

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

DAISY RODRIGUEZ,)
)
 Plaintiff,)
)
 v.) No. _____
)
 U.S. DEPARTMENT OF STATE,)
 SECRETARY OF STATE MARCO RUBIO,)
 U.S EMBASSY GUATEMALA CITY,)
 CONSUL GENERAL, U.S. EMBASSY)
 GUATEMALA CITY, CHIEF, IMMIGRANT)
 VISA SECTION, U.S. EMBASSY)
 GUATEMALA CITY,)
)
 Defendants.)

COMPLAINT

I. INTRODUCTION

1. Plaintiff Daisy Rodriguez (“Ms. Rodriguez”) married Santos Maudilio Saucedo Rivas (“Mr. Saucedo Rivas”) in 2017 and lived with him in their family home in Sweetwater, Tennessee. Ms. Rodriguez is a U.S. citizen and Mr. Saucedo Rivas is a Guatemalan citizen who came to the United States in 2006 without inspection.

2. In 2017, Ms. Rodriguez and Mr. Saucedo Rivas embarked on the process for acquiring lawful permanent residency as provided by the Immigration and Nationality Act (“INA”). *See generally* 8 U.S.C. §§ 1154; 1181-82. This “consular process” requires noncitizens who are not eligible to adjust their status in the United States to attend an interview in the U.S. consular district of their place of last residence abroad in order to apply for issuance of an

immigrant visa and then seek admission to the United States as the final step toward acquiring lawful permanent resident status.

3. After receiving a waiver of his unlawful presence, Mr. Saucedo Rivas left the United States for the first time in his adult life to attend an interview at the U.S. embassy in Guatemala City, Guatemala. During the interviews, Mr. Saucedo Rivas felt intimidated by the consular officers, including physically. The consular officers attempted to entrap him, accusing him of lying and making excuses when he tried to answer their questions. One consular officer told him he looked like a gangster and a “convicto” (in English, a convict) and that he was a member of “Barrio Azteca,” which is a transnational gang. The consular officers deemed him inadmissible under 8 U.S.C. § 1182(a)(3)(A)(ii), which bars entry to individuals who an officer has “reasonable ground to believe” sought entry to engage in “any other unlawful activity.” Following the denial, Defendants violated federal regulations by refusing to meaningfully consider overwhelming exculpatory evidence from highly qualified experts showing Mr. Saucedo Rivas could not have been a member of this particular gang. Judicial review is necessary to correct these wrongs.

II. PARTIES, JURISDICTION, AND VENUE

4. Plaintiff Daisy Rodriguez is a longtime resident of Sweetwater, Tennessee. She and her husband Mr. Saucedo Rivas co-own a small business, Los Zacatecanos restaurant, in Sweetwater. Ms. Rodriguez sponsored her husband, a Guatemalan citizen, for an immigrant visa based on marriage to a U.S. citizen.

5. Defendant Department of State (“DOS”) is the agency responsible for enacting regulations, policies, and procedures regarding immigrant visa processing to implement the immigrant visa provisions of the law, and managing Defendant U.S. Embassy Guatemala City,

which is responsible for implementing the immigrant visa provisions of the law. Defendant Marco Rubio named in an official capacity, is the U.S. Secretary of State and head of the DOS. Defendant U.S. Embassy Guatemala City is the only consular facility in Guatemala and the location that DOS has designated to process immigrant visas. Defendants Consul General, U.S. Embassy Guatemala City and Chief of the Immigrant Visa Section, U.S. Embassy Guatemala City are named in their official capacity. Collectively they are referred to as “Defendants.”

6. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question). The United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702. This Court may grant declaratory relief pursuant to 5 U.S.C. § 702, 28 U.S.C. § 1651, and 28 U.S.C. §§ 2201–02.

7. Venue is proper under 28 U.S.C. § 1391(e) because Plaintiff Rodriguez resides in this District.

III. FACTS AND LEGAL BACKGROUND

8. In 2017, Plaintiff Rodriguez petitioned her husband for an immediate relative visa classification via Form I-130, which U.S. Citizenship and Immigration Services (“USCIS”) approved on or about April 25, 2018. Mr. Saucedo Rivas applied via Form I-601A for a provisional waiver of his unlawful presence based on extreme hardship to Ms. Rodriguez, which USCIS approved on or about November 24, 2020. The last stage in the consular process for acquiring lawful permanent residency required that Mr. Saucedo Rivas leave the United States to attend a consular interview at the U.S. embassy in Guatemala City, Guatemala.

