of V. Patel. The I-130 she filed on February 24, 2006, classified V. Patel as the unmarried son of an LPR, a classification governed by the family based second preference "2B" visa category. In February of 2006, this subcategory of immigrant visas was only available for petitions with a priority date on or before July 1, 1996. Since a second-preference visa was unavailable to petitions with a 2006 priority date, V. Patel remained unable to immigrate to the United States.

On January 23, 2008, Ms. Patel submitted a written request that the I-130 filed on behalf of V. Patel retain the 1998 priority date previously accorded to her I-140. On June 4, 2008, USCIS issued a decision approving the I-130 filed by Ms. Patel on behalf of V. Patel, but denying the request that the I-130 be accorded the priority date from the Ms. Patel's old I-140. The August 2008 Visa Bulletin shows visa availability for petitions with priority dates preceding November 1, 1999. Accordingly, based upon the February 24, 2006 visa priority date granted to the I-130, a visa is not yet available for V. Patel.

V.

ARGUMENT

At issue are the scope and application of INA § 203(h)(3)'s age calculations and the benefits that flow to derivative beneficiaries. The technical framework is complex, but nonetheless clear, consistent, and unambiguous. Prior Board decisions, including Matter of Maria T. Garcia[8], have analyzed only selected parts of subsection (h). A full application and analysis are necessary in order to properly construe the statutory framework.

As the argument below explains in more detail, the correct interpretation of INA § 203(h) is that while most derivative beneficiaries may initially fit within the age-calculating provisions of the subsection, the CSPA age calculator has a limited time window once an immigrant visa becomes available. The priority date retention provisions are likewise limited to beneficiaries who (1) are entitled

[8] Matter of Maria T. Garcia, A79-001-587 (BIA July 16, 2006) (unpublished).

to use the age calculator, and (2) began as qualifying children (including derivative children) of LPRs under § 203(a)(2)(A) and subsection (d). This analysis falls squarely in line with the legislative history, similar provisions within CSPA, and the broader context of the INA.

Ms. Patel's decontextualized argument that the text of INA § 203(h)(3) broadly provides for the transfer of her I-140 priority date to her formerly derivative son's I-130 ignores the principles of statutory construction and advocates an absurdly overbroad result.

A. V. Patel does not meet the requirements of a § 203(h)(1) age determination because he failed to seek timely status.

V. Patel's case cannot survive the required analysis of § 203(h) because his situation lies outside the scope of the statute. Under certain circumstances, § 203(h) provides that beneficiaries may have their age determined via a formula that subtracts the time an "applicable petition" was pending. The statute specifically describes a wide range of petitions that are considered an "applicable petition" for age-counting purposes, including family- or employment-based petitions filed under INA § 204 for which the alien child is a derivative beneficiary. § 203(h)(2)(B). V. Patel clearly "was" a derivative beneficiary of the Vimco I-140, but whether he "is" a derivative beneficiary depends on the strictness of the Board's construction of such a phrase.

Assuming that V. Patel is, indeed, a derivative, the applicability of the I-140 petition to the age formula is the only requirement of § 203(h) that V. Patel might meet. The statute unequivocally states that the alien's age on the date when an immigrant visa number became available may be taken into account "only if the alien has sought to acquire the status of an alien lawfully admitted for permanent resident status within one year of such availability." § 203(h)(1)(A) (emphasis added). As acknowledged by Ms. Patel's brief, V. Patel did not seek status in a timely manner,[9] but instead filed the I-824 on February 24, 2006, almost 20 months after the time limit. [10] Therefore, V. Patel does not meet the requirements of subparagraph (h)(1)(A), so there is no starting age from which to deduct the pendency of

[9] "Subsequently, an I-824 (application for action on an approved application or petition) was filed on behalf of V. Patel. However, [V. Patel] was no longer eligible for an immigrant visa because he was over 21." Petitioner's Brief at 2.

[10] One year from the date of visa availability would have been June 2, 2004

any "applicable petition" that (h)(2)(B) might afford him, and he cannot benefit from the age calculation that would have allowed him to accompany or follow-to-join his mother.[11]

B. The text of § 203(h)(3) limits priority date retention only to those seeking conversion of (a)(2)(A) and (a)(2)(A) derivatives.

Even if the age determination were made and Mr. Patel would be found to be over 21, the plain text of the statute precludes his priority date retention and category conversion. Ms. Patel's contention that I-140 derivatives may retain priority dates under subparagraph (h)(3) skips the required analysis and impermissibly ignores or distorts the plain text.

