ORIGINAL

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SAGARIKA C. GOMES and MALABAGE MARY IRIS GOMES,

Plaintiff(s),

vs.

THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES ("CIS"); DONALD NEUFELD, DIRECTOR OF CIS' CALIFORNIA SERVICE CENTER; EDUARDO AGUIRRE, JR., DIRECTOR OF CIS; TOM RIDGE, SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY; and ALBERTO R. GONZALES, ATTORNEY GENERAL OF THE UNITED STATES,

Defendant(s).

CASE NO. CV 05-3767 SJO (JWJx)

ORDER **GRANTING** PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I. Background

A. Factual Summary

Plaintiffs Sagarika C. Gomes ("Sagarika") and Malabage Mary Iris Gomes ("Iris") (collectively, "Plaintiffs") bring suit against defendants the United States Citizenship and Immigration Services ("CIS"); Donald Neufeld, Director of CIS'

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California Service Center; Eduardo Aguirre, Jr., Director of CIS; Tom Ridge, Secretary of the United States Department of Homeland Security ("DHS"); and Alberto R. Gonzales, Attorney General of the United States (collectively, "Defendants") seeking a declaratory judgment that the CIS wrongly refused to change the status of plaintiff Sagarika to lawful permanent resident in violation of the Child Status Protection Act ("CSPA"), Pub. L. 107-208 (Aug. 6, 2002), now codified at INA § 203(h)(1)(A), 8 U.S.C. § 1153(h)(1)(A).

The following facts are undisputed[1]:

Plaintiff Iris is a lawful permanent resident of the United States and is domiciled in Los Angeles County, California. (UF, ¶ 2). Plaintiff Sagarika is the child of plaintiff Iris, and is also domiciled in Los Angeles County, California. (UF, ¶ 1). Plaintiffs are Sri Lankan citizens. (UF, ¶¶ 1, 2).

On July 31, 1996, the United States Department of Labor approved an Alien Labor Certification for plaintiff Iris as a live-in elderly homecare attendant. (UF, ¶ 3). On September 16, 1996, CIS approved an I-140 Immigrant Petition for Alien Worker status for Iris, in the category "other workers" (INA § 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii) (the "I-140 Petition"). (UF, ¶ 4). The I-140 Petition

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[1]The "undisputed facts" are taken from Plaintiffs' Statement of Uncontroverted Facts And Conclusions Of Law. The Court acknowledges that Defendants have not filed an Opposition or responded in any way to Plaintiffs' summary judgment motion. Because Defendants have failed to oppose this matter, the Court assumes that there is no evidence that Defendants could submit to rebut Plaintiffs' contentions that Defendants cannot meet their burden of proof at trial. See Local Rule 56-3 ("In determining any motion for summary judgment, the Court will assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the 'Statement of Genuine Issues' and (b) controverted by declaration or other written evidence filed in opposition to the motion.").

included Sagarika as a derivative beneficiary "child" pursuant to INA § 101(b), 8 U.S.C. § 1101(b)(1)). (UF, ¶ 4). Plaintiff maintains that from the time Iris filed her I-140 Petition, she intended to obtain lawful permanent resident status for her child Sagarika.

On February 6, 2002, CIS approved Iris' I-485 Application to Adjust Status to permanent resident ("I-485 Application"), based upon her previously approved I-140 Petition. (UF, ¶ 5). At all relevant times, Iris understood that her I-485 Application had to be approved before Sagarika could file a I-485 Application to Adjust Status. (UF, ¶ 6).

On July 11, 2002, Sagarika, then 19 years old, filed her I-485 Application to Adjust Status to permanent resident, as a derivative beneficiary of Iris' approved immigrant worker petition and application to adjust status pursuant to 8 U.S.C. § 1153(d). (UF, ¶ 8). Sagarika's date of birth is September 9, 1982. (UF, ¶ 8).

On August 6, 2002, President Bush signed the CSPA, designed to protect children approaching the age of 21 from losing their direct and derivative eligibility for adjustment of status, by remaining "children" as defined under the INA. (UF, ¶ 9). No regulations have been enacted concerning the application of CSPA. (UF, ¶ 10).

On September 9, 2004, Sagarika turned twenty-one years old. (UF, ¶ 11). On October 4, 2004, CIS' California Service Center ("CSC") issued a written denial of Sagarika's I-485, after it had been pending for more than two years, and without any prior notice, stating, *inter alia*, that "Section 101(b)(1)(A) of the Immigration and Nationality Act defines "child" as an unmarried person under twenty-one years of age.[2] Your I0485 application indicates you were born on

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[2]This Court's Order assumes that Sagarika was born in wedlock. No evidence presently before this Court suggests that this Court conclude otherwise.

