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1. [Haidari v. Frazier, 2007 U.S. Dist. LEXIS 97211](#)

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[Haidari v. Frazier](#)

United States District Court for the District of Minnesota

May 10, 2007, Decided

Civil No. 06-3215 (DWF/AJB)

Reporter

2007 U.S. Dist. LEXIS 97211 *; 2007 WL 5118370

Bilal Haidari, Yamen Haidari, and Zahi Haidari, Plaintiffs, v. Denise Frazier, District Director, U.S. Citizenship & Immigration Services; Eduardo Aguirre, Director, U.S. Citizenship & Immigration Services; Alberto Gonzales, Attorney General of the United States; and Michael Chertoff, Secretary, U.S. Department of Homeland Security, Defendants.

Prior History: [Haidari v. Frazier, 2006 U.S. Dist. LEXIS 89177 \(D. Minn., Dec. 8, 2006\)](#)

Core Terms

applications, adjudicate, substantial justification, attorney's fees, fingerprint, checks, prevailing party, court finds, immigration law, attorneys, costs, special factor, positions, expenses, mandamus, parties, unjust, special circumstance, immigration, permanent

Counsel: [*1] Herbert A. Igbanugo, Esq., Igbanugo Partners Int'l Law Firm, PLLC, counsel for Plaintiffs.

Mary J. Madigan, Assistant United States Attorney, United States Attorney's Office, counsel for Defendants.

Judges: DONOVAN W. FRANK, Judge of United States District Court.

Opinion by: DONOVAN W. FRANK

Opinion

MEMORANDUM OPINION AND ORDER

INTRODUCTION

Plaintiffs Bilal Haidari, Yamen Haidari, and Zahi Haidari (collectively, "Plaintiffs") initiated this suit seeking a writ of mandamus directing the United States Citizenship and Immigration Services ("USCIS") to adjudicate the

Plaintiffs' pending I-485 change of status applications. By its Order dated December 1, 2006, this Court denied Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, remanded the case to the USCIS for expedited resolution, and retained jurisdiction to ensure that this Court's Order was carried out. The above-entitled matter is now before the Court pursuant to Plaintiffs' Motion for Attorney's Fees and Costs Under the Equal Access to Justice Act ("EAJA"). For the reasons set forth below, Plaintiffs' motion is granted.

BACKGROUND

Plaintiffs Bilal, Yamen, and Zahi Haidari are of Palestinian descent. The USCIS granted Plaintiffs asylum on April [*2] 26, 1999, October 18, 1999, and December 28, 2000, respectively. Then, on January 6, 2000, October 20, 2000, and February 13, 2002, Bilal, Yamen, and Zahi respectively filed their Form I-485 applications with the Nebraska Service Center, pursuant to [8 C.F.R. § 209.2](#), in order to become lawful permanent residents of the United States.

When an applicant applies to the USCIS for permanent residence, the USCIS conducts several security and background checks to ensure that the person is both eligible for permanent residence and is not a national security or public safety risk. These background checks include: (a) a record check made against DHS's own immigration systems; (b) an FBI fingerprint check; (c) a check against the Interagency Border Inspection System (IBIS); and (d) an FBI name check, which is run against FBI investigative databases. USCIS's policy requires that an adjudications officer cannot complete a Form I-485 adjudication until all of the above background security checks are completed. Currently, the Nebraska Service Center is adjudicating Form I-485 applications based on asylum grants that were filed on or before August 8, 2003.

Bilal Haidari:

Prior to the Court's December [*3] 1, 2006 Order, the USCIS had taken the following course of action on Bilal's January 2000 application:

- . On January 15, 2003, the USCIS requested that the FBI conduct Bilal's name check.
- . On March 31, 2004, the USCIS took Bilal's fingerprints and submitted them to the FBI.
- . On April 1, 2004, the FBI provided a response to the fingerprint check, which indicated that Bilal had been arrested for evasion of reporting requirements related to the export of monetary instruments. On February 7, 2005, this charge was dismissed.
- . The first fingerprint clearance for Bilal expired on July 1, 2005.¹
- . In March 2006, an adjudications officer for the USCIS interviewed Bilal on his Form I-485.
- . On August 30, 2006, the USCIS requested an update of Bilal's fingerprint check.
- . On September 1, 2006, the FBI provided an updated report and provided fingerprint clearance.
- . On October 10, 2006, the USCIS requested that the FBI expedite its processing of the name check.

