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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROSALINA CUELLAR DE OSORIO; ELIZABETH MAGPANTAY; EVELYN Y. SANTOS; MARIA ELOISA LIWAG; NORMA UY and RUTH UY Plaintiffs, v. JONATHAN SCHARFEN, Acting Director of the United States Citizenship and Immigration Services; MICHAEL CHERTOFF, Secretary U.S. Department of Homeland Security; CONDOLEEZA RICE, Secretary of State Defendants.	COMPLAINT FOR DECLARATORY, MANDAMUS AND INJUNCTIVE RELIEF

Plaintiffs, by and through their undersigned counsel, sue the Defendants and allege as follows:

INTRODUCTION

1. This is an action for declaratory and injunctive relief, challenging the Defendants' arbitrary, capricious and wrongful refusal to accord the appropriate priority dates to the immigrant visa petitions Plaintiffs have filed on behalf of their adult children pursuant to 8 U.S.C. 1154 (setting forth the procedure for granting immigrant status). Plaintiffs, who are all lawful immigrants or non-immigrants in the United States, have been harmed by Defendants' refusal to follow the plain meaning of the Child Status Protection Act, Pub. L. No. 107-20, 116 Stat. 927 (2002), codified at 8 U.S.C. § 1153(h).

JURISDICTION

2. This Court has jurisdiction pursuant to the provisions of 28 U.S.C. § 1331 (federal question jurisdiction) because Plaintiffs' claims arise under the laws of the United States, the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq. This Court may grant relief under 28 U.S.C. §1651 (All Writs Act), 28 U.S.C. § 2201 (Declaratory Judgment Act), and under 5 U.S.C. § 701 et seq. (Administrative Procedure Act or APA).

3. This action involves pure questions of law. Therefore the jurisdictional limitations restricting review of discretionary decisions found at 8 U.S.C. § 1252 do not apply.

EXHAUSTION OF REMEDIES

4. Plaintiffs have exhausted their administrative remedies. Plaintiffs have made numerous written requests that their petitions be accorded the proper priority dates in accordance with 8 U.S.C. § 1153(h)(1). No further administrative remedies are available to address the Defendants' failure to properly adjudicate Plaintiffs' petitions.

VENUE

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because plaintiff Rosalina Cuellar de Osorio resides in this judicial district; the immigrant visa petitions in question were adjudicated at, or are currently pending at, an office of the United States Citizenship and Immigration Services (USCIS) located within this district; because this is a civil action in which the Defendants are officers of the United States acting in their official capacities; and because many of the events or omissions giving rise to the claim occurred in this judicial district.

DEFENDANTS

6. Defendant Jonathan Scharfen is the Acting Director of the United States Citizenship and Immigration Service (USCIS), an agency of the United States government. As USCIS Acting Director, Mr. Scharfen has primary responsibility for the implementation of the immigration laws, particularly the

processing of immigrant visa petitions. Mr. Scharfen is sued in his official capacity.

7. Defendant Michael Chertoff is the Secretary of the United States Department of Homeland Security (DHS). In his capacity as Secretary, Mr. Chertoff is charged with the administration and enforcement of the Immigration and Nationality Act. Mr. Chertoff is sued in his official capacity.

8. Defendant Condoleeza Rice is the Secretary of the Department of State. In her capacity as Secretary, she is charged with the administration and distribution of immigrant visas at United States embassies and consulates around the world. Ms. Rice is sued in her official capacity.

PLAINTIFFS

9. Plaintiff Rosalina Cuellar de Osorio is a native and citizen of El Salvador, and a resident of Reseda, California. She immigrated to the United States based on the petition of her U.S. Citizen mother, and has been a lawful permanent resident of the United States since August of 2006.

10. Plaintiff Elizabeth Magpantay is a native and citizen of the Philippines, and a resident of Temecula, California. She immigrated to the United States based on the petition of her U.S. Citizen father, and has been a lawful permanent resident of the United States since May of 2006.