Age determinations under § 203(h)(3) are made "for purposes of subsection (a)(2)(A) and (d)." This phrase begins the very first sentence of § 203(h)(1) and is reiterated in the priority date retentions of § 203(h)(3). Its meaning must therefore be analyzed and applied.

Given the unambiguous indication that § 203(h) has some tight limits, the issue turns to the scope of those limits. Despite its difficulties, the "for purposes of subsections (a)(2)(A) and (d)" in § 203(h)(3) is unambiguous and cannot be glossed over or ignored. Under ordinary canons of statutory construction, "and" is to be read as conjunctive and every phrase must be given meaning and full effect.[12] Departure from these principles may be justified where other jurisprudential principles may prevail..

A close reading of "for purposes of subsections (a)(2)(A) and (d)" in § 203 (h)(3) makes clear that only a limited subclass of derivative beneficiaries will ultimately benefit from priority date retention. The statute does not say "(a)(2)(A) or (d)." Instead, the use of "and" strongly indicates that only those whose classifications are related to the 2A preference are eligible for priority date retention.

A short examination of three of Congress' alternatives is instructive. First, in setting this limit, it is true that Congress could have omitted the "(d)," imposing the strict limit of allowing only 2A

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[11] Furthermore, because V. Patel failed to seek to acquire status within one year, he may not be entitled to seek the benefit of a retained priority date.

[12] See, e.g., In re First Magnus Financial Corp., 390 B.R. 667 (Bankr. D. Ariz. June 20, 2008) (quoting 2A Sutherland Statutes and Statuory Construction § 47:27 (Thomson Reuters/West 7th ed. 2008))

beneficiaries to convert. However, this would cut off families who, for example, filed one 2A-preference I-130 for a spouse and, instead of filing separately for the children, added them as derivatives under (d). The conjunctive language allows for the possibility, under INA § 203(a)(2)(A), that the child of an LPR may be a primary or derivative beneficiary of a petition. Finally, in promulgating subparagraph (h)(4), which applies the prior three paragraphs of § 203(h) to self-petitioners, Congress could have specified which self-petitioners were covered. This was not necessary because this provision refers only to derivative VAWA claims, which, read in conjunction with § 204(a)(1)(D)(i)(III), turns former derivative abused children of LPRs into self-petitioners.[13] Ms. Patel's expansive interpretation ignores so much of the plain text that it cannot be considered reasonable.

C. An expansive interpretation of § 203(h) is inconsistent with other statutory and regulatory provisions.

1. INA § 203(h)(3) Codifies Existing Regulation and Agency Practice

INA § 203(h)(3) instructs that the conversion of "the alien's petition" will take place automatically, and that the alien shall retain the original priority date issued upon receipt of the original petition." Agency regulations further illustrate the narrow scope of the statute. When compared, INA § 203(h)(3) and 8 C.F.R. § 204.2(a)(4) bear striking similarities. The respective sections provide in pertinent part:

> RETENTION OF PRIORITY DATE.–If the age of an alien is determined under paragraph (1) to be 21 years of age or older **for the purposes of subsection (a)(2)(A) and (d), the alien's petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition.** INA § 203(h)(3) (emphasis added)

> Derivative beneficiaries. **A child accompanying or following to join a principal alien under section 203(a)(2) of the Act** may be included in the principal alien's second preference visa petition. The child will be accorded second preference classification and the same priority date as the principal alien. However, **if the child reaches the age of 21 prior to the issuance of the visa to the primary alien parent, a separate petition will be required. In such case, the original priority date will be retained if the subsequent petition is filed by the same petitioner.** Such retention of priority date will

[13] A parallel provision is found for children of citizens at § 201(f)(4).

be accorded only to a son or daughter previously eligible as a derivative beneficiary under a second preference spousal petition. 8 C.F.R. § 204.2(a)(4) (emphasis added).[14]

INA § 203(h)(3) is essentially the codification of an established regulatory practice. The language of "for the purposes of (a)(2)(A) and (d)" is remarkably similar to the preexisting language of 8 C.F.R. § 204.2(a)(4), which addresses the derivative beneficiaries of petitions filed under INA § 203(a)(2)(A). Previously under the regulation, an intending immigrant child could be included as a derivative on a petition filed for a spouse under INA § 203(a)(2)(A). If, however, the child turned 21 years old before the primary intending immigrant spouse gained status, that aged-out child would be able to retain the priority date of the INA § 203(a)(2)(A) petition by the mere filing of a subsequent petition. This clause within INA § 203(h)(3) reflects the language of the regulations which provide that "the original priority date will be retained if the subsequent petition is filed by the same petitioner."