Yamen Haidari:

Prior to the Court's December 1, 2006 Order, the USCIS had taken the following course of action on Yamen's October 2000 application:

- . On or around December [*4] 18, 2002, the USCIS requested that the FBI conduct Yamen's name check.
- . On September 10, 2003, Yamen's name check was completed.
- . On April 23, 2005, the USCIS took Yamen's fingerprints and submitted them to the FBI.
- . On March 23, 2006, the FBI provided a response to the fingerprint check, which indicated that Yamen had been arrested for evasion of reporting requirements related to the export of monetary instruments. This charge was dismissed.
- . In February 2006, the USCIS issued Yamen a Fingerprint Notification for him to have his fingerprints retaken.
- . On May 11, 2006, the USCIS requested that the FBI conduct a second name check on Yamen.
- . On March 15, 2006, an adjudications officer for the USCIS interviewed Yamen on his Form I-485.

Zahi Haidari:

Prior to the Court's December 1, 2006 Order, the USCIS had taken the following course of action on Zahi's February 2002 application:

- . On June 10, 2003, the USCIS requested that the FBI conduct a name check on Zahi.
- . On approximately September 20, 2005, the USCIS took Zahi's fingerprints and submitted them to the FBI.
- . In November 2005, the FBI provided a response to the fingerprint check, which indicated that Zahi had been arrested for 5th Degree [*5] Assault on July 23, 2002. Zahi was convicted of that crime and was sentenced to 30 days and a \$ 340 fine on October 15, 2002.
- . On March 15, 2006, an adjudications officer for USCIS interviewed Zahi on his Form I-485.
- . On August 30, 2006, USCIS requested that the FBI expedite its processing of the name check.

PROCEDURAL HISTORY

Plaintiffs filed a Complaint for a Writ in the Nature of Mandamus on August 3, 2006. In the Complaint, Plaintiffs assert jurisdiction under [28 U.S.C. § 1361](#) (mandamus statute); [28 U.S.C. § 2201](#) (Declaratory Judgment Act); [28 U.S.C. § 1331](#) (federal question); [5 U.S.C. § 701, et seq.](#); and [5 U.S.C. § 551, et seq.](#) (Administrative Procedure Act). Defendants then filed a Motion to Dismiss, claiming lack of subject matter jurisdiction under [Federal Rule of Civil Procedure 12\(b\)\(1\)](#).

In its motion papers, filed October 11, 2006, Defendants asserted that the USCIS was unable to adjudicate Plaintiffs' Form I-485 applications because the FBI had not reported a final resolution of their background security checks to the USCIS. At the December 1, 2006 oral argument, counsel represented that the FBI background checks on Zahi and Yamen were pending with the FBI. But the record [*6] reflected at that time that that statement was no longer true as to Bilal. In a November 6, 2006 letter, a representative from United States Senator Mark Dayton's office indicates that the FBI name check on Bilal was completed on October 13, 2006, and forwarded to the USCIS headquarters in Washington, D.C. As of December 1, 2006, the USCIS had not adjudicated Bilal's application.

On December 1, 2006, this Court denied Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and remanded the case to the USCIS for expedited resolution. Specifically, the Court ordered the USCIS to

¹ For Form I-485 applicants, FBI fingerprint reports are valid for 15 months.

complete its adjudication of Plaintiffs' I-485 applications within 30 days. In compliance with the Court's Order, the USCIS approved Bilal and Yamen's Form I-485 applications on December 21, 2006, and December 27, 2006, respectively, granting them lawful permanent resident status in the United States. Plaintiffs agreed to a 21-day extension to allow the USCIS to adjudicate Zahi's Form I-485 application because his FBI name check had not yet cleared. On January 22, 2007, the USCIS approved Zahi's Form I-485 application, granting him lawful permanent resident status in the United States.

Asserting that [*7] they are a "prevailing party" as a result of the relief obtained by this Court, and asserting the Defendants' pre-litigation conduct and litigation positions were not "substantially justified," Plaintiffs seek attorney fees and costs in the amount of \$ 22,217.

DISCUSSION

I. Standard of Review

Plaintiffs request attorney fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Under the EAJA, "a court shall award to a prevailing party other than the United States fees and other expenses,... unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).²

II. Attorney Fees

Plaintiffs assert that they are prevailing parties as a result of this Court's December 1, 2006 Order. Additionally, Plaintiffs assert that they are entitled to fees and costs associated with bringing this action because Defendants' pre-litigation and litigation positions [*8] were not substantially justified. Defendants oppose Plaintiffs' motion for attorney fees and costs on three grounds. First, Defendants contend that Plaintiffs are not prevailing parties. Second, Defendants assert that their positions were substantially justified and reasonable. Finally, Defendants claim that special circumstances are present in this case that would make an award of attorney fees unjust. The Court will address each argument in turn.