September 9, 1982, and are now over the age of twenty-one. As such, you no longer qualify as a dependant . . . ." (UF, ¶ 12) (footnote added).

On November 3, 2004, Sagarika timely filed a Motion to Reopen and Reconsider her I-485 application for adjustment of status with the CSC pursuant to 8 C.F.R. § 103.5(a)(1)(i) ("Motion to Reopen"). (UF, ¶ 13). In Sagarika's Motion to Reopen, she maintained that:

> Congress' intent in passing the CSPA was to avoid the problem of innocent children "aging out," and avoiding litigation, especially "mandamus actions," designed to force adjudications of adjustment of status applications prior to the 21st birthdays of

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If Sagarika was not born in wedlock, the fact that Sagarika was age nineteen when she filed her I-485 application may be irrelevant. Indeed, 8 U.S.C. § 1101(b)(1) provides the definition of a "child" in part as follows:

> **(b)** As used in subchapters I and II of this chapter--
> **(1)** The term "child" means an unmarried person under twenty-one years of age who is--
> **(A)** a child born in wedlock;
> **(B)** a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;
> **(C)** a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;
> **(D)** a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person; . . . .

> direct and derivative beneficiaries of visa petitions. The intent of CSPA is to protect a child from aging out, as long as the child files for adjustment of status prior to his 21st birthday, when only Government processing delays are not reason for the . . . [age out].

(*See* UF, ¶ 14; Plaintiffs' Evidence in Support of Motion For Summary Judgment, "Motion To Reopen And Reconsider I-485, Application For Adjustment Of Status," bates stamp 4:5-10).

On January 14, 2005, CSC dismissed Sagarika's Motion to Reopen/Reconsider, on the grounds that: "The applicant did not file for adjustment within one year of eligibility or approval of the I-140." (UF, ¶ 15). The dismissal does not cite to any legal authority or provide explanation for its determination other than Sagarika was "over the age of twenty-one." (UF, ¶¶ 12, 16).

B. Procedural Summary

On May 20, 2005, Plaintiffs filed the Complaint.

On July 25, 2005 Defendants filed their Answer.

On February 13, 2006, Plaintiffs filed a Motion for Summary Judgment ("Motion"), which is before the Court.

II. Discussion

A. Standard for Motion for Summary Judgment

Under the Federal Rules of Civil Procedure, summary judgment is proper only where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of

law." Fed. R. Civ. P. 56(c). Upon such a showing, the Court may grant summary judgment "upon all or any part thereof." Fed. R. Civ. P. 56(a), (b).

To prevail on a summary judgment motion, the moving party must show that there are no triable issues of fact as to matters upon which it has the burden of proof at trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). On issues where the moving party does not have the burden of proof at trial, the moving party is required only to show that there is an absence of evidence to support the nonmoving party's case. See Celotex Corp. v. Catrett, 477 U.S. at 326.

To defeat a summary judgment, the non-moving party may not merely rely on its pleadings or on conclusory statements. Fed. R. Civ. P. 56(e). Nor may the non-moving party merely attack or discredit the moving party's evidence. Nat'l Union Fire Ins. Co. v. Argonaut Ins. Co., 701 F.2d 95, 97 (9th Cir. 1983). The non-moving party must affirmatively present specific admissible evidence sufficient to create a genuine issue of material fact for trial. See Celotex Corp v. Catrett, 477 U.S. at 324.

B. Analysis

This Court must determine whether defendant CIS wrongfully denied Sagarika's request for permanent resident status on the grounds that Sagarika was no longer a "child" as defined by INA § 101(b)(1) at the time of denial, even though Sagarika was a "child" within the meaning of the INA when Sagarika initially filed her I-485 Application for Permanent Resident Status.

1. This Court has jurisdiction over Plaintiffs' action

The parties do not dispute the basis for jurisdiction. This action arises under 28 U.S.C. § 1331(a) (Federal Question); the Due Process Clause of the Fifth Amendment to the United States Constitution; the Immigration and Nationality Act ("I.N.A."), 8 U.S.C. §§ 1101 *et seq.*, *as amended*, in particular, 8 U.S.C. §

1153(h) (Child Status Protection Act); I.N.A. § 245 *et seq.*, 8 C.F.R. § 245.2; 8 C.F.R. 103.5(a); the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 *et seq.*, *as amended*, in particular 5 U.S.C. § 555 and §§ 701, 706, this action being one to declare actions of a United States agency to be arbitrary and capricious and in violation of the laws of the United States; and 28 U.S.C. § 1361, this action being in the nature of mandamus to enjoin and compel officers and employees of the United States to perform duties owed to Plaintiffs.

