UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

COLETTE LEE-LEWIS, M.D., and **SELVIN CHARLES LEWIS**, a married couple,	)	
Plaintiffs,	)	
v.	)	Civil Action No: 2:13-CV-80
JOHN KERRY, U.S. Secretary of State; **RAJIV SHAH**, Administrator, U.S. Agency for International Development; **LINDA WALKER**, J-1 Waiver Officer, U.S. Agency for International Development; **MARCIA PRYCE**, Chief, Waiver Review Division, U.S. Department of State; **JEH JOHNSON**,[1] U.S. Secretary of Homeland Security; **LEON RODRIGUEZ**,[2] Director, U.S. Citizenship and Immigration Services; **DANIEL M. RENAUD**, Director, Vermont Service Center, U.S. Citizenship and Immigration Services; the **UNITED STATES**; and **ERIC HOLDER**, Attorney General of the United States,	)	**SECOND AMENDED AND SUPPLEMENTAL COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MANDAMUS RELIEF**
Defendants.	)	

Plaintiffs by their undersigned lawyer allege as follows:

I. Parties

1. Plaintiff Colette Lee-Lewis, M.D. ("Dr. Lee-Lewis") is a citizen of the British Overseas Territory of Montserrat. She is currently a resident of Glynn County, Georgia. Her

[1] Janet Napolitano is no longer with the Department of Homeland Security. Jeh Johnson should be substituted for Janet Napolitano under Fed. R. C. P. 25(d).

[2] Alejandro Mayorkas is no longer the Director of U.S. Citizenship and Immigration Services. Leon Rodriguez should be substituted for Alejandro Mayorkas under Fed. R. C. P. 25(d).

address is 304 Oak Grove Island Dr., Brunswick, Georgia 31523.

2. Plaintiff Selvin Charles Lewis ("Mr. Lewis") is a citizen of Montserrat. He is a resident of Glynn County, Georgia. He is married to Dr. Lee-Lewis and resides with her.

3. Defendant John Kerry is the United States Secretary of State, the head of the United States Department of State, an agency of the United States. He is named in his official capacity. His address is: U.S. Department of State, 2201 C Street N.W., Washington, D.C. 20520.

4. Defendant Rajiv Shah is the Administrator of the U.S. Agency for International Development ("USAID"), an agency of the United States. He is named in his official capacity. His address is: Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20523.

5. Defendant Linda Walker renders decisions in J-1 waiver matters on behalf of the USAID, an agency of the United States. She is named in her official capacity. On information and belief, Ms. Walker issued the critical opinion that led to this lawsuit. Her address is: Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20523.

6. Defendant Marcia Pryce is the Chief of the Waiver Review Division ("WRD") of the Bureau of Consular Affairs of the United States Department of State, an agency of the United States. This office is responsible for making recommendations on waivers pursuant to 8 U.S.C. § 1182(e). She is named in her official capacity. Her address is: Waiver Review Division, CA/VO/L/W, U.S. Department of State, 2401 E. Street, N.W., (SA-1, L-603A), Washington, D.C. 20520.

7. Defendant Jeh Johnson is the United States Secretary of Homeland Security, the head of the United States Department of Homeland Security, an agency of the United States. He is named in his official capacity. His address is: U.S. Department of Homeland Security, Washington, D.C. 20528.

8. Defendant Leon Rodriguez is the Director of the United States Citizenship and Immigration Services ("USCIS"), which is part of the Department of Homeland Security and is an agency of the United States. He is named in his official capacity. His address is: Office of the Director MS 2000, U.S. Citizenship and Immigration Services, 20 Massachusetts Ave. N.W., Washington, D.C. 20529-2000.

9. Defendant Daniel M. Renaud is the Director of the USCIS Vermont Service Center, an agency of the United States. He is named in his official capacity. His address is: U.S. Citizenship and Immigration Services, 75 Lower Welden St., Saint Albans, Vermont 05479.

10. Defendant Eric Holder is the Attorney General of the United States. He is named in his official capacity. His address is: U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

II. Jurisdiction and Venue

11. This is an action to review administrative agency action of the U.S. Department of State ("State Department"). The action arises under the Immigration and Nationality Act of 1952, as amended (the "Act"), 8 U.S.C. § 1101 et seq, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq. Subject matter jurisdiction is based on 28 U.S.C. §§ 1331 (federal questions) and 1361 (mandamus). This Court may grant relief pursuant to the Act, the

APA, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., 28 U.S.C. §§ 1361, and 28 U.S.C. § 1651 (the All Writs Act).

