



LEGAL ACTION CENTER

AMERICAN IMMIGRATION COUNCIL

For Immediate Release

Circuit Court Rules USCIS Unlawfully Imposed Arbitrary Requirements
Ninth Circuit Court of Appeals Adopts Legal Action Center's Arguments

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Washington D.C. - In a decision issued today, the Ninth Circuit Court of Appeals adopted the arguments of the Legal Action Center (LAC), of the American Immigration Council, that the United States Citizenship and Immigration Services (USCIS) unlawfully imposed extra-regulatory requirements on a petition for a worker of "extraordinary ability" (EB-1). The case in question, *Kazarian v. USCIS*, involves a theoretical physicist whose employment-based visa was denied because he did not demonstrate "the research community's reactions to his [scholarly] publications" - an arbitrary requirement with no justification in the law.

In today's decision, the Ninth Circuit amended its previous ruling and reversed the agency's interpretation. The court held that "neither USCIS nor an [Administrative Appeals Office] may unilaterally impose novel substantive or evidentiary requirements beyond those set forth [in the regulations]." The Ninth Circuit also found that the agency impermissibly added another unlawful criteria as well.

The case stems from a 2009 Ninth Circuit Court ruling in favor of USCIS. Following that ruling, the LAC and NAFSA submitted an amicus brief in support of rehearing Kazarian's case. The LAC argued that USCIS erred by adding an additional requirement that did not exist under the law. Kazarian was represented pro bono in the rehearing petition by Wolfsdorf Immigration Law Group.

Today's decision sends a clear message that USCIS must follow the law and provide a fair process. Unfortunately, this case is not an isolated incident and not the first time the LAC has successfully challenged the policies and practices of the agency. The LAC will continue to challenge similar attempts by the government to operate outside of the law.

"Immigration law is complicated enough without the immigration agency imposing additional requirements and burdens of proof that aren't in the statute or regulations and that ultimately undermine the goal of attracting the best and brightest to our shores," said Benjamin Johnson, Executive Director of the American Immigration Council.

To read the decision in its entirety visit:

<http://www.ca9.uscourts.gov/datastore/opinions/2010/03/04/07-56774.pdf>

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