9. During two of the three consular interviews that were conducted, consular officers pre-judged Mr. Saucedo Rivas as a criminal, attempted to entrap him into a false confession, and resorted to physical intimidation. The three interviews took place on December 8, 2022, March 20, 2023 and April 19, 2023.

10. During the second interview, a female officer told Mr. Saucedo Rivas he was lying about his past and not to make excuses about his tattoos. During the third interview, another officer, who was large and whom Mr. Saucedo Rivas found to be physically intimidating, again accused Mr. Saucedo Rivas of lying about his tattoos and of insulting the officer's intelligence when Mr. Saucedo Rivas tried to respond to the officer's accusations.

11. During the third interview, the large officer said Mr. Saucedo Rivas looked like a gangster and a "convicto" (convict in English) and that his appearance was how the officer knew Mr. Saucedo Rivas was in Barrio Azteca. The officer said he knew Mr. Saucedo Rivas was guilty, so he should confess to make everything go easier on him. The officer slammed his hands on the desk and shouted at Mr. Saucedo Rivas, making him concerned that the officer could become physically violent. The Foreign Affairs Manual ("FAM") forbids "[a]ny semblance of aggressive cross-examination, assumption of bad faith, or entrapment." 9 FAM 504.7-3.

12. On June 30, 2023, a consular officer informed Mr. Saucedo Rivas and Ms. Rodriguez that the visa was denied under 8 U.S.C. § 1182(a)(3)(A)(ii), which bars admission to individuals who "a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in . . . any other unlawful activity." Based on the officers' prior statements, it is no secret that the denial was based on Mr. Saucedo Rivas' alleged membership in Barrio Azteca.

13. Defendant DOS' regulations provide that applicants have the right to attempt to overcome a denial by providing exculpatory evidence: "Reconsideration of refusal. If a visa is refused, and the applicant within one year from the date of refusal adduces further evidence tending to overcome the ground of ineligibility on which the refusal was based, the case shall be reconsidered." 22 C.F.R. § 42.81(e). Section 40.6 of Title 22 states that a visa can only "be refused

upon a ground specifically set out in the law or implementing regulations. The term ‘reason to believe,’ as used in [8 U.S.C. § 1201(g)] shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a visa as provided in the INA and as implemented by the regulations.”

14. Of the 1,806 immigrant visas denied under 8 U.S.C. § 1182(a)(3)(A)(ii) (“any other unlawful activity”) statutory provision from Fiscal Years 2000 to 2023, not a single person has been able to overcome the presumption of ineligibility. U.S. Dep’t of State, Bureau of Consular Affairs, *Report of the Visa Office, Immigrant and Nonimmigrant Visa Ineligibilities (by Ground for Refusal under the Immigration and Nationality Act), Table XIX, FY 2020-2023, Table XX FY 2000-2019* (last accessed Apr. 6, 2025), <https://tinyurl.com/mt5utchy>.

15. Mr. Saucedo Rivas and Ms. Rodriguez attempted to provide exculpatory evidence. On July 31, 2023, through prior counsel, they submitted evidence that generally presented Mr. Saucedo Rivas as being of good moral character, and DOS replied that it had not changed its conclusion. On June 24, 2024, before the one-year-deadline had run, Mr. Saucedo Rivas and Ms. Rodriguez submitted additional evidence, this time from three highly credible experts on Barrio Azteca. Each expert submitted a statement showing that it was factually impossible for Mr. Saucedo Rivas to be a gang member. They focused on four main issues:

- Mr. Saucedo Rivas is a Guatemalan citizen, and Barrio Azteca is a gang comprised only of Mexican citizens or U.S. citizens of Mexican heritage.
- Mr. Saucedo Rivas has no violent crimes or drug offenses on his criminal record, and membership in Barrio Azteca is tightly restricted, takes place entirely or almost entirely in Texas prisons, and is limited to individuals with long rap sheets who can establish their willingness to commit violent crimes and drug offenses.
- Barrio Azteca’s membership consists entirely of individuals with ties to the El Paso, Texas/Ciudad Juarez, Chihuahua region, and Mr. Saucedo Rivas has never been to this region and has no connections there.

