

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

on behalf of  
E. R. P. A., a minor child

Plaintiff

v.

GREGORY A. RICHARDSON, DIRECTOR,  
TEXAS SERVICE CENTER,  
UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES

Defendant

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Case No.: [REDACTED]

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**COMPLAINT**

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COMES NOW [REDACTED] [REDACTED] [REDACTED] [REDACTED] on behalf of her ten-year-old daughter, E. R. P. A., and requests, through undersigned counsel, relief under the Administrative Procedure Act (APA) following the immigration agency's wrongful denial of E. R. P. A.'s application for employment authorization. Plaintiff seeks a declaration that the agency's action violated the APA, and an order

directing the agency (herein, “Defendant”) to reopen E. R. P. A.’s application and adjudicate it in accordance with the law.

### INTRODUCTION

Children listed on a parent’s asylum application are considered asylum applicants in their own right, and thus eligible for employment authorization once the application has been pending for 180 days. E. R. P. A. and her 14-year-old sister are listed on their mother’s (Ms. [REDACTED] [REDACTED] asylum application, filed in 2014. In February of this year, each girl submitted a Form I-765, the employment-authorization application. Defendant approved E. R. P. A.’s sister’s Form I-765, but denied E. R. P. A.’s, declaring in a written decision it could find no evidence that her asylum application—that is, Ms. [REDACTED] [REDACTED] remains pending. This is inexplicable. The girls have the same mother—if the asylum application is pending in E. R. P. A.’s sister’s case, then it must also be pending in E. R. P. A.’s. And, in any event, the administrative record includes a Board of Immigration Appeals filing receipt confirming that Ms. [REDACTED] [REDACTED] case is on appeal—that is, *that her asylum application, and, by extension, E. R. P. A.’s, remain pending*. Defendant’s decision violates the APA and must be set aside.

## CAUSE OF ACTION, JURISDICTION, AND VENUE

1. This action arises under section 208(d)(2) of the Immigration and Nationality Act (INA), [8 U.S.C. § 1158\(d\)\(2\)](#); and under sections 6, 10(a), and 10(e) of the APA, [5 U.S.C. §§ 555, 701 – 702](#), and [706\(1\) – \(2\)\(A\)](#).<sup>1</sup>
2. This Court has subject matter jurisdiction under [28 U.S.C. § 1331](#).
3. Venue is proper under [28 U.S.C. § 1391\(b\)\(2\)](#), because this is the district in which “a substantial part of the events or omissions giving rise to the claim occurred.” The asylum application on which E. R. P. A. is listed as a derivative—and which forms the basis for employment-authorization eligibility—was filed and litigated at the Atlanta Immigration Court, located in Fulton County, Georgia.

## PARTIES

4. Plaintiff [REDACTED] [REDACTED] [REDACTED] [REDACTED] is a citizen and national of Honduras. She resides in Brunswick, Georgia. Ms. [REDACTED] [REDACTED] application for

<sup>1</sup> The APA waives sovereign immunity in suits against the government for injunctive relief. [5 U.S.C. § 702](#). No statute precludes APA review of the agency action in this case. *See Hamby v. Janer*, [808 F.2d 1433, 1434](#) (CA11 1987)(APA section 701(a)(1) bars review where statute precludes relief requested); *Gjondrekaj v. Napolitano*, [801 F.Supp.2d 1344, 1348](#) n.3 (M.D. Fla. 2011)(“After careful review of the [INA] as well as other portions of the U. S. Code, the Court has found no statute precluding [APA] review of denials of an [employment-authorization] application made by an asylum applicant.”).

asylum has been pending with the Executive Office for Immigration Review (EOIR), an administrative agency housed within the U. S. Department of Justice, since December 2, 2014. The application is currently on appeal at EOIR’s Board of Immigration Appeals.

5. E. R. P. A., a citizen and national of Honduras, resides with her mother, Ms. [REDACTED] [REDACTED] in Brunswick, Georgia. E. R. P. A. is listed as a derivative child on Ms. [REDACTED] [REDACTED] asylum application.

6. Defendant Gregory A. Richardson, sued in his official capacity, is the Director of the Texas Service Center, a component of the United States Citizenship and Immigration Services (USCIS). The Texas Service Center oversees filing, data entry, and adjudication of certain applications for immigration benefits, including applications for employment authorization.