²In addition, Plaintiffs must be parties to the underlying civil action, and their net worth must not exceed two million at the time the action was filed. See 28 U.S.C. § 2412. Defendants do not dispute that these elements are met.

A. Prevailing Party

In determining whether the petitioner is a prevailing party a court must examine whether he obtained "actual relief on the merits of [the] claim [that] materially alter[ed] the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Drennan v. Pulaski County Special Sch. Dist.*, 458 F.3d 755, 757 (8th Cir. 2006) (quoting *Farrar v. Hobby*, 506 U.S. 103, 111-12, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992)). The relief obtained "must directly benefit [the plaintiff] at the time of the judgment or settlement." *Id.* (quoting *Warner v. Indep. Sch. Dist. No. 625*, 134 F.3d 1333, 1338 (8th Cir. 1998) and *Farrar*, 506 U.S. at 111). An award of attorney fees is properly denied under circumstances in which [*9] a plaintiff prevailed on only a small and technical part of the claim. *Id.* (citing *Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 831, 833 (8th Cir. 2002)). A conditional, unrealized grant of relief that does not provide direct, immediate benefit to the plaintiff is not sufficient to make the plaintiff a prevailing party. *Id.*

The Court finds that Plaintiffs are prevailing parties because they were granted the relief they requested from the Court. Specifically, Plaintiffs sought a writ of mandamus directing the USCIS to adjudicate their pending I-485 change of status applications. On December 1, 2006, this Court ordered the USCIS to complete its adjudication of Plaintiffs' I-485 applications within 30 days. The Court disagrees with the Defendants' contention that Plaintiffs did not obtain a judgment on the merits. The Court's ruling constitutes a binding judgment that altered the legal relationship between the parties in exactly the manner requested by Plaintiffs. Plaintiffs could have moved to enforce the Court's Order if Defendants had failed to comply, which is the reason why the Court retained jurisdiction over the matter. The Court finds that an order of this kind renders Plaintiffs [*10] the prevailing parties. See *Aboushaban v. Mueller*, 475 F. Supp. 2d 943, 946 (N.D. Cal. 2007) (citing cases).³

B. Substantially Justified

³*Morillo-Cedron v. Dist. Director for the USCIS*, 452 F.3d 1254 (11th Cir. 2006) and *Ma v. Chertoff*, No. 3:06CV1652(MRK), 2007 U.S. Dist. LEXIS 19473, 2007 WL 869026 (D. Conn. Mar. 20, 2007), cited by Defendants, are distinguishable because here, there was a "judicially sanctioned" change in the legal relationships of the parties.

Once the movants have shown they are the prevailing parties, the Defendants bear the burden of proving that its position was substantially justified. [*Friends of Boundary Waters Wilderness v. Thomas*, 53 F.3d 881, 885 \(8th Cir. 1995\)](#). "Position" refers to both the Defendants' litigation position and the underlying action or failure to act by the agency that led to the litigation in the first place. 28 U.S.C. § 2412(d)(2)(D). Substantially justified means "justified in substance or in the main" -- that is, justified to a degree that could satisfy a reasonable person." [*Pierce v. Underwood*, 487 U.S. 552, 565, 108 S. Ct. 2541, 101 L. Ed. 2d 490 \(1988\)](#); see also [*Moseanko v. Yeutter*, 944 F.2d 418, 427 \(8th Cir. 1991\)](#) ("The test for substantial justification is one of 'reasonableness'").

The Court [*11] finds that Defendants' underlying pre-litigation conduct lacks substantial justification. The only reasons Defendants give to explain the unreasonable delay in adjudicating Plaintiffs' applications is that the USCIS has "crushing work loads" and that the USCIS was acting according to law by waiting to adjudicate Plaintiffs' applications until the FBI security checks were complete. (Defendants' Opposition to Attorney Fee Request at 8.) The record reflects that the delay of the adjudications largely stems from the USCIS's untimeliness in its initial requests to the FBI. Specifically, (1) Bilal filed his Form I-485 application in January 2000, but the USCIS did not request the FBI to conduct a name check until three years later; (2) Yamen filed his Form I-485 in October 2000, but the USCIS did not request the FBI to conduct a name check on him until two years later (and, a second name check request was given to the FBI six years after the initial Form I-485 was filed); and (3) Zahi filed his Form I-485 application in February 2002, but the USCIS did not request the FBI to conduct a name check on him until more than a year later. Defendants' assertion that the USCIS is overworked does [*12] not justify the delay. See [*Dabone v. Thornburgh*, 734 F. Supp. 195, 203 \(E.D. Pa. 1990\)](#) (finding that the assertion of overwork did not justify delay).