- Mr. Saucedo Rivas' tattoos are not compatible with membership in Barrio Azteca.

16. The experts are highly qualified. Jeffrey Gibson is an analyst for the West Texas High Intensity Drug Trafficking Areas (HIDTA) Investigative Support Center. HIDTA is a program sponsored by the federal executive branch, and Mr. Gibson regularly advises DOS, as well as multiple other federal, state and local law enforcement agencies regarding the history, organization and practice of Barrio Azteca. In his 30-year career, he has interviewed a substantial portion of the leadership of Barrio Azteca and is likely the world's foremost expert on this particular criminal organization, as it has been his focus "almost the entirety of [his] years in law enforcement." In his statement submitted to Defendant U.S. Embassy Guatemala City on June 24, 2024, he concluded: "I have not received any information that membership extends to any other Central or South American nationality No known person has obtained membership in the Barrio Azteca's estimated 4000 members outside of the prison system I have not seen nor have I heard of any members operating in Tennessee . . ." Exhibit 1.

17. Michael Tapia, Ph.D. is a Professor at Texas A&M University-Commerce and is one of the world's most foremost academic experts on Barrio Azteca. Only a "handful" of scholars have prepared peer-reviewed published academic research on Barrio Azteca and he is aware of only one other scholar (with whom he has interacted over the years) with publications exclusively focused on this criminal organization. Exhibit 2. He is the author of the 2019 book *Gangs of the El Paso-Juarez Borderland* and has authored numerous peer-reviewed academic journal articles about the history and practices of Barrio Azteca. In his declaration submitted to Defendant U.S. Embassy Guatemala City on June 24, 2024, he concluded: "In my professional opinion . . . Mr. Saucedo Rivas lacks any of the characteristics of a member of the gang Barrio Azteca (BA). I have

never come across or heard of any member of the BA that fits the profile of a person like Mr. Saucedo Rivas.” *Id.*

18. Ms. Adriana Chavez was a journalist at the *El Paso Times* from 2001-2015 responsible for the publication’s criminal beat. She conducted a detailed investigation of Barrio Azteca both in her work as a journalist and at New Mexico State University, for her master’s thesis “A Case Study of the El Paso/Juarez Prison Gang, the Barrio Azteca.” In her declaration, submitted to Defendant U.S. Embassy Guatemala City on June 24, 2024, she concluded: “To the best of my knowledge, I do not believe Mr. Saucedo Rivas is a member of the Barrio Azteca gang, and has been incorrectly identified as such.” Exhibit 3.

19. Each of these three experts provided information detailing why Mr. Saucedo Rivas’ personal history makes it factually impossible that he would be a member of this particular gang. In a cover letter preceding the experts’ information, Eric Lee, counsel for Mr. Saucedo Rivas and Ms. Rodriguez, and counsel listed below, encouraged Defendant U.S. Embassy Guatemala City to contact the three experts to clarify any outstanding concerns they may have had about Mr. Saucedo Rivas’ visa application. Exhibit 4. In particular, Mr. Lee urged the Embassy to contact Jeffrey Gibson, who stated: “While I am unable to provide a great deal of specific information to anyone other than law enforcement/criminal justice agencies, *I would be able to, and have provided information of this nature to the Department of State in reference to gang affiliation of those seeking an entry visa.*” *Id.* (quoting Exhibit 1 (emphasis added)).

20. Defendants made no attempt to contact any of the experts and the Embassy did not request any information from Jeffrey Gibson about persons affiliated with the Barrio Azteca gang as pertaining to Mr. Saucedo Rivas. Exhibit 5. Instead, in June 2024, the Embassy reiterated the inadmissibility finding and Mr. Saucedo Rivas remains in Guatemala.

COUNT ONE

FAILURE TO CONSIDER EVIDENCE VIOLATES *ACCARDI* DOCTRINE

21. Plaintiff incorporates by reference all preceding allegations.

22. In *U.S. ex rel. Accardi v. Shaughnessy*, the Supreme Court reversed agency action for violation of the agency's regulations. 347 U.S. 260, 268 (1947). The Sixth Circuit has held that *Accardi* announced a "rule of federal administrative law." *West v. Kentucky Horse Racing Comm'n*, 972 F.3d 881, 892 (6th Cir. 2020).