This interpretation of INA § 203(h)(3) avoids the difficulty of identifying the "appropriate category" when considering the automatic conversion which is related to the relationship between the petitioner and the beneficiary. In the case of a derivative child under INA § 203(a)(2)(A), who aged out and was ineligible for a derivative benefit under INA § 203(d), such son or daughter may otherwise proceed based upon their relationship as an unmarried son or unmarried daughter under INA § 203(a)(2)(B), while still retaining the precise familial relationship with the petitioner.

3. CSPA's limited extension of processing times and conversion to a small subclass does not override the interest of granting visas in the order and the category in which petitions were filed:

V. Patel's circumstances are not addressed or ameliorated by INA § 203(h)(3). Even though we have already shown why Ms. Patel cannot even reach § 203(h)(3), Ms. Patel wishes us to adopt an interpretation where any alien who is over 21 years old may benefit from its priority date retention provisions. INA § 203(h)(3) instructs that the conversion of "the alien's petition" will take place automatically, and that the alien shall retain the original priority date issued upon receipt of the original petition."

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[14] First introduced on August 19, 1991 (56 FR 41084)

The first clash with this interpretation that the I-130 will automatically convert, which leaves open-ended policy implications concerning timeliness. Here, Ms. Patel seemingly urges the utilization of the I-130 filed for V. Patel as a means of revitalizing an approved I-140 for which immigrant status was available or perhaps, stranger still, the "conversion" of an employment-based I-140 into a family-based I-130. Such treatment of the subsequent I-130 not only ignores the visa category friction described below, but it also raises concerns including whether time limitations condition the clause "the alien's petition." The section could not have been written with the intention urged by Ms. Patel because an open-ended application of the clause would contravene paragraph (h)(1) and the interests of timely administration. Assuming no other legal barriers, Ms. Patel's proposed application of INA § 203(h)(3) fails because of long-standing considerations to visa number impact after automatic conversion to an appropriate category and/or the retention of a priority date. Generally, Congressional intent is that visas be allocated in order of receipt, stating that, "[I]mmigrant visas made available under this subsection (a) or (b) of this section **shall be issued to eligible immigrants in the order in which a petition in behalf of such immigrant is filed**...." INA § INA § 203(e) (emphasis added).

Applying the I-140's priority date to V. Patel's I-130 abrogates this section by allowing the petition to jump far ahead of the thousands of petitions patiently awaiting consideration.[15] Indeed, I-130 preference beneficiaries who might have been waiting for several years would have to cede to a line-jumping derivative of a fast-moving I-140 petition. Because the application of INA § 203(h)(3) urged by Ms. Patel is not supported by either statutory language of INA § 203(h)(3) or even companion provisions of law working in concert, it is unfathomable that INA § 203(h)(3) provides for the result of transferring the priority date of Ms. Patel's I-140 to V. Patel's I-130.

To illustrate the impossibility of what petitioner suggests, and assuming *arguendo* that V. Patel was entitled to a benefit pursuant to INA § 203(h)(3) in the case of either the I-140 or the I-130, the difficulty then becomes one of identification. Visa categories are based upon the relationship existing between the petitioner and the beneficiary, and limited to a defined set of petitioner-beneficiary

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[15] USCIS is concerned that individuals who have only recently acquired LPR status, and thus the ability to file petitions on behalf of others, will realize an advantage over other petitioners who have possessed a recognized petitionable relationship with their beneficiary from the moment of filing.

relationships. Separating the petitioner-beneficiary relationship from conversion mutates the intent of category conversion.[16]

The only petition in existence at the time V. Patel "aged-out" of his eligibility to "the same status and order of consideration" pursuant to INA § 203(d) was the I-140 filed by Vimco on behalf of Ms. Patel. The I-140 reflected the relationship between Ms. Patel and Vimco as described by § 203(b)(3),[17] not a relationship between V. Patel and Vimco. In fact, no visa preference category exists to reflect the relationship between an employer and the son of an employee. It is only by operation of INA § 203(d), and not the prescribed visa categories, that V. Patel could even secure an immigration benefit had he remained a qualifying derivative beneficiary.

