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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

DZU CONG TRAN, DANIEL MAI

Civil No. **CV'10-724 ST**

DINH, and AUSTIN PETER TRAN, on
behalf of themselves and all others similarly
situated,

PLAINTIFF,

SUPPLEMENTAL PLEADING

v.

CLASS ACTION

JANET NAPOLITANO, Secretary,
Department of Homeland Security;
ALEJANDRO MAYORKAS, Director,
U.S. Citizenship and Immigration Services;
DONALD NEUFELD, Associate Director,
USCIS Service Center Operations
Directorate; **CHRISTINA POULOS**,
Director, USCIS California Service Center;
HILLARY RODHAM CLINTON,
Secretary of State, U.S. Department of State;
JANICE L. JACOBS, Assistant Secretary
for Consular Affairs, U.S. Department of
State; **CHARLES E. BENNETT**, Consular
Section Chief, U.S. Consulate General, Ho
Chi Minh City; **JOHN AND JANE DOE**
U.S. CONSULAR OFFICERS 1 through
1000,

DEFENDANTS.

SUPPLEMENTAL PLEADING

Pursuant to Fed. R. Civ. P. 15(d) and leave of Court granted this date, Plaintiffs hereby set out certain transactions, occurrences, and/or events that happened after the date of the First Amended Complaint, filed August 26, 2010. Plaintiffs allege as follows:

Plaintiff Dzu Cong Tran

1. On October 1, 2010, California Service Center (CSC) issued a “Notice of Decision” in reference to Plaintiff Dzu Cong Tran’s first Form I-129F Petition for Alien Fiancé(e), which had been approved on October 27, 2009, stating that “all USCIS action on this petition is concluded as of the date of this notice.” See Def. Mem. Supp. MTD, Exhibit B (Docket No. 18). The reason given was due to the expiration of the four-month validity period of the I-129F, and no opportunity to rebut consular findings was provided to Plaintiff. In its notice, DHS/USCIS/CSC further stated that, “The petitioner may choose to file a new Form I-129F, Petition for Alien Fiancé(e), with fee in behalf of the beneficiary.”

2. As of the date of initiating the instant lawsuit, Plaintiff Dzu Cong Tran was aware of the DHS/USCIS/CSC policy of issuing these “Notice of Decision” form letters terminating returned Form I-129F petitions without action as in the case of Plaintiff Dinh. In the absence of any administrative right to appeal the absolute termination of action contained in such notices of decision, and in the absence of any right to rebut the consular findings, Plaintiff Dzu Cong Tran was compelled by the lack of due process to file a new petition. He filed a second Form I-129F Petition for Alien Fiancé(e) on behalf of Ms. Pham with USCIS/CSC on September 3, 2010, with filing fee of \$455 to USCIS. A receipt notice was issued to him, bearing the receipt number “WAC-10-902-55739”, issued from the CSC. Mr. Tran and Ms. Pham met in person within two years of the filing of the second petition and had and continue to have a bona fide intention to marry within 90 days of Ms. Pham’s arrival.

3. Over six months later, on March 22, 2011, the CSC issued a Request for Evidence (RFE), providing Plaintiff Dzu Cong Tran until May 3, 2011 to request a “waiver” of the

requirement at 8 U.S.C. § 1184(d)(2)(A), which USCIS alleges imposes a limit on petitioners to filing only one K-1 petition in a two-year period. See Exhibit 1 for copy of the RFE.

4. The International Marriage Broker Regulation Act of 2005 (IMBRA) amended 8 U.S.C. § 1184(d) to require verification that “(i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and (ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.” Because Plaintiff Dzu Cong Tran has not petitioned for two or more applying aliens, but instead merely filed two petitions for the same applying alien, this limitation does not apply. See 8 U.S.C. § 1184(d)(2)(A)(i).

5. Plaintiff Dzu Cong Tran intends to file a response to the RFE arguing that the limitations of U.S.C. § 1184(d)(2)(A)(i) do not apply, and in the alternative that a waiver should be granted. Such waiver is discretionary, and did not apply to the first petition. Plaintiff would not have encountered this alleged multiple petition bar with USCIS had the Consulate provided an opportunity to rebut the consular findings in connection with the first petition.

6. Plaintiff Dzu Cong Tran is currently unable financially to travel to Vietnam to visit Ms. Pham, and Ms. Pham is not able to obtain a visa to come visit Plaintiff.

Plaintiff Daniel Mai Dinh

7. As previously alleged in the FAC, Paragraph 117, Plaintiff Daniel Mai Dinh filed a second Form I-129F Petition for Alien Fiancé(e) on behalf of Ms. Vu with USCIS. This second petition was filed on June 14, 2010 with USCIS accompanied by the \$455 filing fee. A receipt notice was issued to him, bearing the receipt number “WAC-10-901-17529”, issued from the California Service Center of USCIS. Mr. Dinh and Ms. Vu met in person within two years of the filing of the second petition and had a bona fide intention to marry within 90 days of Ms. Vu’s arrival.