11. Plaintiff Evelyn Santos is a native and citizen of the Philippines, and a resident of Livermore, California. She immigrated to the United States based on the petition of her U.S. Citizen father, and has been a lawful permanent resident of the United States since February 2007.

12. Plaintiff Maria Eloisa Liwag is a native and citizen of the Philippines, and a resident of Suisun City, California. She immigrated to the United States based on the petition of her U.S. Citizen father, and has been a lawful permanent resident of the United States since June of 2006.

13. Plaintiff Norma Uy is a native and citizen of the Philippines, and a resident of Marysville, Washington. She immigrated to the United States based on the petition of her U.S. Citizen sister, and has been a lawful permanent resident of the United States since April of 2005.

14. Plaintiff Ruth Lalaine Uy is a native and citizen of the Philippines currently residing in Marysville, Washington. She is the daughter of Plaintiff Norma Uy. Ruth Uy is currently in valid F-1 non-immigrant status as a student.

STATUTORY FRAMEWORK

Family-Sponsored Immigration

15. Immigration on the basis of a family relationship with a citizen or lawful permanent resident of the United States is one of the primary ways for foreign nationals to immigrate to the United States.[1]

16. Certain family members of U.S. citizens are considered "immediate relatives," and are not subject to numerical limitations. Immediate relatives include the children of U.S. citizens, spouses of U.S. citizens, and parents of U.S. citizens who are at least twenty-one years of age. 8 U.S.C. § 1151(b)(2)(A)(i). There is no similar provision for the "immediate relatives" of lawful permanent residents.

17. For those individuals who are not "immediate relatives," the Immigration and Nationality Act establishes four family-sponsored immigrant visa preference categories which are subject to numerical limitations. 8 U.S.C. § 1153(a). These categories are:

a) *First family-sponsored preference category*: Unmarried adult sons and daughters of United States citizens. 8 U.S.C. § 1153(a)(1).

b) *Second family-sponsored preference category*: Spouses and children, and unmarried sons and daughters of lawful permanent residents. 8 U.S.C. § 1153(a)(2)(A) & (B).

c) *Third family-sponsored preference category*: Married sons and daughters of U.S. citizens. 8 U.S.C. § 1153(a)(3).

d) *Fourth family-sponsored preference category*: Brothers and sisters of

[1] Other means include immigration through an employer's petition, asylum, and the diversity visa lottery. 8 U.S.C. §§ 1153(b), 1159, and 1153(c).

adult U.S. citizens. 8 U.S.C. § 1153(a)(4).

18. A spouse or child of the alien beneficiary of a family-sponsored immigrant visa petition is entitled to the same status and priority date as the principal alien beneficiary. 8 U.S.C. §1153(d). The spouse or child is considered a "derivative beneficiary" of the visa petition.

19. In order to meet the definition of a "child" for immigration purposes, the individual must be unmarried and under the age of twenty-one. 8 U.S.C. § 1101(b). Once an individual reaches the age of twenty-one or marries, he or she can no longer be considered a "child" for immigration purposes.

20. The family-sponsored immigration categories are subject to a maximum allotment of 480,000 visas each year, less the number of immigrant visas issued to immediate relatives, and plus the number of unused employment-sponsored immigrant visas, if any. See 8 U.S.C. § 1151(c). The Immigration and Nationality Act establishes a minimum of 226,000 available immigrant visa numbers for the family-sponsored preference categories.

21. Immigrant visas are made available in the order in which a visa petition is received by the USCIS. Because the demand for immigrant visas in each category far exceeds the statutory allotment each year, beneficiaries and their immediate family members often experience long waiting times before they are eligible to receive an immigrant visa.

22. Filing an immigrant visa petition (Form I-130, Petition for Alien Relative) with the USCIS is the first step in the family-sponsored immigration process. The receipt date of the I-130 petition is commonly referred to as the "priority date" because it indicates the beneficiary's "place in the line" to receive an immigrant visa. See 8 C.F.R. § 204.1(c).