Because the fundamental element reflected by the various relationships allowed by INA § 204(a)(1)(F) is one of the relationship between the employer-petitioner and the employee-beneficiary, V. Patel cannot meaningfully rely upon the conversion based upon the I-140. V. Patel had neither a valid preference classification prior to age out, nor does a statutorily recognized category exist following his age-out.[18]

Ms. Patel's argument in support of priority date retention also bypasses the companion clause within INA § 203(h)(3) which mandates that the "alien's petition shall automatically be converted to the appropriate category." Any argument that the priority date retention clause operates independently of a direct transition to a related visa category lacks merit. His I-140 has no upgrade available; the petitioner falls out of the picture and the connection becomes tenuous. Such automatic conversion creates an absurd result since as the principal beneficiary of the I-130, V. Patel is already the unmarried son of an LPR, and appropriately entitled to a family-based second preference "B" visa classification. USCIS simply cannot identify what more "appropriate category" than the category to which V. Patel naturally belongs.

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16 This conceptualization is consistent with 204(k), the only other part of the INA that allows for category conversion. Specifically, 2B-preference sons or daughters convert to first-preference in the event the petitioning parent naturalizes.

17 INA § 203(b)(3) is entitled, "SKILLED WORKERS, PROFESSIONALS, AND OTHER WORKERS."

18 It is also important to note only Congress has the authority to create visa categories. There is no plausible reading of section 203(h)(3) that permits the Department of Homeland Security or the Attorney General to convert a petition on behalf of a beneficiary to a category into a category in which the beneficiary doesn't fit or a visa category that does not exist

D. Congressional intent comports with the plain text's focus on narrow relief for those harmed by processing delays.

In addition to the textual, interpretive, and procedural flaws, Congress' stated intent contradicts Ms. Patel's argument. Reviewing the United States House proceedings of July 22, 2002, the record reflects that Representative Sensenbrenner specifically contemplated CSPA as addressing V. Patel's situation:

> The Senate passed H.R. 1209 with a few appropriate additions, and the motion today is to concur in those additions. The Senate bill addresses three other situations where alien children lose immigration benefits by "aging out" as a result of INS processing delays... Case number two: Children of family and employment-sponsored immigrants... Under current law, when an alien receives permanent residence as a preference visa recipient... a minor child receives permanent residence at the same time. After the child turns 21, the parent would have to apply for the child to be put on the second preference B waiting list.

The concern highlighted by Representative Sensenbrenner has been addressed by INA § 203(h)(1), which provides that the eligibility of an alien for an immigration benefit will be frozen, so long as "the alien has sought to acquire the status of an alien lawfully admitted for permanent residence within one year of such availability." It is only because of V. Patel's unsuccessful attempts at the consulate abroad that Ms. Patel raises this creative application of INA § 203(h)(3).

Congress also stated a countervailing concern about displacing others in line, an issue that Ms. Patel's argument does not address. Representative Jackson-Lee provided an even more detailed description of the problem faced by alien children of United States citizens that age out:

> Generally, 23,400 family-first preference visas are available each year to the adult, unmarried sons... of citizens... this bill, with the newly added compromise language that I proposed last year, will solve the age-out problem **without displacing others** who have been waiting patiently in other visa categories. (emphasis supplied). Congressional Record – House, June 6, 2001 at H2902; June 22, 2002 at H4991.

Plantiff's argument, if adopted, would be the exception that swallowed the rule. Thousands of derivative beneficiaries would permanently preserve their place in line—even if they failed to file an I-824—to the obvious detriment of spouses or children who initiated the immigration process only after the principal

acquired LPR status. INA § 203(h)(1) merely placed a reasonable restriction on an otherwise open-ended benefit by requiring that the alien seek to acquire status within one year of the visas availability.

The sister provisions of 203(h) further demonstrate Congressional Intent. Following Representative Sensenbrenner's statement on section 2 of CSPA, Representative Jackson-Lee provided an even more detailed description of the problem faced by alien children of United States citizens that age out:

> The child of a U.S. citizen is eligible for admission as an immediate relative. Immediate relatives of U.S. citizens are not subject to any numerical restrictions.... When a child of a U.S. citizen ages out by becoming 21, the child automatically shifts from the immediate-relative category to the family first-preference category. This puts him... at the end of a long waiting list for a visa... Generally, 23,400 family-first preference visas are available each year to the adult, unmarried sons... of citizens... this bill, with the newly added compromise language that I proposed last year, will solve the age-out problem **without displacing others** who have been waiting patiently in other visa categories. (emphasis supplied). Congressional Record – House, June 6, 2001 at H2902; June 22, 2002 at H4991.

