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Ohio Judge Won't Free Feds From Wife's Visa Delay Suit

By **Alyssa Aquino**

Law360 (June 10, 2024, 6:09 PM EDT) -- An Ohio federal magistrate refused to free the U.S. Department of State from a lawsuit challenging a delayed green card application, rejecting officials' claims that an application pushed into administrative proceedings was outside the court's purview.

U.S. Magistrate Judge Kimberly Jolson of the Southern District of Ohio found that the State Department had only continued the green card adjudication process when it placed a rejected 2021 application into further administrative processing. As those proceedings gave Muna Adal Igal and her husband an opportunity to salvage the application, which had been rejected by a consular officer, the State Department couldn't claim that the denial was final and beyond the court's jurisdiction, the judge said.

A refusal "might be the eventual outcome in this case," Judge Jolson said on Friday. "But the parties provide no explanation why plaintiff's husband's application was refused, if he received a form outlining the reason for the refusal, or what information, if any, is needed to process his visa. ... The refusal here may not be as final as defendants say."

Igal, a U.S. citizen from Westerville, Ohio, filed suit in the Ohio federal court in November, several months after the U.S. Consulate in Johannesburg denied the application.

Igal had sued the U.S. Secretary of State and a handful of its officials in South Africa, accusing them in a November lawsuit of unreasonably delaying a visa application that was kicked off in July 2021, when she petitioned the U.S. government for a green card for her husband, who is not identified in available court documents.

She argued that the State Department was skirting its obligations to process the request within a reasonable amount of time, saying the department stopped responding to inquiries on the application after placing it in administrative proceedings in early 2023.

The department countered that the process had run its course when a consular officer rejected the green card application following a January 2023 visa interview. Just because the husband could, through administrative processing, fix his application doesn't mean that the application hadn't been fully processed, the department argued.

But Judge Jolson found the administrative processing to be a prerequisite to a final decision, rather than a final decision itself, citing two cases in Washington federal court. She further pointed to a federal regulation stating that decisions to reject a visa under Title 8, Section 1201 of the U.S. Code — such as the decision to reject Igal's husband's — must be signed off by a senior consular officer after administrative proceedings are completed.

"If the principal consular officer does not agree with the initial refusal, he or she must refer the case to the State Department for an advisory opinion or 'assume responsibility for final action on the case,'" the judge said, citing federal regulations. "This language presumes that the initial refusal is not a final decision."

The department had separately argued that the delay in green card processing hadn't been unreasonable in light of the backlog of visa applications.

But the magistrate said she needed more information to figure out whether Igal's wait time was reasonable, such as how the Johannesburg Consulate processes applications and how many requests have been sent to administrative processing.

"Indeed, taking plaintiff's allegations as true, her husband's application has been in this status for 15 months without any indication as to why his application needs additional processing or what information is needed to adjudicate it," the judge said.

In allowing the case to proceed, the judge also noted Igal's claims of undergoing hardship while separated from her husband.

"Plaintiff has raised their daughter on her own, and her husband has never met his child. Because plaintiff has no support system in the United States to help her with child care, she works part time and worries about losing her job if she misses work. Currently, she says her part-time warehouse job barely covers her expenses, and her husband, who has not found employment, cannot support her financially," Judge Jolson said.

A representative for the federal government and counsel for Igal did not immediately respond Monday to a request for comment.

Igal is represented by Joshua Goldstein of Goldstein Immigration Lawyers and by Seth Marks.

The U.S. is represented by Kevin Charles Hirst of the U.S. Department of Justice's Office of Immigration Litigation.

The case is Igal v. U.S. Consulate General of Johannesburg et al., case number 2:23-cv-04160, in the U.S. District Court for the Southern District of Ohio.

--Editing by Karin Roberts.