23. Beneficiaries must monitor the progression of priority dates on the U.S. State Department's Visa Bulletin. (Current and archived visa bulletins are available on the State Department website).[2] The Visa Bulletin shows when a visa number is available for beneficiaries of approved visa petitions. Only beneficiaries who have a priority date earlier than the cut-off date on the current Visa Bulletin may be allotted a visa number. This is commonly referred to as having a "current priority date." Once a beneficiary has a "current priority date," she may take the second step of applying for adjustment of status (aka "green card") if she resides in the United States, or for an immigrant visa at the appropriate U.S. Consulate if she resides abroad.

The Child Status Protection Act

24. The Child Status Protection Act (CSPA) was signed into law by President Bush on August 6, 2002. Pub. L. No. 107-208, 116 Stat. 927 (2002), codified at 8 U.S.C. § 1153 (h)(1)(A)-(B). The CSPA was enacted in order to address

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2 http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html (accessed May 9,

the problems of certain individuals who were classified as children under the INA when the immigrant visa petition was filed with the USCIS, but who turned twenty-one and subsequently lost their eligibility for immigration benefits as derivative beneficiaries.

25. The statute provides several formulas for determining whether an alien may still be considered a "child" for immigration law purposes. 8 U.S.C. § 1153(h)(1). For example, in the case of a derivative beneficiary of a family or employment-sponsored immigrant visa petition, the beneficiary's age will be locked in on the date that the priority date become current, less the number of days that the petition was pending. The formula requires states the beneficiary to seek status as a lawful permanent resident within one year of the date the visa became available.

26. Those aliens who cannot qualify as "children" under the CSPA formula are benefited by 8 U.S.C. § 1153(h)(3), entitled "Retention of priority date." This section states that if the age of a beneficiary is determined to be twenty-one years or older for purposes of 8 U.S.C. §§ 1153(a)(2) (petitions filed by lawful permanent residents) or 1153(d) (derivative beneficiaries of family, employment and diversity visa petitions), "the alien's petition shall

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automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition."

27. The provisions of the Child Status Protection Act apply to visa petitions and applications for permanent residence pending on or after the date of enactment (August 6, 2002). The CSPA additionally applies to beneficiaries of petitions approved before August 6, 2002 "if a final determination has not been made on the beneficiary's application for an immigrant visa or adjustment of status to lawful permanent residence pursuant to such approved petition." CSPA § 8, 116 Stat. at 930.

28. The USCIS and the Department of State have issued various memoranda interpreting the CSPA. However, regulations governing the implementation of this law have not been published. None of the memoranda address the provision regarding automatic conversion and retention of priority dates codified at 8 U.S.C. § 1153(h)(3).

FACTUAL ALLEGATIONS

Plaintiff Rosalina Cuellar de Osorio

29. Rosalina Cuellar de Osorio entered the United States in August 2006 as a lawful permanent resident. Ms. Cuellar de Osorio was the beneficiary of a family-sponsored immigrant visa petition filed by her U.S. Citizen mother on May 5, 1998. This was a third family-sponsored preference category petition

for a married daughter of a United States citizen, as defined in 8 U.S.C. § 1153(a)(3). At the time Ms. Cuellar de Osorio's son, Melvin Alexander Osorio Cuellar, was thirteen years old and classified as a derivative beneficiary of this petition.

30. The immigrant visa petition was approved on June 30, 1998. However, due to numerical restrictions and per-country limitations on immigrant visas available each year, visa numbers were not available to Ms. Cuellar de Osorio until over seven years later, on November 1, 2005. Melvin turned twenty one in July of 2005. By the time Ms. Cuellar de Osorio and Melvin appeared for their immigrant visa interview at the U.S. Consulate in San Salvador, the Consulate determined that Melvin could no longer be classified as a "child" under 8 U.S.C. § 1001(b) and was thus ineligible for derivative status. The Consulate did not apply the automatic conversion provision found at 8 U.S.C. § 1153(h)(3).

31. Ms. Cuellar de Osorio's immigrant visa application was approved, and she entered the United States as a lawful permanent resident on or about August of 2006.