12. Defendants John Kerry, Rajiv Shah, Linda Walker, Marcia Pryce, Jeh Johnson, Leon Rodriguez, and Daniel M. Renaud had duties to act in conformity with the statute, the regulations, the legislative history, and international law in adjudicating Dr. Lee-Lewis's no objection waiver application. Defendant John Kerry had a duty to adhere to the Freedom of Information Act. Defendants Jeh Johnson and Leon Rodriguez had duties to fairly adjudicate the Plaintiffs's adjustment of status applications.

13. Venue is proper in the United States District Court for the Southern District of Georgia under 28 U.S.C. §§ 1391(e) and 1402(a)(1), because all Plaintiffs reside in the district and the United States is a Defendant.

III. Introduction and Legal Background

14. This section of the complaint gives a brief introduction of what happened and what is at stake, then a summary of the rather complex legal procedures involved. Waivers pursuant to 8 U.S.C. § 1182(e) will be called "J-1 waivers." Exchange visitors in the United States in "J-1" nonimmigrant (temporary) status will be called "J-1s."

15. The State Department initially issued a Not Favorable recommendation on Dr. Lee-Lewis's application for a waiver of the two-year J-1 foreign residence requirement of 8 U.S.C. § 1182(e) ("the foreign residence requirement"). This required the USCIS to deny the waiver application. Dr. Lee-Lewis is a national of the British Overseas Territory of Montserrat. Montserrat is a small island in the Caribbean. Most of the island is now buried under volcanic ash. In 1995, the Soufriere Hills volcano on the island's southern end began to erupt. The

volcano completely destroyed the capital city of Plymouth, where Dr. Lee-Lewis was born. It destroyed the airport and most of the fertile soil of the country. These volcanic eruptions are expected to continue indefinitely. The eruptions could completely destroy the rest of the island at any time. The State Department and USCIS Resource Information Center (RIC) also states: "In addition to the prospect of volcanic destruction, returning residents possibly would be subject to contracting the lung disease silicosis and other health risks caused by ash that periodically covers much of the island." The chief claim of this action is that the State Department must have abused its discretion, because it could not have come to its initial negative conclusion through a correct process of reasoned decision making.

16. Many foreigners come to the United States as "J-1" exchange visitors ("J-1s"). This is a kind of nonimmigrant (temporary) classification, as set forth in 8 U.S.C. § 1101(a)(15)(J).

17. Under 8 U.S.C. § 1182(e), there are three ways that a J-1 can become subject to the two-year foreign residence requirement: (1) the J-1 program is funded by the U.S. Government or the J-1's government; (2) the J-1 is engaged in training that is on the "Skills List" for the home country; or (3) the J-1 is coming to the United States for graduate medical education. The foreign residence requirement prohibits a J-1 from doing certain things, such as applying for permanent resident status (green card), until he has either fulfilled the requirement by spending two years in his home country, or until he has obtained a waiver of the requirement.

18. Dr. Lee-Lewis could only fulfill the requirement in Montserrat. In particular, 8 U.S.C. § 1182(e) provides that a J-1 subject to the requirement may fulfill it only in his country of "nationality or last residence." Both the USCIS and the State Department have consistently

interpreted "last residence" to mean a country where the person had the equivalent of permanent resident status as of the time of first admission to the United States in J-1 status.

19. As described with more specificity below, Dr. Lee-Lewis became subject to the foreign residence requirement because her J-1 program was funded by the U.S. Government. In particular, it was funded by the U.S. Agency for International Development ("USAID").

20. Under 8 U.S.C. § 1182(e), there are four ways that a J-1 can pursue a waiver of the foreign residence requirement (these are specified below). The instant action concerns Dr. Lee-Lewis's application for a waiver based on a no objection statement from the Government of Montserrat. This kind of waiver application commences with the filing of a DS-3035 data sheet, along with accompanying materials, with the State Department. The home country must also issue a no objection statement, stating that it does not object to the continued presence of the applicant in the United States. The no objection statement must be transmitted to the State Department through diplomatic channels.

21. Unlike virtually all other waiver application types in U.S. immigration law, this kind of waiver application is not adjudicated solely by the USCIS. Instead, the waiver can be granted only if the State Department issues a favorable recommendation. In this case, the State Department initially issued a Not Favorable recommendation. This required the USCIS to deny the waiver application.

