IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

Brian P. Carr, Rueangrong Carr, and Buakhao Von Kramer Plaintiffs versus United States, US Department of Justice, USPS, USPS OIG, USPS BoG, US CIGIE, Department of State, Department of State OIG, USCIS, DHS OIG, and SSA Defendants	Civil No. 3-23CV2875 - S Affirmation Supporting Count 3, 4 and 5 Against DoS and DHS OIG

Affirmation Supporting Count 3, 4 and 5

Against DoS and DHS OIG

DoS Count 3 and 4

Non Immigrant Visas Denied Without Due Process

In 2018 and 2019 Mrs. Carr and Mrs. Von Kramer were denied non-immigration visas under INA 214(b) (actually 8 USC § 1184(b)) but the written decision was flawed as it listed the statute for the denial but had no references to the evidence considered. This is a clear violation of Due Process and the Plaintiffs were damaged by the unwarranted restrictions in their freedom of travel.

As non-immigration visas are issued and denied according to clear and specific statutes (not discretionary) and visa applications are processed on a fee for service basis, the primary relief they seek is credits for future services with DoS.

There is ancillary relief of a declaration of the court that Mrs. Von Kramer was improperly denied the ability to visit the United States in 2019, 2020 and 2021 in order to establish her Social Security 'lawful presence' to receive Social Security Surviving Spouse.

There is also ancillary relief to correct the defects in non-immigration visa processing to insure that it complies with constitutional requirements such as Due Process as well as relief for similar applicants.

Sovereign Immunity and Executive Discretion Do Not Apply

The primary releif sought is a credit for future services which is authorized in Marbury v. Madison (1803) and APA 5 USC § 702. The restrictions on 'sovereign immunity' are discussed at length in my Response of 18 Mar 2024 (ECF 18) pages 1 to 4 and won't be repeated here.

Further, contrary to the broad claims of executive discretion by USATXN, it is not applicable as committing federal crimes and violating the constitution is never within executive discretion as discussed in my Response of 18 Mar 2024 (ECF 18) pages 4 to 6.

Doctrine of Consular Non Reviewability (DoCNR) Challenged

We intend to challenge DoCNR as it is offensive (to us) and fundamentally flawed. With a Motion to Dismiss, it is premature to dismiss a case while there are novel and untested challenges to existing law.

The Complaint has two claims against DoS for failure to provide Due Process in their 4 visa denials to Mrs. Carr (2018) and Mrs. Von Kramer (2019). USATXN claims immunity from DoCNR citing Kleindienst v. Mandel, 408 U.S. 753, 766 (1972) an older case.

Since that time there have been a few challenges raised to DoCNR to include Sandra Munoz v. State Department (case no. 21-55365) (9th Cir. 2022) where the citizen spouse of a foreign national met the exception described in Kleindienst.

As such, DoCNR does not apply to my wife as I am her citizen spouse who clearly desires to travel with her and, hence, must be given Due Process in administrative decisions impacting my ability to travel with her.

For Mrs. Von Kramer, in Patel v. Reno, 134 F.3d 929, 121 F.3d 1277 (9th Cir. 1997) the APA is cited as a potential source of judicial review. As Nikolaus Von Kramer (Mrs. Von Kramer decesased husband) was a pre-1968 veteran, Congress has made special provisions preserving Mrs. Von Kramer's Social Security Surviving Spouse benefits and she is an ideal candidate to challenge DoCNR with respect to the APA as suggested in Patel.

Patel v. Reno, 134 F.3d 929, 121 F.3d 1277 (9th Cir. 1997) states:

> judicial review exists when the government has denied a visa if the government did not act "on the basis of a facially legitimate and bona fide reason." Kleindienst v. Mandel, 408 U.S. 753 (1972). In addition, ... judicial review may also exist under certain circumstances pursuant to the

Administrative Procedure Act.

We also intend to challenge the DoCNR as it was an outgrowth of the Chinese Exclusion Act of 1882 which has been repealed and replaced with the INA which has no such exclusion of judicial review. The only restriction on consular visa review is in INA, 8 USC § 1104(a) - Powers and duties of Secretary of State which only restricts the Secretary of State and makes no mention of the courts or judicial review so it appears that Congress has repealed the DoCNR.