Further, although FBI background checks are important and may sometimes require extensive amounts of time, the FBI's delay here does not negate the USCIS's duty to process the Plaintiffs' applications in a reasonable time, both upfront when receiving the forms from the applicants and later when receiving the requested information from the FBI. As to the latter, the letter from Senator Dayton's office shows that at least as to Bilal, the name-check process with the FBI was finished by October 13, 2006, and forwarded on to the USCIS. At

oral argument on December 1, 2006, Defendants were unable to explain why, at a minimum, Bilal's application had not been adjudicated. Defendants also could not explain why Plaintiffs' applications had not been adjudicated when the Nebraska Service Center is adjudicating Form I-485 applications based on asylum grants that were filed on or before August 8, 2003. Bilal and Yamen filed their applications in 2000, and Zahi filed his in 2002. No reason is given to explain why these applications were not adjudicated [*13] until late 2006 and early 2007.

Here, like in [*Aboushaban v. Mueller*, 475 F. Supp. 2d 943, 947-48 \(N.D. Cal. 2007\)](#), Defendants have failed to explain why the Plaintiffs' name checks were so delayed, and they have further failed to explain the delay in the USCIS's request for the FBI to conduct the name checks. Therefore, Defendants have failed to meet their burden of demonstrating that the delay in processing Plaintiff's applications was substantially justified.

Additionally, although the Court need not address whether Defendants' litigation positions were substantially justified in light of finding that the underlying actions were not substantially justified, the Court finds that certain litigation positions that the Defendants' took were not substantially justified. Specifically, in light of the relevant statutes and regulations and the existing case law indicating a trend to recognize that the government has a duty to process these and similar applications within a reasonable period of time, (see December 8, 2006 Memorandum Opinion and Order (discussing in detail)), at a minimum, Defendants' failure to recognize that the USCIS has a duty to adjudicate the Plaintiffs' applications within [*14] a reasonable time was not substantially justified.

C. Special Circumstances

The final question in the attorney-fee analysis is whether "special circumstances" exist that would make an award of attorney fees unjust. See 28 U.S.C. § 2412(d)(1)(A). Defendants contend that there are. Specifically, Defendants assert that this is a case in which the government simply failed to timely act. Defendants assert, however, that Plaintiffs' conduct contributed to the delay because they had positive hits on their name checks performed by the FBI. In other words, Defendants contend that the USCIS was delayed by the FBI being unable to complete the name checks, which in turn was delayed in part because of the Plaintiffs' conduct that prompted the positive hits. Defendants

contend that under these circumstances, an attorney fee award is unjust.

The Court disagrees. The primary responsibility for the lengthy delay here falls on Defendants, not Plaintiffs. Even if Plaintiffs' positive hits on their name checks caused some delay in the FBI's security-checks process, this does not account for the major delays that occurred both before the USCIS sent the Plaintiffs' names to the FBI and after the USCIS received [*15] the results from the FBI's security checks. As stated above, the USCIS did not request the FBI to conduct a name check on Bilal until three years after it had received his Form I-485 application, did not request a name check on Yamen until two years after it had received his application (and, a second name check request was given to the FBI six years after the initial Form I-485 was filed), and did not request a name check on Zahi until more than a year after it had received his application. These circumstances do not make an award in this case unjust.

In conclusion, the Court finds that Plaintiffs are the prevailing parties to the underlying action, Defendants' positions are not substantially justified, and there are no special circumstances that would make an award unjust. Because Plaintiffs have indisputably met the other statutory requirements, Plaintiffs are entitled to an award of reasonable "fees and other expenses" pursuant to the EAJA. See 28 U.S.C. § 2412(d)(1)(A).

D. Hourly Rate

The EAJA explains what "fees and other expenses" includes and on what hourly rate the amount of fees awarded shall be based upon:

"[F]ees and other expenses" includes the reasonable expenses of expert [*16] witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of \$ 125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher

fee.)[.]
28 U.S.C.A. § 2412 (d)(2)(A).