IV. Factual Allegations

22. Dr. Lee-Lewis first entered the United States on or about August 12, 1989, as a nonimmigrant exchange visitor under 8 U.S.C. § 1101(a)(15)(J), to undertake a bachelor's degree program in biochemistry at Old Dominion University in Norfolk, Virginia.

23. Dr. Lee-Lewis's J-1 visa was sponsored by the United States Agency for International Development (USAID).

24. She was in J-1 status from August 12, 1989, to October 26, 1992.

25. At the conclusion of her program, Dr. Lee-Lewis returned to Montserrat on October 26, 1992, presenting herself to the Ministry of Education to let them know that she had completed her degree and was ready to commence work. There were no jobs at the time, so she came back to the United States to attend medical school interviews in December 1992. She then returned to Montserrat in the fall of 1992, where she spent several months searching for jobs. Upon return, she spoke with the Ministry of Education in Montserrat, which told her that she was released from her two-year foreign residence requirement because she could not find a job. The Ministry also gave her a letter showing that she had applied for a job, but there were none available. She sincerely believed that these officials had released her from the two-year foreign residence requirement.

26. Subsequently, she returned to the United States as a B-1/B-2 tourist and later as an F-1 student.

27. Dr. Lee-Lewis changed her status from F-1 to H-1B. That change of status application was approved on May 8, 1998. She worked for six years in H-1B status, up until July 7, 2005. She has been out of status since that date.

28. The USCIS erred in permitting Dr. Lee-Lewis to change status from F-1 to H-1B visa status. See Matter of Kim, 13 I. & N. Dec. 316 (Reg. Comm'r 1968). Had the INS (now USCIS) properly denied the change of status application under Matter of Kim, Dr. Lee-Lewis would have discovered her lingering J-1 problem. Instead, the improvident change of status from

F-1 to H-1B lulled Dr. Lee-Lewis into thinking that the Government of Montserrat was correct, and that she was no longer subject to the two-year foreign residence requirement.

29. An I-140 immigrant visa petition was approved on her behalf on May 24, 2005, but Dr. Lee-Lewis has been unable to seek U.S. lawful permanent resident status due to her J-1 foreign residence requirement, because 8 U.S.C. § 1182(e) provides that a person subject to the foreign residence requirement may not apply for permanent resident status.

30. Dr. Lee-Lewis was granted the following H-1B petition approvals over the years: (1) the University of Alabama at Birmingham, granted from July 1, 1998, to July 1, 2000; (2) the University of Texas Houston, granted from July 1, 2000, to July 1, 2003; (3) Anacleto T. Ordinario, Jr., M.D., A.P.M., granted from July 8, 2002, to July 7, 2005; and (4) Nephrology & Endocrinology Consultants, granted from January 15, 2005, to July 7, 2005.

31. Not one employer or attorney for all of these petitions identified or tried to rectify the J-1 problem, until it was too late.

32. Dr. Lee-Lewis received no legal counsel in connection with her first two H-1B petitions, which were handled by university personnel. Later, prior to her employment with Dr. Ordinario, Dr. Lee-Lewis was referred to an immigration lawyer. That lawyer conducted an intake with Dr. Lee-Lewis, which included a detailed questionnaire. Dr. Lee-Lewis completed this questionnaire on April 12, 2002. This lawyer did not identify the J-1 issue. This lawyer could have and should have identified the J-1 issue at the onset of the representation.

33. This same lawyer filed a new H-1B petition for Dr. Lee-Lewis when she transitioned to her new job at Nephrology & Endocrinology Consultants. This petition was filed on November 2, 2004. The J-1 issue was not discovered at that time.

34. Dr. Lee-Lewis started her new job in February 2005. At that point, her lawyer felt she should file an I-140 National Interest Waiver (NIW) petition because her H-1B status would soon expire. That petition was filed on May 6, 2005, and was approved on May 24, 2005. Again, the J-1 issue was not raised.

35. Shortly after the approval of Dr. Lee-Lewis's I-140 petition, her lawyer asked her whether she had obtained a J-1 waiver. Dr. Lee-Lewis told the lawyer that she did not have one, nor did she think she needed one. Her lawyer then sent her a letter on June 2, 2005, shortly before her H-1B status expired on July 7, 2005, notifying her that she was ineligible to apply for adjustment of status until she fulfilled her two-year foreign residence requirement. This lawyer then abandoned the representation of Dr. Lee-Lewis and her husband on the eve of the expiration of her H-1B status.