32. On July 20, 2007, Ms. Cuellar de Osorio filed an immigrant visa petition (Form I-130) on behalf of her adult son Melvin pursuant to the terms of 8 U.S.C. § 1153(a)(2)(B) (providing classification for unmarried sons and daughters of

lawful permanent residents). This petition was filed with the USCIS' California Service Center. (Receipt number: WAC-07-222-50720). Included with the immigrant petition was a request to retain the May 5, 1998 priority date pursuant to Section 3 of the CSPA, codified at 8 U.S.C. 1153(h)(3). This would afford Ms. Cuellar de Osorio's son immediate eligibility for an immigrant visa, and avoid the lengthy waiting period associated with the second family-sponsored preference category. Currently, this waiting period is approximately nine years for the unmarried sons or daughters of permanent residents from El Salvador.

33. To date, the USCIS California Service Center has not adjudicated Ms. Cuellar de Osorio's petition or otherwise responded to her request for priority date retention under the CSPA.

34. Melvin Orosio Cuellar remains in El Salvador, separated from his mother and other members of his immediate family who are in the United States. Given the current waiting periods for the second family-sponsored preference category, Melvin will not be able to join their parents in the United States until 2017 when he is approximately thirty-three years old. If he marries, his mother's petition will be cancelled as a matter of law.

Plaintiffs Norma Uy and Ruth Uy

35. Ms. Norma Uy entered the United States in April 2005 as a lawful permanent resident. Norma Uy was the beneficiary of a family-sponsored immigrant visa petition filed by her sister on February 4, 1981. This was a fourth family-sponsored preference category petition for a sibling of a United States citizen, as defined in 8 U.S.C. § 1153(a)(4). At the time, Norma Uy's daughter Ruth was nearly two years old, and included as a derivative beneficiary.

36. The immigrant visa petition was approved on February 4, 1981. However, due to numerical restrictions and per-country limitations on immigrant visas available each year, visa numbers were not available to the Uy family until over twenty one years later, in July 2002. Ruth Uy turned twenty one in April of 2000. Thus she could not be classified as a "child" under 8 U.S.C. § 1001(b), and was no longer eligible for status as a derivative status of her mother's petition.

37. Norma Uy's immigrant visa application was approved, and she entered the United States as a lawful permanent resident in April of 2005.

38. Ruth Uy entered the United States in March of 2007 as a visitor, and was subsequently granted a change to F-1 (student) non-immigrant status so that she may attend University.

39. On July 12 2007 Norma Uy submitted an immigrant petition on behalf of Ruth Uy pursuant to the terms of 8 U.S.C. § 1153(a)(2)(B) (providing classification

for unmarried sons and daughters of lawful permanent residents). At the same time, Ruth Uy submitted an application for permanent residence (aka "green card" application) pursuant to 8 U.S.C. § 1245(a). Included was a request to retain the February 4, 1981, priority date pursuant to Section 3 of the CSPA, codified at 8 U.S.C. 1153(h)(3). This would afford Ruth Uy immediate eligibility for permanent residence, and would avoid the lengthy waiting periods associated with the second family-sponsored preference category. Currently, this waiting period is approximately eleven years for the unmarried sons or daughters of permanent residents from the Philippines.

40. On July 23, 2007, the USCIS rejected Ruth Uy's application for permanent residence. The USCIS also rejected Norma Uy's immigrant visa petition on behalf of her daughter. The rejection notice states that, "based on the information you provided, a visa number does not appear to be available for your immigration category at this time." The rejection notice made no mention of the CSPA's provision for priority date retention codified at 8 U.S.C. 1153(h)(3).

41. Norma Uy has re-submitted her immigrant visa petition to the USCIS, again requesting the February 4, 1981, priority date pursuant to Section 3 of the CSPA. This petition is currently pending. Given the current waiting periods associated with the second family-sponsored preference category, if the USCIS

refuses to provide the 1981 priority date, Ruth Uy will have to wait approximately eleven years (until she is forty years old) before she may apply for permanent residence based on the petition. If she marries, her mother's petition will be cancelled as a matter of law.