Plaintiffs seek attorney fees for attorneys Dyan Williams and Herbert Igbanugo. Both Williams and Igbanugo worked on Plaintiffs' case. Plaintiffs submitted the affidavits and time records of both attorneys. For Williams, using the Consumer Price Index for All Urban Consumers (CPI-U rate) for January 2007 (202.416) to calculate the cost of living adjustment, the Plaintiffs request applying [*17] a \$ 162.50 hourly rate for determining the fee award, which results in an award of \$ 8,258.25 for the total hours that Williams spent on the case. Defendants do not contest this amount. The Court finds that the fees sought for Williams are reasonable and grants Plaintiffs request.

For Igbanugo, Plaintiffs request reimbursement at a market rate of \$ 285 per hour, which results in an award of \$ 13,608.75 for the total hours that Igbanugo spent on the case. Plaintiffs assert that such fees, which are in excess of the adjusted statutory rate, are justified because Igbanugo possesses special expertise that was needed for the Plaintiffs' case. Plaintiffs cite several cases in support of their contention that a specialized knowledge of immigration law can warrant enhanced attorney rates. See, e.g., [Muhur v. Ashcroft, 382 F.3d 653, 656 \(7th Cir. 2004\)](#) (acknowledging that immigration expertise, "such as knowledge of foreign cultures or of particular, esoteric nooks and crannies of immigration law," may pierce the ceiling); [Rueda-Menicucci v. INS, 132 F.3d 493, 496 \(9th Cir. 1997\)](#) (stating "a specialty in immigration law could be a special factor warranting an enhancement of the statutory rate" [*18] if that specialty is "needful for the litigation in question"); [Pollgreen v. Morris, 911 F.2d 527, 537-38 \(11th Cir. 1990\)](#) (recognizing that a "special factor" rate adjustment might be appropriate for attorneys who have a special expertise in immigration law); [Douglas v. Baker, 809 F. Supp. 131, 135 \(D. D.C. 1992\)](#) (awarding enhanced EAJA rate based, in part, on attorney's extensive experience in immigration law). Defendants contend that the \$ 285 hourly rate for Igbanugo is unwarranted because Plaintiffs have not presented evidence that there is a limited availability of qualified practitioners of Immigration law who would not have represented Plaintiffs at the statutory rate. Defendants submit nothing other than attorney argument to support their contention.

The Court finds that the fees sought for Igbanugo are reasonable. The EAJA provides that "attorney fees shall not be awarded in excess of \$ 125 per hour unless the

court determines that an increase in the cost of living *or a special factor*, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C.A. § 2412 (d)(2)(A) (emphasis added). The "limited availability of qualified [*19] attorneys" clause is one such example of a special factor that would justify a higher fee. This factor is not exclusive; other special factors may justify a higher fee as well. Here, this case did require some specialized knowledge of immigration law and experience in this field, especially in light of the Plaintiffs' complex history dealing with the immigration system. Igbanugo has been practicing immigration law for almost 20 years and has represented thousands of individuals in immigration proceedings. Although the underlying dispute was a relatively straight-forward mandamus action, based on the Court's review of the record and all submissions by the parties, and in light of the fact that Defendants have not contested the specific difficulty⁴ of this case nor the time spent on this case, the Court finds the reasonable amount of fees and other expenses awarded for Igbanugo and Williams' work on this case is \$ 22,217.⁵

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CONCLUSION

Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiffs' Motion for Attorney's Fees and Costs Under the Equal Access to Justice Act (Doc. No. 24) is **GRANTED**. Plaintiffs are entitled to a judgment in the amount of \$ 22,217 for attorney fees and costs.

Dated: May 10, 2007

/s/ Donovan W. Frank

DONOVAN W. FRANK

Judge of United States District Court

⁴ Defendants' argument that Igbanugo's expertise was "not needful" for the litigation because the Court indicated at oral argument that it was prepared to rule on the motion from the bench is without merit. (See Defendants' Opposition to Attorney Fee Request at 11-12.) [*20] The Court would not have been so prepared to make a ruling if it had not received the briefing submitted by Igbanugo prior to the hearing.

⁵ In addition to the requested attorney fees for Williams and Igbanugo, the Court also awards the requested \$ 350 for the filing fee for the mandamus complaint. Reasonable costs that are necessary for the preparation of a plaintiff's case may be recovered under the EAJA. See 28 U.S.C.A. § 2412 (d)(2)(A).