### **STANDING**

7. The APA affords a right of review to one “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Defendant’s action harmed E. R. P. A., a noncitizen, because it deprived her of the opportunity to receive employment authorization and the attendant work-permit card. Without a work-permit card, E. R. P. A. is not eligible for a Social Security number.<sup>2</sup> And without a

<sup>2</sup> See <https://www.ssa.gov/pubs/EN-05-10096.pdf> (last visited on April 21, 2020).

Social Security number, she does not qualify for certain government benefits, including those covered by the Coronavirus Aid, Relief, and Economic Security Act. *See* [26 U.S.C. § 6428\(g\)\(1\)](#).

### RELEVANT LAW

8. The INA and certain regulations issued by the U. S. Department of Homeland Security, of which USCIS is a component, set the requirements for employment authorization based on a pending asylum application. *See* [INA § 208\(d\)\(2\)](#), [8 U.S.C. § 1158\(d\)\(2\)](#); [8 C.F.R. §§ 208.7](#) (2011), [274a.12](#) (2020), and [274a.13](#) (2017).

9. An asylum applicant may apply for employment authorization, using Form I-765, once 150 days have elapsed from the date of the asylum application's filing. *See* [8 C.F.R. §§ 208.7\(a\)](#), [274a.12\(c\)\(8\)\(i\)](#), [274a.13\(a\)](#), [1208.7\(a\)](#).<sup>3</sup>

<sup>3</sup> USCIS considers an "asylum applicant" to include the principal applicant's spouse and unmarried children under 21 years of age, so long as they are listed on the asylum application. The asylum application instructions posted on the USCIS website include the following language on page 13: "Each family member whom you have asked to be included in your application and who also wants permission to work must submit a separate Form I-765." *See* [uscis.gov/i-589](#) (last visited on April 24, 2020). *See also* [8 U.S.C. § 1158\(b\)\(3\)\(A\)](#) ("A spouse or child... of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.")

10. USCIS may not approve the Form I-765 until 180 days have elapsed from the date of the asylum application's filing. *See* [8 U.S.C. § 1158\(d\)\(2\)](#); [8 C.F.R. §§ 208.7\(a\), 274a.12\(c\)\(8\)](#).<sup>4</sup>

11. Noncitizens “authorized to accept employment” are categorized by class, with asylum applicants listed at [8 CFR § 274a.12\(c\)\(8\)](#).<sup>5</sup>

12. “The approval of [employment-authorization] applications filed under 8 CFR 274a.12(c), *except for* 8 CFR 274a.12(c)(8), are within the discretion of USCIS.” (Emphasis supplied.) [8 C.F.R. § 274a.13\(a\)\(1\)](#).

13. Accordingly, 180 days after the unadjudicated asylum application's filing—and so long as the applicant is not an aggravated felon (as defined at [8 U.S.C. § 1101\(a\)\(43\)](#))—USCIS *shall* grant employment authorization. *See Gjondrekaj*, [801 F.Supp.2d at 1346](#) (“If an asylum application remains unadjudicated by the USCIS or the Immigration Court after 150 days, the applicant may apply for employment authorization, *which the United States must grant after*

<sup>4</sup> Time begins to run “when the alien has filed a complete asylum application in accordance with [8 C.F.R.] §§ 208.3 and 208.4.” [8 C.F.R. § 208.7\(a\)\(2\)](#). The so-called “asylum clock” keeps track of the days elapsed. *See Gjondrekaj*, [801 F.Supp.2d at 1345-47](#) (explaining how the asylum clock works).

<sup>5</sup> More commonly known as “category (c)(8).”

30 days unless the asylum application is denied in the interim.”)(emphasis supplied).<sup>6</sup>

14. “If the [Form I-765] is granted, the alien shall be notified of the decision and issued an employment authorization document valid for a specific period and subject to any terms and conditions as noted.” 8 C.F.R. § 274a.13(b).<sup>7</sup>

15. If the Form I-765 is denied, there is no right to administrative appeal. 8 C.F.R. §274a.13(c).

16. “Final agency action” is subject to judicial review under the APA. 5 U.S.C. § 704.