The Mandamus and Venue Act, 28 U.S.C. § 1361, confers jurisdiction over any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to a plaintiff. The duty owed must be a "clear nondiscretionary duty." 28 U.S.C. § 1361. Mandamus is an extraordinary form of relief which may be invoked only if (1) the plaintiff asserts a claim that is clear and certain, (2) there is no other adequate remedy available, and (3) the actions of the agency have been so egregious as to warrant such relief under discretionary grounds. Heckler v. Ringer, 466 U.S. at 616-17; Telecommunications Research & Action v. FCC, 750 F.2d 70, 79 (D.C. Cir. 1984).

Jurisdiction under the Mandamus and Venue Act and under the APA has similar requirements. Under the Mandamus and Venue Act, jurisdiction is available "if [the plaintiff] has exhausted all other avenues of relief." Heckler v. Ringer, 466 U.S. 612, 616-17 (1984). The Ninth Circuit Court of Appeals has held that the Administrative Procedures Act (the "APA") "provides for judicial review of final agency action." City of San Diego v. Whitman, 242 F.3d 1097, 1101 (9th Cir. 2001); 5 U.S.C. § 704 (Under the APA, jurisdiction exists to review "final agency action for which there is no other adequate remedy in a court."). The basis for subject matter jurisdiction to review an agency decision may exist

under 28 U.S.C. § 1331 combined with the APA, 5 U.S.C. §§ 701 et seq. Califano v. Sanders, 430 U.S. 99, 105 (1977) (Jurisdiction in an APA case is derived from 28 U.S.C. § 1331, "subject only to preclusion-of-review statutes created or retained by Congress."). Two conditions must be met for an agency action to be considered final by the court, (1) "the action must mark the consummation of the agency's decision making process[,]" and (2) "the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." Bennett v. Spear, 520 U.S. 154, 177-178 (1997).

This Court has jurisdiction under both the APA and the Mandamus and Venue Act. No other appropriate source of jurisdiction need be discussed in this case. This Court asserts jurisdiction under the APA.

2. Summary judgment in favor of Plaintiffs is warranted under the APA

Under the APA, a reviewing court may not set aside an agency's action unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . ." 5 U.S.C. § 706(2)(A); Safari Aviation Inc. v. Garvey, 300 F.3d 1144, 1150 (9th Cir. 2002). An abuse of discretion may be found where the agency decision is based on an improper understanding of the law. Occidental Engineering Co. v. INS, 753 F.2d 766, 768 (9th Cir. 1985).

District courts "interpret a federal statute by ascertaining the intent of Congress and giving effect to its legislative will." Hernandez v. Ashcroft, 345 F.3d 824, 939 (9th Cir. 2003). Questions of law regarding the INA are reviewed de novo. Melkonian v. Ashcroft, 320 F.3d 1061, 1065 (9th Cir. 2003). "Deference to the [agency's] interpretation of the immigration laws is only appropriate if Congress' intent is unclear." Socop-Gonzalez v. INS, 272 F.3d 1176, 1187 (9th Cir. 2001) (en banc hearing) (citing Chevron, USA v. Natural

Resources Defense Council, Inc., 467 U.S. 837, 842 (1984)). When interpreting a provision of the INA, "doubts are to be resolved in favor of the alien." Padash v. INS, 358 F.3d 1161, 1172 (9th Cir. 2004) (citing Cardoza-Fonseca, 480 U.S. 421, 449 (1987).

In the recent case, Padash v. INS, 358 F.3d 1161 (9th Cir. 2004), the Ninth Circuit discussed the legislative objective of the CSPA at length:

> The legislative objective reflects Congress's intent that the Act be construed so as to provide expansive relief to children of United States citizens and permanent residents. Congress's goal in enacting the Child Status Protection Act was to address the "enormous backlog of adjustment of status (to permanent residence) applications" which had developed at the INS. H.R.Rep. No. 107-45, 2 *reprinted in* 2002 U.S.C.C.A.N at 641. The House Judiciary Committee, in recommending passage of the bill, noted that, at the time the backlog was close to one million. *Id.* Because of delays of up to three years, approximately one thousand of the applications reviewed each year by the agency were for individuals who had aged-out of the relevant visa category since the time they had filed their petitions. *Id.* Congress stated that the purpose of the Child Status Protection Act was to "address [] the predicament of these aliens, who through no fault of their own, lose the opportunity to obtain [a]