CSPA Section 4 provides additional support for USCIS' reluctance to venture into Congress' plenary power to enact immigrant law without a reasonable statutory instruction. Amending INA § 208(b)(3), CSPA section 4 provided for asylum beneficiaries to benefit in much the same way as described above.

It is this clarity, present in the sister provisions to INA § 203(h)(3) enacted by CSPA, that USCIS relies upon in concluding that Congress did not draft, nor intend the result urged by Ms. Patel. As Representative Jackson-Lee commented, "the Senate expanded this bill to cover other situations where alien children lose immigration benefits by aging out as a result of INS processing delays, to included children of permanent residents." It is illogical—and unfair to other applicants—to interpet 203(h) broadly.

VI.

CONCLUSION

In light of the above, USCIS respectfully requests that the Board uphold the decision of the Director of the California Service Center, denying retention of the earlier priority date. Ms. Patel's argument and desired remedy are not supported by the existing statutory language and would require an

unreasonable interpretation of INA § 203(h)(3). USCIS urges the Board to clarify the state of this provision by upholding the decision of the Service Center Director, California Service Center.

VII.

RENEWED REQUEST FOR PRECEDENT DECISION

In accordance with the procedures described at 8 C.F.R. section 1003.1(g), USCIS renews its request that the Board issue a precedent decision concerning the interpretation and application of INA § 203(h)(3). Since enactment on August 6, 2002, INA § 203(h)(3) has been subject to conflicting interpretation[19] and intensifying litigation in the federal district courts. Moreover, the interpretation of INA § 203(h)(3) has risen to the level of national and public significance as USCIS stakeholders strive to administer the provisions of the INA § 203(h)(3) in the absence of consistent guidance. USCIS believes the matter is ripe for publication and hereby formally requests that the Board consider issuing a precedent decision.

VIII.

RENEWED REQUEST FOR ORAL ARGUMENT

USCIS renews its request that the Board grant oral argument in this matter as described within the Board of Immigration Appeals Practice Manual ("Practice Manual") at Chapter 4.2(g) and Chapter 8. In this matter, Petitioner has requested oral argument, and USCIS joins in this request. Observing the criteria for oral argument discussed at Chapter 8.2(d) of the Practice Manual, this matter concerns the resolution of a novel issue of law, requiring clarification of several conflicting and unpublished decisions issuing from the Board, and concerning an issue of significant public interest.

IX.

RENEWED REQUEST FOR CONSIDERATION BY THREE MEMBER PANEL

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[19] Matter of Maria T. Garcia, A79 001587 (BIA July 16, 2006)(unpublished); Matter of Elizabeth Francisca Garcia, A77 806 733 (BIA July 24, 2007)(unpublished); Matter of Francisco Drilon Yang, A79 638 092 (BIA September 7, 2007)(unpublished); Matter of Stuti Chaitanya Patel, A88 124 902 (BIA April 18, 2008)(unpublished).

In accord with the necessity for oral argument in this matter, USCIS renews its request that this matter, if not previously before a three Board Member panel, be appropriately considered for such treatment. This matter involves "[t]he need to establish a precedent construing the meaning of law and procedure," as described by 8 C.F.R. § 1003.1(e)(6)(ii) and Chapter 1.3(a)(i)(2) of the Practice Manual. Moreover, the novel issue of law concerns a "controversy of major national import," as described by 8 C.F.R. § 1003.1(e)(6)(iv) and Chapter 1.3(a)(i)(4) of the Practice Manual. Accordingly, USCIS requests consideration by a three-Board Member panel in conjunction with the request for oral argument.

Date: August 20, 2008

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CERTIFICATE OF SERVICE

I, Jason R. Grimm, certify that a copy of this motion has been mailed to Ms. Patel's counsel of record via DHL express courier on August 19, 2008 at the following address:

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Date: August 20, 2008

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I, Jason R. Grimm, certify that a copy of this motion has been mailed to Mr. Wang's counsel of record via DHL express courier on August 19, 2008 at the following address:

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