

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. EDCV 08-840 JVS (SHx) Date December 2, 2008

Title Rosalina Cuellar De Osorio, et al. v. Jonathan Scharfen, et al.

Present: The James V. Selna  
Honorable

Karla J. Tunis

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings:** (In Chambers) Order Granting Defendants' Motion to Stay Action  
(Fld 9-22-08)

Defendants Jonathan Scharfen, et al. (collectively "Scharfen") move to dismiss the complaint filed by Plaintiffs Rosalina Cuellar De Osorio, et al. (collectively "Osorio") or in the alternative to hold the case in abeyance in accordance with Costelo et al. v. Chertoff et al., (No. SACV 08-688). The relief requested in Osorio's complaint involves the interpretation of a provision of the Child Status Protection Act, codified at § 203(h)(3) of the Immigration and National Act ("INA"), 8 U.S.C. § 1153(h)(3) (hereinafter "§ 203(h)(3)").

Scharfen argues that the Court should follow its decision in Costelo et al. (Mot. p. 3.) In that case, the government argued that the Court should dismiss or stay the action, because the government had already certified two similar cases for hearing before the Board of Immigration Appeals ("BIA") ("the pending § 203 cases") (August 25th Order, p. 1.) The government also argued that because it had requested a written opinion from the BIA interpreting § 203(h)(3), the Court should decline to issue its own interpretation of the statute until such time as the BIA has had an opportunity to rule on the issue. (Id.) This Court agreed and stayed the action for 180 days to afford the BIA an opportunity to issue an interpretation of § 203(h)(3) in the first instance. (Id. at 2.)

This Court sees no compelling reason to depart from its holding and reasoning in Costelo et al. Osorio has not argued that the legal or factual issues in this case differ significantly from those in Costelo et al.

The Court is sensitive to Osorio's concern that (1) the BIA may chose not to issue a written opinion on the pending § 203 cases; and (2) there is no time limit in which the

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BIA must rule on those cases, if ever. The Court is also sensitive to the hardship that further delay will cause the families in this action. However, the resolution of Osorio’s allegations is affected by construction of the substantive statute and the Court believes that it would benefit greatly from any interpretation of § 203(h)(3) which the BIA might issue.

Because the Court finds that the BIA expertise in this area might help this Court reach a proper conclusion, and further, because administrative review might preclude the need for review by this Court, the Court declines to rule on the merits of Osorio’s motion at this time. See El Rescate Legal Services, Inc. v. Executive Office of Immigration Review, 959 F.2d 742, 747 (9th Cir. 1999) (A court may apply a prudential exhaustion requirement where (1) agency expertise makes agency consideration necessary to generate a record and reach a decision; (2) not applying exhaustion would encourage bypass of administrative scheme; and (3) administrative review is likely to allow the agency to correct its mistake and preclude the need for judicial review.). The Court declines, however, to impose an exhaustion requirement in the absence of a statutory mandate. See id.

Accordingly, this action is stayed in its entirety to afford the BIA an opportunity to issue an interpretation of § 203(h)(3) in the first instance.<sup>1</sup> The stay will expire concurrently with the stay Costelo et al., which was set for 180 days following August 25, 2008. (August 25th Order, p. 2.) The Court further finds that oral argument would not be helpful on this matter, and vacates the December 8, 2008 hearing. Fed. R. Civ. P. 78; L.R. 7-15.

Scharfen shall keep both Osorio and the Court apprised of any relevant developments in the pending § 203 cases.

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<sup>1</sup> “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” Landis v. North American Co., 299 U.S. 248, 254 (1936).