The Honorable James L. Robart
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A.A., Antonio MACHIC YAC, and W.H., Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; *et al.*,

Defendants.

Case No. 2:15-cv-00813-JLR

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:
July 16, 2018

Introduction

Plaintiffs seek an order compelling Defendants, U.S. Citizenship and Immigration Services ("USCIS") to adjudicate all initial employment authorization document ("EAD") applications based on a pending asylum application ("initial asylum EADs") within 30 days. However, as Defendants explained in their motion for summary judgment, ECF No. 119, this Court should not require Defendants to meet the regulatory deadline in every single case. While Defendants recognize that this Court has previously held in this case that the 30-day regulatory deadline is mandatory, an injunction requiring absolute compliance should not issue because it is not required to effectuate the purpose of the regulation and because Defendants' actions have been reasonable given the agency's resource limitations. The Court should therefore deny Plaintiffs' motion for summary judgment.

U.S. Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
(202) 598-2446

Argument

As both Defendants and Plaintiffs have recognized, this Court has held that Defendants have a mandatory duty to adjudicate initial asylum EAD applications within 30 days as provided in 8 C.F.R. § 208.7.[1] *See* ECF No. 119 at 9 (citing ECF No. 55 at 25, ECF No. 95 at 21 n.10); ECF No. 118 at 1, 8. The parties also agree that USCIS is not adjudicating 100 percent of initial asylum EAD applications within 30 days. ECF No. 119 at 7, 9; ECF No. 118 at 10-11.

Nevertheless, even after the Court's prior orders, the question that remains is whether an injunction should issue. As Defendants articulated in their motion for summary judgment, no injunction is required because of the circumstances presented in this case.[2] First, the purpose of the regulatory deadline does not mandate an order requiring strict compliance with that deadline. ECF No. 119 at 10-11 (citing *Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166, 1177 (9th Cir. 2002)). The regulation that enacted the 30-day processing deadline was not enacted to ensure that applicants received work authorization as quickly as possible. ECF No. 119 at 5-6, 10-12. Moreover, because the regulation is the judgment of an executive branch agency, rather than a command of Congress, separation of powers concerns do not circumscribe this Court's equitable discretion in shaping any potential remedy. *C.f. Biodiversity Legal Found.*, 309 F.3d at 1177.

Second, Defendants' actions in light of an extraordinary increase in application volume and resource constraints show that an injunction should not issue in this case. ECF No. 119 at

[1] Defendants again respectfully disagree with this ruling and preserve their rights to appeal this determination.

[2] A number of cases cited by Plaintiffs call for interim EADs for those whose applications are not adjudicated within 30 days. ECF No. 118 at 9-10 (citing, e.g., *Ramos v. Thornburgh*, 732 F. Supp. 696, 701 (E.D. Tex. 1989); *John Doe I v. Meese*, 690 F. Supp. 1572, 1577 (S.D. Tex. 1988); *Najera-Borja v. McElroy*, No. 89-CV-2320, 1995 WL 151775, at *1 (E.D.N.Y. March 29, 1995)). However, that relief is not available to Plaintiffs in this case, nor do Plaintiffs request this relief in their Motion for Summary Judgment. *See* ECF No. 118 at 11. The cases cited that discuss interim EADs for initial asylum EAD applications were decided prior to 1997, when the interim EAD provision was specifically removed from the regulation regarding initial asylum EADs. *Compare* 8 C.F.R. § 208.7(a)(1) (1997) *with* 8 C.F.R. § 208.7(a)(1) (1998). Additionally, no portion of the regulations provides for interim EADs after the amendment to the standard EAD regulations in 2017. *See* 8 C.F.R. §§ 208.7; 274a.12 (as amended).

U.S. Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
(202) 598-2446

13-15 (citing *Am. Hosp. Ass'n v. Burwell*, 812 F.3d 183, 190 (D.C. Cir. 2016)). It is appropriate to consider Defendants' circumstances because even if the command in the regulation is mandatory, this Court must exercise its equitable discretion to determine whether an injunction should issue to compel agency action. The D.C. Circuit has held that the *TRAC* factors are a useful way to examine this equitable question. *Am. Hosp. Ass'n*, 812 F.3d at 190; *see also Verizon California Inc. v. Peevey*, 413 F.3d 1069, 1084 (9th Cir. 2005) (Bea, J., concurring) (recognizing that the D.C. Circuit "has particular expertise in administrative law"). As detailed in their motion for summary judgment, Defendants have made significant efforts to improve processing timelines of initial asylum EADs but have been unable to adjudicate 100 percent of applications within 30 days. ECF No. 119 at 13-15. Further, DHS continues to proceed with drafting a Notice of Proposed Rulemaking to remove the 30-day processing provision for initial employment authorization applications filed by those with pending asylum applications. Office of Management and Budget, Office of Information and Regulatory Affairs, View Rule, RIN 1615-AC19 (Spring 2018), https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=1615-AC19. These reasonable actions show that an injunction is not an appropriate remedy in this case.

Conclusion

Although this Court has held that the 30-day timeline to adjudicate an initial employment authorization document application for an applicant with a pending asylum application found at 8 C.F.R. § 208.7(a) is mandatory for jurisdictional purposes, it is not mandatory that Plaintiffs are entitled to injunctive and mandamus relief when Defendants cannot meet that deadline. Instead, Defendants current and ongoing efforts to process initial asylum EADs is reasonable. This Court should decline to afford relief to Plaintiffs, deny Plaintiffs' motion for summary judgment, and grant summary judgment for Defendants.

DATED: July 2, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

U.S. Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
(202) 598-2446

WILLIAM C. PEACHEY
Director

JEFFREY S. ROBINS
Assistant Director

s/ Adrienne Zack
ADRIENNE ZACK
Trial Attorney
U.S. Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Phone: (202) 598-2443
Fax: (202) 305-7000
Email: adrienne.m.zack@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 2, 2018, I electronically filed the foregoing Defendants' Opposition to Plaintiffs' Motion for Summary Judgment with the Clerk of the Court using CM/ECF. I also certify that the foregoing document should automatically be served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

s/ Adrienne Zack
ADRIENNE ZACK
Trial Attorney
U.S. Department of Justice

U.S. Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
(202) 598-2446