23. Defendants failed to follow DOS regulations for considering exculpatory evidence. Section 40.6 of Title 22 states that "[c]onsideration *shall* be given to any evidence submitted indicating that the ground for a prior refusal of a visa may no longer exist." (Emphasis added). Section § 42.81(e) of Title 22 states that "[i]f a visa is refused, and the applicant within one year from the date of refusal adduces further evidence tending to overcome the ground of ineligibility on which the refusal was based, *the case shall be reconsidered*. In such circumstance, an additional application fee shall not be required." (Emphasis added).

24. Although Mr. Saucedo Rivas and Ms. Rodriguez submitted exculpatory evidence within one year of the visa denial, Defendants did not give the evidence a meaningful reconsideration. After consular officers pre-judged, intimidated and attempted to entrap Mr. Saucedo Rivas during the interview, Defendants failed to follow-up with any of the experts whose information addressed in great detail the many reasons why Mr. Saucedo Rivas' personal history makes it a factual impossibility that he was or is a Barrio Azteca member.

25. Critically, Defendants failed to ask Jeffrey Gibson for the information he offered to provide, "in reference to gang affiliation" of Mr. Saucedo Rivas, as he had done in the past for Defendant DOS "as to those seeking an entry visa." There is no bona fide reason why Defendants

would not, at a bare minimum, inquire with Jeffrey Gibson as to whether the information he offered to share included Mr. Saucedo Rivas as affiliated with Barrio Azteca or not.

26. Defendants' actions evince a clear disinterest in determining whether Mr. Saucedo Rivas was or was not a member of Barrio Azteca in violation of the regulatory mandates to review exculpatory evidence.

COUNT TWO

ADMINISTRATIVE PROCEDURE ACT VIOLATION OF 5 U.S.C. § 706(2)(A) BY FAILING TO MEANINGFULLY REVIEW EXCULPATORY EVIDENCE

27. Plaintiff incorporates by reference all preceding allegations.

28. The APA provides for judicial review when a person is adversely affected by agency action. 5 U.S.C. § 702. Defendants' reconsideration of the denial of Mr. Saucedo Rivas' immigrant visa without meaningful review is final agency action, per 5 U.S.C. § 704, as a "definitive position" which caused injury to Ms. Rodriguez. *See Darby v. Cisneros*, 509 U.S. 137, 144 (1993). She has been adversely affected by Defendants' failure to meaningfully review exculpatory evidence in reconsideration of the denial of Mr. Saucedo Rivas' immigrant visa, which is a final agency decision that is arbitrary and capricious or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

29. "An agency decision is arbitrary and capricious if the agency fails to examine relevant evidence . . ." *Bangura v. Hansen*, 434 F.3d 487, 502 (6th Cir. 2006) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 42-43 (1983)). APA review is proper under *Bangura* because the remedies Ms. Rodriguez requests do not include a demand that an immigrant visa be issued to Mr. Saucedo Rivas. Instead, Ms. Rodriguez seeks a meaningful reconsideration process as the DOS regulations require.

COUNT THREE

FIRST AMENDMENT DENIAL OF U.S. CITIZEN'S FREEDOM TO ASSOCIATE AND BAD FAITH CONDUCT AFTER VISA DENIAL

30. Plaintiff incorporates by reference all preceding allegations.

31. As a U.S. citizen, Ms. Rodriguez has a First Amendment right to associate and speak in person with her husband Mr. Saucedo Rivas. Her First Amendment rights were harmed by the visa denial.

32. In *Kleindienst v. Mandel*, the Supreme Court held that when, as in that case, a “facially legitimate and bona fide reason” is given for a visa denial, the Court will not look behind the reason nor balance the government’s justification against First Amendment interests. 408 U.S. 753, 769-70 (1974). The *Mandel* court expressly declined to decide what First Amendment or other constitutional grounds may be available if no justification was given. *Id.* In his concurrence in *Kerry v. Din*, Justice Kennedy discussed that *Mandel* “instructs” the Court not to look behind the reason for a visa denial “[a]bsent an affirmative showing of bad faith,” which is “plausibly alleged with sufficient particularity.” 576 U.S. 86, 105 (2015). In *dicta* in *Dep’t of State v. Muñoz*, the Supreme Court discussed *Mandel*’s “facially legitimate and bona fide” standard and did not overrule it, although finding it inapplicable—with no First Amendment claim before the Court. 602 U.S. 899, 918-19 (2024).