Plaintiff Elizabeth Magpantay

42. Ms. Elizabeth Magpantay entered the United States in May 2006 as a lawful permanent resident. Ms. Magpantay was the beneficiary of a family-sponsored immigrant visa petition filed by her U.S. citizen father on January 29, 1991. This was a third family-sponsored preference category petition for a married daughter of a United States citizen, as defined in 8 U.S.C. § 1153(a)(3). At the time, Ms. Magpantay had four minor children who were derivative beneficiaries of this petition.

43. The immigrant visa petition was approved on March 14, 1991. However, due to numerical restrictions and per-country limitations on immigrant visas available each year, visa numbers were not available to Ms. Magpantay and her family until nearly fifteen years later, on December 1, 2005. By the time Ms. Magpantay was interviewed at the U.S. Consulate in Manila, her daughter Melizza Magpantay, her son Ricardo Magpantay, and her daughter Christine Magpantay were all over the age of twenty-one. Melizza turned twenty-one in July 1999, Ricardo turned twenty-one in December 2001, and Christine

Magpantay turned twenty-one in August 2005. Thus they could not be classified as "children" under 8 U.S.C. § 1001(b), and were no longer eligible for derivative status.

44. Ms. Magpantay's immigrant visa application was approved and in May of 2006 she entered the United States as a lawful permanent resident.

45. On May 22, 2007, she filed three separate immigrant visa petitions on behalf of her adult children Melizza, Ricardo and Christine pursuant to the terms of 8 U.S.C. § 1153(a)(2)(B) (providing classification for unmarried sons and daughters of lawful permanent residents). All three petitions were filed with the USCIS' California Service Center. (Receipt Numbers WAC-07-184-52537, WAC-07-182-55490, WAC-07-183-50358).

46. On October 17, 2007, Ms. Magpantay's newly retained counsel submitted requests to retain the January 29, 1991, priority date pursuant to Section 3 of the CSPA, codified at 8 U.S.C. 1153(h)(3). This would afford Ms. Magpantay's children immediate eligibility for immigrant visas, and avoid the lengthy waiting periods associated with the second family-sponsored preference category. Currently, this waiting period is approximately eleven years for the unmarried sons or daughters of permanent residents from the Philippines.

47. On November 7, 2007, electronic mail inquiries were made to the California Service Center regarding the status of Ms. Magpantay's three immigrant visa

petitions. Ms. Magpantay also reiterated her requests that the petitions be approved with the January 29, 1991, priority dates in accordance with the CSPA.

48. The California Service Center responded with a request for additional evidence relating to the priority date issue, and instructed Ms. Magpantay's counsel to deliver the evidence to a specific post office box "with a bold label of 'PRIORITY DATE RETENTION REQUEST.'"

49. Ms. Magpantay submitted the evidence requested in connection with each of the three pending petitions on February 5, 2008. To date, the USCIS has not adjudicated Ms. Magpantay's petitions or otherwise responded to her requests regarding the priority date retention under the CSPA.

50. Ms. Magpantay's three children remain in the Philippines, separated from the rest of their immediate family who are in the United States. Given the current waiting periods for the second family-sponsored preference category, Melizza, Ricardo and Christine will not be able to join their parents in the United States until 2018. They will be forty years old, thirty-eight years old, and thirty-four years old respectively. If they marry, their mother's petition will be cancelled as a matter of law.

Plaintiff Evelyn Santos

51. Ms. Evelyn Y. Santos entered the United States in February of 2007 as a lawful permanent resident. Ms. Santos was the beneficiary of a family-sponsored immigrant visa petition filed by her U.S. citizen father on January 29, 1991. This was a third family-sponsored preference category petition for a married daughter of a United States citizen, as defined in 8 U.S.C. § 1153(a)(3). Ms. Santos had four minor sons who were derivative beneficiaries of this petition.