36. Dr. Lee-Lewis began feverishly communicating with other immigration lawyers to determine what could be done in her situation. None of the lawyers, aside from Bruce A. Hake, knew what to do.

37. Many general practice immigration lawyers, and immigration lawyers that concentrate in J-1 matters, consider no objection waiver applications to be nearly impossible to win when U.S. Government funding is involved. This is likely the reason why most of the immigration lawyers she went to could not help her.

38. On information and belief, the State Department denies the majority of U.S. Government (USAID-sponsored) no objection waiver applications. On April 26, 2013, Dr. Lee-

Lewis filed a Freedom of Information Act (FOIA) request seeking information to substantiate this assertion. To date, the State Department has failed to indicate whether it will comply with FOIA.

39. Montserrat is a small island in the Caribbean. Its area is only approximately 39 square miles, which is approximately one-half the size of Washington, D.C. Most of the island is now buried under volcanic ash.

40. Montserrat is a British Overseas Territory. For many years it was a peaceful and prosperous place. In 1995, however, the Soufriere Hills volcano on the island's southern end began to erupt. Over the next two years, the volcano completely destroyed the capital city of Plymouth, where Dr. Lee-Lewis was born.

41. The volcano's eruptions are expected to continue indefinitely. The eruptions could completely destroy the island at any time. Nearly the entire population of the island has abandoned Montserrat and emigrated elsewhere.

42. On July 6, 2004, the U.S. Department of Homeland Security announced that it was discontinuing Temporary Protected Status ("TPS") for citizens of Montserrat—for an unusual reason: "Because the volcanic eruptions are unlikely to cease in the foreseeable future, they can no longer be considered 'temporary' as required by Congress when it enacted the TPS status." Thus, the U.S. Government has formally determined and declared that the volcanic destruction on Montserrat is expected to be ongoing and permanent.

43. For these reasons, the goals of Dr. Lee-Lewis's USAID-sponsored exchange program cannot be fulfilled due to circumstances outside of her control.

44. At the same time, Dr. Lee-Lewis's work in the United States is clearly in the U.S. public interest. She is a nephrologist. She provides nephrologic services to areas that are underserved both for internal medicine and especially for nephrology. She oversees dialysis activities for patients in these areas.

V. J-1 Waiver History (No Objection Waiver Application)

45. As noted above, Dr. Lee-Lewis's J-1 program subjected her to the foreign residence requirement because her J-1 program was funded by the U.S. Government.

46. As noted above, there are four ways to pursue a waiver of the foreign residence requirement. These include: (1) an application on the basis of a "no objection statement" from the applicant's home country; (2) an application by an "interested Government agency" ("IGA"), which must be a U.S. federal agency; (3) an application on the basis of a personal risk of persecution; and (4) an application on the basis of exceptional hardship to the applicant's qualifying relatives. The procedure is different for each of these waiver types.

47. Dr. Lee-Lewis does not fear persecution in Montserrat (although the evidence is clear that she would face extremely serious, life-threatening dangers there). Dr. Lee-Lewis does not have a qualifying relative, and therefore she was not eligible to file an exceptional hardship waiver. Dr. Lee-Lewis did not have a realistic chance for an IGA waiver. Therefore, Dr. Lee-Lewis had one realistic way to pursue a waiver of her J-1 foreign residence requirement: a no objection waiver application.

48. All applicants for a J-1 no objection waiver must fill out a State Department Form DS-3035. The DS-3035 is an application data sheet, which requires the applicant to supply biographical information, as well as information concerning the applicant's participation in J-1

programs, and a summary of the applicant's immigration history. The DS-3035 must be signed by the applicant and the attorney of record.

49. Once the DS-3035 is completed, it must be submitted to the WRD. The form is mailed with the filing fee check of $215. Dr. Lee-Lewis's DS-3035 with filing fee was submitted to the WRD on September 5, 2006.

50. At that time, once the DS-3035 was received by the WRD, the WRD issued an instructions letter. This letter provided detailed instructions on what the applicant and attorney of record must do to complete the waiver application. The letter also assigned a State Department WRD case number.

51. The WRD issued the instructions letter on September 14, 2006. The WRD assigned Dr. Lee-Lewis a WRD case number of 834856. The instructions letter was a standard boilerplate letter for this kind of case. It is noteworthy that the WRD erroneously identified Dr. Lee-Lewis's country of birth as "Great Britain and Northern Ireland," and her country of residence as "Great Britain and Northern Ireland." The DS-3035 that was filed in this case provided "Montserrat" for both of these items. Dr. Lee-Lewis was not born in Great Britain or Northern Ireland, nor has she ever resided in those places.