Finally, we intend to challenge DoCNR directly based on the fact that the DoCNR is based on a false premise. While Congress can certainly deprive citizens, permanent residents, and 'aliens' from life, liberty, and property, it can only do so through Due Process. Congress never had any 'plenary power to exclude aliens' because the authors of the Fifth Amendment declared 'No person ... ' and Mrs. Von Kramer is a person. They could well have said 'No citizen ...' which was used elsewhere in the constitution but they chose 'person' for the protections of the Fifth Amendment and so Mrs. Von Kramer must be provided with Due Process.

The discussion of DoCNR is elaborated in depth in our Response (ECF 18) pages 13 - 22 where we document the current exceptions to DoCNR and our intent to challenge DoCNR, but the foundation of those novel and untested challenges were already laid out in the complaint (ECF 11-1) para 121 and 167.

Just as Plessy v. Ferguson, 163 U.S. 537 (1896) was based on a false creation of the Supreme Court, 'Separate But Equal', which was corrected with Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), the 'Doctrine of Consular Non

Reviewability' (DoCNR) is based on a false premise that aliens are not people but rather some sort of vermin who are not entitled to Due Process. DoCNR needs to be overturned are relegated to the trash bin of history.

Conclusion

We should be granted the relief sought from DoS as DoS had a duty to provide facially correct decisions (listing the evidence considered as well as the statute) in its visa denials and it did not. Sovereign Immunity does not apply. The offensive (to us) DoCNR does not apply to my wife and Mrs. Von Kramer has several plausible challenges to DoCNR which we intend to pursue.

We are also seeking ancillary relief of DoS revising the non immigrant visa process to insure it complies with Due Process as required by the Fifth Amendment. This is actually greater importance to us than the nominal credit for future services as we have a strong belief in good governance. We also seek relief for other surviving spouses of American workers who are being unlawfully denied access to their congressionally approved benefits.

Count 5, DoS OIG Refuses to Investigate or Report Federal Crimes

Ancillary Relief is sought from DoS OIG because had they fulfilled their statutory and constitutional duties in 2018 with Mrs. Carr's improper visa denial, in 2019 Mrs. Von Kramer's first visa would have been granted and the later applications would not have been necessary. Further, as there are expiration dates for the non-immigrant visas provided to my wife and Mrs. Von Kramer (they are of the ten year multiple entry variety), we will likely need to get replacement visas and have

an interest in a corrected visa application process.

The relief sought is orders to DoS OIG that they take those actions to prevent such damages in the future, particularly 5a USC IG Act 1978 section 4 (reporting of federal crimes) as it relates to 18 USC § 1001, the federal crime of falsification of government records.

Obviously Sovereign Immunity does not apply to these orders to obey statutes as in Marbury v. Madison (1803) and APA 5 USC § 702. The limitations on 'sovereign immunity' are discussed at length in my Response of 18 Mar 2024 (ECF 18) pages 1 to 4. Further, contrary to the broad claims of executive discretion by USATXN, it is not applicable as committing federal crimes and violating the constitution is never within executive discretion as discussed in my Response of 18 Mar 2024 (ECF 18) pages 4 to 6.

Further, the DoCNR applies only to judicial review and there is no restriction on OIG review of consular visa decisions and process.

Conclusion

The claims against DoS and DoS OIG are well founded and the court is asked to direct DoJ, DoS OIG and DoS to coordinate the corrections to provide Due Process in processing all visa applications. We should also be given a credit for future services as requested though, admittedly, we are actually more interested in good governance than in the credits for future services.

Mr. Carr hereby affirms under penalty of perjury in both the United States and Thailand that as an individual:

1. I have reviewed the above affirmation and believe all of the statements to be true to the best of my knowledge.
2. I have reviewed the associated documents and exhibits and believe them to be true and accurate copies with the exception of the documents identified as being redacted. The redacted documents have only been altered to remove sensitive personal information or other redactable information (as cited in the redaction) according to normal redaction procedures.

I hereby reaffirm that the above is true to the best of my knowledge under penalty of perjury in both the United States and Thailand.

/s Brian P. Carr

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Brian P. Carr
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Date: 26 May 2024

Location: Irving, Texas