52. The immigrant visa petition was approved on March 14, 1991. However, due to numerical restrictions and per-country limitations on immigrant visas available each year, visa numbers were not available to Ms. Santos and her family until nearly fifteen years later, on December 1, 2005. By the time Ms. Santos was interviewed at the U.S. Consulate in Manila, her son Dan Edward Santos was over the age of twenty-one. Dan turned twenty-one in September of 2002. Thus he could not be classified as a "child" under 8 U.S.C. § 1001(b), and was no longer eligible for derivative status.

53. Ms. Santos' immigrant visa application was approved, and in February of 2007 she entered the United States as a lawful permanent resident with her husband and two of her minor children.

54. On January 8, 2008, Ms. Santos filed an immigrant visa petition on behalf of her son Dan, pursuant to the terms of 8 U.S.C. § 1153(a)(2)(B) (providing classification for unmarried sons and daughters of lawful permanent residents).

The petition was filed with the USCIS' California Service Center. (Receipt Number WAC-08-128-13618).

55. Included with the immigrant petition was a request to retain the January 29, 1991, priority date pursuant to Section 3 of the CSPA, codified at 8 U.S.C. 1153(h)(3). This would afford Ms. Santos' son immediate eligibility for an immigrant visa, and avoid the lengthy waiting period associated with the 2B preference category. Currently, this waiting period is approximately eleven years for the unmarried sons or daughters of permanent residents from the Philippines.

56. On February 19, 2008, Ms. Santos' attorney submitted a follow-up request to retain the January 29, 1991 priority date pursuant to Section 3 of the CSPA, codified at 8 U.S.C. 1153(h)(3). This request was sent via certified mail with a bold label of "PRIORITY DATE RETENTION REQUEST." On February 28, 2008, the California Service Center returned the entire package to Ms. Santos' counsel with a boilerplate letter. The letter stated that inquiries regarding case status should be directed to the USCIS' National Customer Service Center (a 1-800 number).

57. To date, the USCIS has not adjudicated Ms. Santos' petition or otherwise responded to her request regarding the priority date retention under the CSPA. Her son Dan remains in the Philippines separated from the rest of his immediate

family in the United States. Given the current waiting periods for the second family-sponsored preference category, Dan will not be able to join his parents in the United States until the year 2019, when he is approximately thirty-eight years old. If he marries, his mother's petition will be cancelled as a matter of law.

Plaintiff Maria Eloisa Liwag

58. Ms. Maria Eloisa Liwag entered the United States in June 2006 as a lawful permanent resident. Ms. Liwag was the beneficiary of a family-sponsored immigrant visa petition filed by her U.S. citizen father on January 29, 1991. This was an third family -sponsored preference category petition for a married daughter of a United States citizen, as defined in 8 U.S.C. § 1153(a)(3). At the time, Ms. Santos' daughter Conalu Liwag was eight years old and a derivative beneficiary of this petition.

59. The immigrant visa petition was approved on March 14, 1991. However, due to numerical restrictions and per-country limitations on immigrant visas available each year, visa numbers were not available to Liwag and her family until nearly fifteen years later, on December 1, 2005. By the time Ms. Santos was interviewed at the U.S. Consulate in Manila, her daughter Conalu was over the age of twenty-one. Conalu Liwag turned twenty-one in December of 2004.

Thus she could not be classified as a "child" under 8 U.S.C. § 1001(b) and was no longer eligible for derivative status.

60. Ms. Liwag's immigrant visa application was approved, and in June of 2006 she entered the United States as a lawful permanent resident with her husband.

61. On July 27, 2007, Ms. Liwag filed an immigrant visa petition on behalf of her daughter pursuant to the terms of 8 U.S.C. § 1153(a)(2)(B) (providing classification for unmarried sons and daughters of lawful permanent residents). The petition was filed with the USCIS' California Service Center. (Receipt Number WAC-07-237-50520).