8. On September 1, 2010, USCIS approved the second I-129F Petition for Alien Fiancé(e) filed by Plaintiff Dinh on behalf of Ms. Vu, and issued an approval notice bearing the

validity dates of September 1, 2010 to December 31, 2010.

9. On December 13, 2010, when the four-month validity period was soon to expire, Plaintiff Dinh sent an email inquiry to the Consulate regarding the delay in scheduling an interview. On January 19, 2011, the U.S. Consulate General in Ho Chi Minh City issued an email with an attached letter, referencing Ms. Vu's second immigrant visa number HCM2010750147, and setting January 24, 2011 as the date of her K-1 visa appointment. The Consulate collected the \$350 application fee for the second K-1 visa application.

10. On January 24, 2011, following an interview, Ms. Vu was issued a letter from the Immigrant Visa Unit of the Consulate asking her to pick up her visa on February 15, 2011. On February 15, 2011, Ms. Vu collected her passport, which was affixed with a K-1 visa issued on February 15, 2011, valid until July 4, 2011, with the annotation that the expiration date of the petition was now May 1, 2011. Ms. Vu entered the United States on February 22, 2011, and was admitted in K-1 status valid until May 23, 2011. See Exhibit 2 for copy of the visa and I-94.

11. Plaintiff Dinh and Ms. Vu were married in Washington State on March 20, 2011, the second anniversary of the day he proposed to her. They intend to file for Adjustment of Status to Conditional Permanent Resident (CPR) Status on Form I-485 in the United States. They are able to live together in the United States as husband and wife during the process leading up to the green card interview for CPR Status, and Ms. Vu is eligible to apply for interim work and travel authorization.

Plaintiff Austin Peter Tran

12. On October 1, 2010, California Service Center issued a "Notice of Decision" in reference to Plaintiff Austin Peter Tran's first petition, the Form I-129F Petition for Alien Fiancé(e), which had been approved on October 13, 2009, stating that "all USCIS action on this petition is concluded as of the date of this notice." See Def. Mem. Supp. MTD, Exhibit D (Docket No. 18). The reason given was due to the expiration of the four-month validity period of the I-129F, and no opportunity to rebut consular findings was provided to Plaintiff. In its

notice, DHS/USCIS/CSC further stated that, “The petitioner may choose to file a new Form I-129F, Petition for Alien Fiancé(e), with fee in behalf of the beneficiary.” In the absence of any administrative right to appeal the absolute termination of action contained in the notice of decision, and in the absence of any right to rebut the consular findings, Plaintiff Austin Peter Tran was compelled by the lack of due process to file a new petition.

13. Plaintiff Austin Peter Tran married Ms. Nguyen in Vietnam on November 27, 2010. Since their union as husband and wife, however, they have been forced to live apart. Plaintiff must reside in the United States for work, and Ms. Nguyen cannot obtain a visa to visit the United States. On January 13, 2011, Plaintiff Austin Tran filed a second petition, this time a Form I-130, Petition for Alien Relative, on behalf of Ms. Nguyen his spouse, with filing fee of \$420 to USCIS. A receipt notice was issued to him, bearing the receipt number “WAC-11-901-93852”, issued from the California Service Center of USCIS. The second petition remains pending, and California Service Center processing times posted on USCIS’s website quote six (6) months to adjudicate I-130 petitions. Combined DHS/USCIS/CSC and State Department processing times are anticipated to be in excess of one year. They are not able to live together in the United States as husband and wife during the process leading up to the green card interview for CPR Status.

14. Since the filing of the FAC on August 26, 2010, Plaintiff Austin Peter Tran has visited Vietnam two more times from November 19, 2010 to November 28, 2010; from December 24, 2010 to January 1, 2011; and again plans to visit from April 29, 2011 to May 14, 2011. He has and continues to expend extraordinary resources in order to maintain his marriage.

DATED this 29th day of March, 2011.

PARRILLI RENISON LLC

By /s/
BRENT W. RENISON, OSB No. 96475
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Attorneys for Plaintiffs

PROOF OF SERVICE

On March 29, 2011, true and correct copies of the Plaintiffs': SUPPLEMENTAL PLEADING, were served pursuant to the district court's ECF system as to ECF filers, to the following ECF filers:

Jeffrey S. Robins
Office of Immigration Litigation
USDOJ Civil Division
P.O. Box 878
Ben Franklin Station
Washington, DC 20044

James E. Cox, Jr.
United States Attorney's Office
1000 SW Third Ave
Suite 600
Portland, OR 97204

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED on March 29, 2011, at Portland, Oregon.

S/ Brent W. Renison
Brent W. Renison, Declarant