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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

NAGENDRA KUMAR NAKKA, et al. Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES and U.S. DEPARTMENT OF STATE, Defendants.	Case No.: 3:19-cv-02099 DEFENDANTS' OBJECTIONS TO REPORT AND RECOMMENDATION

Defendants oppose in part the Report and Recommendation ("R&R") entered by Magistrate Judge Youlee Yim You on November 2, 2020. Defendants disagree with the R&R's conclusions regarding standing of Derivative Beneficiaries and ripeness of the claims.

First, Defendants disagree with the standing analysis because it fails to recognize that Derivative Beneficiaries do not have any legal cognizable interest relating to an employment-

based visa petition. The R&R relies on two decisions that found that the principal beneficiary of a visa petition has standing to sue. R&R 8-9 (*citing Hsiao v. Scalia*, 821 F. App'x 680, 682-83 (9th Cir. 2020) *and Abboud v. INS*, 140 F.3d 843 (9th Cir. 1998)). However, these cases are distinguishable. *Hsiao* and *Abboud* involved principal beneficiaries of a visa petition, not the derivative beneficiary of a third party's visa petition. As explained in Defendants' motion, the derivative beneficiary has no cognizable legal interest over an immigrant petition. Mot. 15 (citing *Scialabba v. Cuellar de Osorio*, 573 U.S. 41, 50 (2014)). Given the Derivative Beneficiaries' lack of a cognizable legal interest, the Derivative Bbeneficiaries lack standing to sue and should be dismissed from the case. *See Aranas v. Napolitano*, No. SACV 12-1137 CBM (AJWx), 2013 WL 12251153, at *3-4 (C.D. Cal. April 19, 2013) (dismissing a derivative beneficiary from challenge to denial of an immigrant petition because their claim is dependent on the principal beneficiary).

As for ripeness, the R&R errs in finding that Plaintiffs' claims depend on circumstances that have already occurred. According to the R&R, there are sufficient known facts related to Derivative Beneficiaries aging out under the CSPA in order to ascertain that USCIS will deny Derivative Beneficiaries' applications. R&R 13-15. However, even if certain underlying facts are known, in order to determine whether Derivative Beneficiaries are eligible for adjustment of status, there are still several future events that must occur and other facts to ascertain that could effect the final agency decision. *See* Mot. 17. The principal beneficiary must have an immigrant visa available and otherwise be eligible for adjustment of status under 8 U.S.C. § 1255(a), a critical fact since a derivative beneficiary *cannot* be eligible for adjustment of status if the principal beneficiary is ineligible. 8 U.S.C. § 1153(d). The derivative beneficiary must independently demonstrate that he or she is admissible and otherwise eligible for adjustment of

status. 8 U.S.C. § 1255(a). And the derivative beneficiary must also seek such benefit within one year of a visa becoming available to the principal beneficiary. 8 U.S.C. § 1153(h). Indeed, there is no "firm prediction" that USCIS will deny Derivative Beneficiaries' applications for aging out because it remains possible that USCIS could make a decision regarding Derivative Beneficiaries' applications for adjustment of status (if one were to be filed) on grounds other than the age calculation provision of the CSPA. *See Mont. Env'l Information Ctr. v. Stone-Manning*, 766 F.3d 1184, 1191 (9th Cir. 2014) (explaining that firm prediction rule for ripeness applies if alleged injury is "nearly certain"). Plaintiffs' claims are therefore not yet ripe.

The Court should therefore adopt the R&R in part and reject the R&R as it relates to jurisdiction.

RESPECTFULLY SUBMITTED THIS November 16, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I certify that all participants are CM/ECF users and that service will be accomplished by the CM/ECF system.

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