#### RELEVANT FACTS

**[Ms. [REDACTED] [REDACTED] asylum application, which lists E. R. P. A. as her child, remains pending 180 days after the date of filing]**

17. Ms. [REDACTED] [REDACTED] filed her asylum application with the Atlanta Immigration Court on December 2, 2014. Exh. A at 18.

18. The application lists E. R. P. A. and E. R. P. A.’s sister as Ms. [REDACTED] [REDACTED] children. *Id.* at 19-20.

<sup>6</sup> Note also that, under the APA, “each agency shall proceed to conclude a matter presented to it.” 5 U.S.C. § 555(b).

<sup>7</sup> The “employment authorization document” is also referred to as a “work-permit card.”

19. In January of 2015, the Atlanta Immigration Judge denied Ms. [REDACTED] [REDACTED] asylum application. The Board of Immigration Appeals (the “Board”), in May of 2015, affirmed the Immigration Judge’s decision. One year later, however, in May of 2016, the U. S. Court of Appeals for Eleventh Circuit granted Ms. [REDACTED] [REDACTED] petition for review and remanded the case to the Board for further consideration, thus keeping alive Ms. [REDACTED] [REDACTED] and E. R. P. A.’s— application for asylum. *See* [REDACTED] *v. U.S. Atty. Gen.*, [649 Fed. Appx. 983](#) (CA11 2016).

20. On remand from the Eleventh Circuit, the Board in turn remanded the case to the Atlanta Immigration Court for further proceedings. Exh. A at 34.

21. On June 21, 2018, the Immigration Judge denied, for the second time, Ms. [REDACTED] [REDACTED] application for asylum. *Id.* at 37.

22. Ms. [REDACTED] [REDACTED] appealed (again) to the Board, which issued a “Filing Receipt for Appeal” confirming receipt, on July 23, 2018, of Ms. [REDACTED] [REDACTED] timely appeal.<sup>8</sup> *Id.* at 47.

<sup>8</sup> The deadline for appeal to the Board is 30 calendar days from the date on which the Immigration Judge’s decision was mailed. [8 C.F.R. § 1003.38\(b\)](#). Here, the decision was mailed on June 22nd, which put the final calendar day on July 22, 2018, a Sunday. The appeal deadline was thus extended to the next business day, Monday, July 23, 2018. *Id.* (“If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day.”).



23. According to EOIR's automated case information hotline (1-800-898-7180), both Ms. [REDACTED] [REDACTED] and E. R. P. A.'s cases remain pending at the Board.<sup>9</sup>

24. Further, Ms. [REDACTED] [REDACTED] asylum application has been pending for well more than 180 days.

25. Where, as here, the Board remands an asylum application to the immigration judge, the total number of days the application was on appeal is added to the asylum clock. *See Operating Policies and Procedures Memorandum 13-03: Guidelines for Implementation of the ABT Settlement Agreement*, EOIR, December 2, 2013, at page 7.<sup>10</sup>

26. The Board remanded Ms. [REDACTED] [REDACTED] asylum application on February 27, 2017, approximately 775 days following the Immigration Judge's initial denial, on January 14, 2015.

<sup>9</sup> Upon entry of the noncitizen's "alien registration number," the hotline provides general information on EOIR cases, including those on appeal at the Board. *See* <https://www.justice.gov/eoir/customer-service-initiatives> (last visited on April 27, 2020). Undersigned counsel last called the hotline on April 27, 2020.

<sup>10</sup> Available at <https://www.justice.gov/eoir/oppm-log> (last visited on April 27, 2020).

27. The asylum clock thus stands at well beyond the required 180 days, even without including the time elapsed between the Board's remand and the Immigration Judge's second denial.

**RELEVANT FACTS (cont.)**

**[Defendant approves E. R. P. A.'s sister's Form I-765, but denies E. R. P. A.'s]**

28. Under cover of a letter dated February 14, 2020, undersigned counsel submitted to USCIS the Forms I-765 of both E. R. P. A. and her sister, seeking employment authorization under category (c)(8). Exh. A.<sup>11</sup>

29. Supporting materials submitted with the Forms I-765 included the asylum application listing E. R. P. A. and E. R. P. A.'s sister as Ms. [REDACTED] [REDACTED] children, file-stamped by the Immigration Judge on December 2, 2014. *Id.*

30. Additional supporting materials included the Board's 2017 remand order, the Immigration Judge's June 2018 post-remand denial, and the Board's July 2018 notice acknowledging receipt of appeal. *Id.*

31. By written notice dated March 23, 2020, Defendant approved the Form I-765 of E. R. P. A.'s sister and issued her a work-permit card under category (c)(8). Exh. B.