> . . . visa." *Id.; see also* 80 No. 7 Interrel 233 (February 19, 2003) ("The [Act's] impact may be far-reaching, as it fundamentally reforms the process for determining whether a child has "aged out" of eligibility for visa issuance or adjustment of status in most immigrant visa categories."). The Department of Justice's only objection to the enactment of the statute was that the agency would be faced with an unmanageable administrative burden if Congress did not impose a reasonable limit on the statute's retroactive effect. As we have explained, that objective was accommodated in the final version of the bill by limiting the Act's applicability to individuals whose applications had not yet been finally resolved by the time of passage of the Act.

Padash v. INS, 358 F.3d at 1172-3.

Based upon the Ninth Circuit's discussion in Padash and this Court's own independent research of the overriding rational accompanying the CSPA's passage, this Court finds that the CSPA was enacted to provide expansive relief to prevent children from "aging-out" as a result of processing delays by government agencies so as to protect the status of any child whose application was pending on the date of the CSPA's enactment. This determination is directly applicable to the facts of this case as discussed below.

The INA defines "child" as an unmarried individual under twenty-one years of age. 8 U.S.C. § 1101(b)(1), INA § 101(b)(1). The CSPA does not modify this

definition, but changes the point in time when the child's age is calculated during the application for permanent residency. Before passage of the CSPA, an application for permanent residency for a derivative child would be approved only if adjudicated prior to the child reaching 21 years of age. Under the CSPA, a child's age is locked-in as of the date that child filed for permanent resident status. INA § 203(h)(1)(A), 8 U.S.C. § 1153(h)(1)(A).

In the present case, Sagarika's I-485 application was filed when she was nineteen years old, and had been pending for several months when Congress enacted the CSPA. Where Congress' intent in passing the CSPA was to avoid the result of children like Sagarika from "aging out" due to processing delays by the CIS, the disposition of this case is clear: Sagarika cannot be denied her permanent residency status.[3]

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[3]This Court's ruling takes into account CSC's dismissal of Sagarika's Motion to Reopen/Reconsider on the grounds that Sagarika "[failed to] file for adjustment within one year of eligibility or approval of the I-140." (UF 15; Plaintiffs' Evidence In Support Of Motion For Summary Judgment, bates stamp 115 (CSC's Letter To Sagarika, dated January 14, 2005, dismissing Sagarika's Motion To Reopen/Reconsider)). The basis for CSC's dismissal ostensibly derives from the agency's reading of Section 2 of the INA, 8 U.S.C. 1153(h)(1)(A), which states as follows:

> (h) Rules for determining whether certain aliens are children
> (1) In general
> For purposes of subsections (a)(2)(A) and (d) of this section, a determination of whether an alien satisfies the age requirement in the matter **preceding** subparagraph (A) of section 1101(b)(1) of this title shall be made using–
> (A) the age of the alien on the date on which an immigrant visa number becomes available for such alien (or, in the case of subsection (d) of this section, the date on which an immigrant visa number became available for the alien's parent), but

Under the facts of this case, Defendants' denial of plaintiff Sagarika's application for permanent resident status was incorrect and an abuse of discretion; thereby warranting this Court to compel CIS to grant Sagarika's application for permanent resident status.

> 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
>
> (B) 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)(A) (emphasis added). This Court interprets INA § 203(h)(1)(A) to apply when an individual is not considered a "child" as *expressly* defined under 8 U.S.C. § 1101(b)(1)(A), but may still qualify for "child" status if the requirements of 8 U.S.C. 1153(h)(1)(A) are satisfied. For example, in the instant case, if Sagarika had filed her I-485 application for permanent resident status after turning age twenty-one, she may still be able to receive "child" status if she: (a) received her visa immigration number before turning twenty-one; or (b) "sought to acquire the status of an alien lawfully admitted for permanent residence within one year of such availability[,]" i.e., when her mother Iris's I-485 application for permanent resident status was approved. 8 U.S.C. § 1153(h)(1)(A) is inapplicable to the case at bar because plaintiff Sagarika already satisfied the definition of "child" under 8 U.S.C. § 1101(b)(1)(A), and as such, CIS' grounds for denial of Sagarika's application for permanent resident status is disingenuous.

For the foregoing reasons, this Court **GRANTS** Plaintiffs' Motion For Summary Judgment.

IT IS SO ORDERED.

DATED: 3/22/06

S. James Otero, Judge
United States District Court