62. On January 4, 2008, Ms. Liwag's newly-retained attorney submitted a request to retain the January 29, 1991, priority date pursuant to Section 3 of the CSPA, codified at 8 U.S.C. 1153(h)(3). This would afford Ms. Liwag's daughter immediate eligibility for an immigrant visa, and avoid the lengthy waiting period associated with the 2B preference category. Currently, this waiting period is approximately eleven years for the unmarried sons or daughters of permanent residents from the Philippines.

63. On February 19, 2008, Ms. Liwag's attorney submitted a follow-up request to retain the January 29, 1991 priority date pursuant to Section 3 of the CSPA, codified at 8 U.S.C. 1153(h)(3). This request was sent via certified mail with a bold label of "PRIORITY DATE RETENTION REQUEST." On February 28,

2008, the California Service Center returned the entire package to Ms. Liwag counsel with a boilerplate letter. The letter stated that inquiries regarding case status should be directed to the USCIS' National Customer Service Center (a 1-800 number).

64. To date, the USCIS has not adjudicated Ms. Liwag's petition or otherwise responded to her request regarding the priority date retention under the CSPA. Her daughter remains in the Philippines separated from the rest of her immediate family who are in the United States. Given the current waiting periods for the second family-sponsored preference category, Conalu will not be able to join her parents in the United States until the year 2018, when she is approximately thirty-five years old. If she marries, her mother's petition will be cancelled as a matter of law.

CAUSES OF ACTION

Count One - Mandamus Action, 28 U.S.C. § 1361

65. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 64 above.

66. Defendants' refusal to accord the proper priority dates to Plaintiffs' immigrant visa petitions is arbitrary and capricious, an abuse of discretion, and contrary to 8 U.S.C. § 1153(h)(3).

67. Defendants are charged with the administration and implementation of the Immigration and Nationality Act. Defendants are solely responsible for

adjudicating and approving the immigrant visa petitions of lawful permanent residents and United States citizens, and for distributing immigrant visas accordingly. Defendants' failure to perform their statutory obligations is injuring Plaintiffs by prolonging their separation from their adult children. Defendants should be compelled to perform the duties owed to Plaintiffs and properly adjudicate the Plaintiffs' immigrant visa petitions.

Count Two – Administrative Procedures Act, 5 U.S.C. §§ 555 (b), 701 et seq.

68. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 64 above.

69. By failing to give effect to the provisions of the Child Status Protection Act codified at 8 U.S.C. §1103(h)(3), Defendants' procedures and practices violate the Administrative Procedures Act and constitute agency action that is arbitrary and capricious.

Count Three – Equal Access to Justice Act

70. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 64 above. If they prevail, Plaintiffs will seek attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the Court to grant the following relief:

(1) Accept and maintain continuing jurisdiction of this action.

(2) Declare that Defendants' policies, practices, and customs arbitrarily contradict the plain language of the Child Status Protection Act and the Immigration and Nationality Act, and thus violate the Administrative Procedures Act.

(3) Declare that Defendants' practices violate legal duties owed to Plaintiffs under the Immigration and Nationality Act.

(4) Order Defendants to properly adjudicate Plaintiffs' immigrant visa petitions and grant their original priority dates in accordance with the terms of the Child Status Protection Act.

(5) Award Plaintiffs the costs of this action, including fair and reasonable attorney's fees as provided in the Equal Access to Justice Act.

(6) Provide such relief as the Court may deem proper and appropriate.

Dated: , 2008

Respectfully submitted,

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Carl Shusterman
Amy Prokop
Attorneys for Plaintiffs
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Los Angeles, CA 90017

CERTIFICATE OF SERVICE

This is to certify that I have served counsel of record in the foregoing matter with one copy of the foregoing complaint having deposited in the US mail, postage pre-paid, certified return receipt requested, a copy of the same, on this day of 2008 as follows:

Michael Mukasey, Attorney General
US Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Michael Chertoff, Secretary of DHS
US Department of Homeland Security
Washington, DC 20528

Mr. Jonathan Scharfen, USCIS Acting Director
Office of the Chief Counsel
20 Massachusetts Ave., NW, Room 4025
Washington, DC 20536