<sup>11</sup> E. R. P. A.'s application and supporting materials come first, *see* Exh. A at 1-47, followed by her sister's.

32. By written decision dated April 3, 2020, Defendant denied the Form I-765 submitted by E. R. P. A. The decision states in relevant part as follows:

A review of your file and USCIS records indicates that you lodged or filed Form I-589, Application for Asylum and for Withholding of Removal, pursuant to 8 CFR § 208. However, Form I-589 was denied on June 21, 2018. *A further search of USCIS and Executive Office for Immigration Review (EOIR) records does not indicate that an appeal or motion to reopen or reconsider was filed on your application, or that an asylum application remains pending.* Therefore, you are not eligible for employment authorization under 8 CFR § 274a.12(c)(8). There is no appeal from this decision.

(Emphasis supplied.) Exh. C.

33. The decision was signed by Gregory A. Richardson, as “Director, Texas Service Center.”<sup>12</sup> *Id.*

**COUNT ONE**  
**[Administrative Procedure Act]**

34. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.

35. Defendant denied E. R. P. A.’s Form I-765 because, according to his written decision, there was no evidence E. R. P. A.’s asylum application remains pending.

<sup>12</sup> By written notice dated April 14, 2020, Defendant approved Ms. [REDACTED] [REDACTED] Form I-765. Exh. D.

36. Defendant denied E. R. P. A.'s Form I-765 despite the fact that the administrative record includes the Board's filing receipt, evidence that E. R. P. A.'s case—and asylum application—remain pending.

37. Defendant denied E. R. P. A.'s Form I-765 despite the fact that the EOIR hotline, had Defendant called it, would have revealed that E. R. P. A.'s appeal is “currently pending” at the Board.

38. Defendant denied E. R. P. A.'s Form I-765 despite the fact that, less than two weeks prior, he approved her sister's, which was submitted under the same cover letter and included the same supporting materials.

39. Defendant's denial of E. R. P. A.'s Form I-765 constitutes final agency action under the APA. *See* [5 U.S.C. §§ 701, 704](#).

40. Defendant's denial of E. R. P. A.'s Form I-765 was arbitrary, capricious, contrary to the law, and not supported by substantial evidence in the record. *See* [5 U.S.C. §§ 706\(2\)](#).

41. Because of Defendant's wrongful denial of her application for employment authorization, E. R. P. A. has suffered, and will continue to suffer, substantial and irreparable harm to her welfare and that of her family, for which there is no adequate remedy at law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court grant the following relief:

1. Under the Declaratory Judgment Act, 28 U.S.C. § 2201, declare that Defendant's actions and omissions complained of herein violated 8 U.S.C. § 1158(d)(2); 5 U.S.C. §§ 555(b) and 706(2)(A); and 8 C.F.R. §§ 208.7, 274a.12(c)(8), and 274a.13.
2. Enjoin Defendant—and each of his officers, agents, servants, employees, successors in office, and anyone acting in privity or concert with him—and enter an order compelling Defendant to reopen E. R. P. A.'s employment-authorization application and adjudicate it in accordance with the law.
3. Award to Plaintiff attorneys' fees and costs of this litigation under 28 U.S.C. § 2412 and other authority.
4. Grant any and all further relief that the Court deems just and proper.

Dated: May 4, 2020

Respectfully submitted,

/s/ Willis Miller  
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**EXHIBITS**

Ex.	Document	Pages
A	Forms I-765 and supporting materials submitted to USCIS by E. R. P. A. and her sister under cover of a letter dated February 14, 2020	1-92
B	Defendant's approval notice (March 23, 2020) for Form I-765 of E. R. P. A.'s sister	1-2
C	Defendant's written decision (April 3, 2020) denying Form I-765 of E. R. P. A.	1-2
D	Defendant's approval notice (April 14, 2020) for Form I-765 of E. R. P. A.'s mother, [REDACTED] [REDACTED] [REDACTED] [REDACTED]	1-2