33. While the question has not been resolved, some federal courts of appeals have considered what would constitute bad faith by a consular officer. *Yafai v. Pompeo*, 912 F.3d 1018, 1022 (7th Cir. 2019) (*dicta* that “evidence of ‘behind-the-scenes’ bad faith” might be enough but plaintiffs did not make affirmative showing; “evidence . . . reflects a good-faith evaluation” of the visa application); *Morfin v. Tillerson*, 851 F.3d 710, 713 (7th Cir. 2017) (Easterbrook, J.) (remarking that indictment of noncitizen plaintiff for possession of cocaine with intent to distribute

“forecloses any contention that the State Department was imagining things” in deeming noncitizen inadmissible under 8 U.S.C. § 1182(a)(2)(C) (drug smuggling); *Bustamante v. Mukasey*, 531 F.3d 1059, 1062 (9th Cir. 2008) (plaintiffs “failed to allege that the consular officer did not in good faith believe the information he had”). Whether a denial is “objectively unreasonable” is a factor for courts to consider in determining whether a denial was issued in bad faith. *Khachatryan v. Blinken*, 4 F.4th 841, 853 (9th Cir. 2021).

34. The consular officers prejudged Mr. Saucedo Rivas and denied his visa in bad faith.

Consular officer actions included:

- Telling him he looked like a gangster and a “convicto” (in English, a convict).
- Attempting to entrap him into making false statements, saying that things would go better for him if he confessed to things he did not do.
- Telling him to stop lying and stop giving excuses, and refusing to listen to his answers when he was telling the truth.
- Shouting at him and physically intimidating him, pounding hands on the desk and making Mr. Saucedo Rivas fear for his physical safety.

35. After issuing the denial, Defendants failed to meaningfully consider the substantial exculpatory evidence. The three experts documented their qualifications and provided a high degree of detail as to the characteristics of members of Barrio Azteca and the factual impossibility that Mr. Saucedo Rivas could be a member, past or present. Defendants did not contact any of the experts—not even Jeffrey Gibson who had offered to provide evidence about Mr. Saucedo Rivas “in reference to gang affiliation,” as he had done in the past for Defendant DOS “as to those seeking an entry visa.” This blatant disregard is a continuation of the bad faith demonstrated during the interviews.

REQUEST FOR RELIEF:

Plaintiff Rodriguez requests that this Honorable Court grant the following relief:

- (a) Assume jurisdiction over this matter;
- (b) Declare that Defendants' failure to meaningful consider the exculpatory evidence submitted within one year of the denial of Mr. Saucedo Rivas' immigrant visa unlawfully violated federal regulations;
- (c) Declare that Defendants' failure to meaningfully consider the exculpatory evidence submitted within one year of the denial of Mr. Saucedo Rivas' immigrant visa was arbitrary and capricious or otherwise not in accordance with law;
- (d) Declare that Defendants' denial of Mr. Saucedo Rivas' immigrant visa harmed Ms. Rodriguez's First Amendment rights to associate and speak in person with her husband and was not for a facially legitimate and bona fide reason because of bad faith during the visa interviews and in failing to meaningfully consider the exculpatory evidence submitted within one year of the visa denial;
- (e) Order Defendants to reconsider Mr. Saucedo Rivas' immigrant visa application including a meaningful review of, and factoring in the exculpatory evidence submitted June 24, 2024 within 10 days of such order;
- (f) Retain jurisdiction over this case to ensure compliance with all of the Court's orders;
- (g) Award costs and attorney fees under the Equal Access to Justice Act , 28 U. S. C. § 2412(d), 5 U.S.C. § 504, and on any other basis justified under law; and
- (h) Such other and further relief that the Court deems just and proper.

Dated: April 29, 2025

Respectfully Submitted,

NEAL & HARWELL, PLC

/s/ William J. Harbison II

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