52. On October 3, 2006, Dr. Lee-Lewis received correspondence from the British Embassy in Washington, D.C., indicating that it had transmitted the no objection statement to the WRD.

53. On October 27, 2006, Dr. Lee-Lewis, through counsel, filed her no objection waiver application. Dr. Lee-Lewis was statutorily eligible to seek a no objection waiver under 8 U.S.C. § 1182(e).

54. As documented in the application, Dr. Lee-Lewis could not return to her home country because it was destroyed by a volcano, which continued to erupt throughout the time of the filing of the application, and continues to erupt today. As documented in the application, the U.S. Government formally determined that the volcanic destruction on Montserrat is expected to be ongoing and permanent when the government discontinued Temporary Protected Status ("TPS") for citizens of the country.

55. Dr. Lee-Lewis's no objection waiver application complied with all statutory and regulatory requirements specified by the Defendants.

56. On November 8, 2006, Daniel Hoag of the WRD sent a letter requesting that the applicant submit legible copies of all DS-2019/IAP-66 forms. These are State Department forms used to begin a new J-1 program, extend an ongoing J-1 program, transfer from one J-1 program to a different J-1 program, replace a lost form, and/or permit a J-1's immediate family to enter the United States separately. This form contains information about the applicant, the program sponsor, the period of the exchange program, the type of study in which the exchange visitor will be engaged, whether or not government funding is involved, the amount of the funding, and an indication of whether an individual is subject to the two-year foreign residence requirement. The State Department requires all of these forms, or a suitable equivalent, to be submitted with every waiver application. A suitable equivalent is a writing from the program sponsor, which provides much, if not all of the information on the IAP-66 or DS-2019 form. The equivalent is usually used in place of an IAP-66 or DS-2019 that is missing. The State Department routinely accepts this kind of documentation in lieu of a missing IAP-66 or DS-2019.

57. All of these forms or suitable equivalents were submitted with Dr. Lee-Lewis's original waiver application, which was filed on October 27, 2006.

58. On November 20, 2006, the attorney of record, Bruce A. Hake ("Mr. Hake"), responded to the November 8, 2006, request for information. In particular, Mr. Hake indicated that he had submitted the information in the original waiver application.

59. On November 13, 2006, U.S. Congressman Jack Kingston made a congressional inquiry with the State Department to determine why the case was not progressing. This was the second of two congressional inquiries on this matter. On December 12, 2006, Jane Burt-Lynn, Chief, Public Inquiries Division at the State Department responded to the letter, indicating that all necessary documentation had not been submitted. Ms. Burt-Lynn indicated that the WRD would proceed with issuing its recommendation once it had received all of the necessary material.

60. On January 9, 2007, Mr. Hake sent an inquiry to the State Department "LegalNet" email address. LegalNet is a mechanism of communicating with the State Department on legal issues. His inquiry concerned why the case had not been logged into the WRD website and why the State Department had indicated that all documents had not been received. LegalNet replied to this message on January 16, 2007, indicating that the State Department would get back to him as soon as more information is available. LegalNet did not communicate with Mr. Hake on this matter after the January 16, 2007, response.

61. On April 17, 2007, Mr. Hake sent an email to Linda Walker at USAID inquiring as to whether she had received Dr. Lee-Lewis's application. Mr. Hake stated that the WRD's

website indicated that it had requested sponsor's views from USAID on December 11, 2006. Ms. Walker responded the next day, indicating that she had not received the case.

62. Without discovery, it is impossible to know whether Defendant Marcia Pryce failed to transmit a complete copy of the no objection waiver application and all supporting materials to Defendants Rajiv Shah and Linda Walker of USAID.

63. On June 29, 2007, Ms. Walker sent Mr. Hake an email indicating that the WRD had finally sent the case to her office. She asked Mr. Hake the following question: "Could you please clarify her citizenship? Her passport says 'British Overseas Territories citizen,' but the cover letter from State says Great Britain and Northern Ireland. . . . the no objection statement is from the British Embassy. Does this mean she could reside in any area defined as a British territory and not have to return to Montserrat?"

64. Ms. Walker's question about where Dr. Lee-Lewis could reside is a clear abuse of discretion. Where Dr. Lee-Lewis could reside is not germane to the fulfillment of the two-year foreign residence requirement, nor to the assessment of the fulfillment of the goals of the underlying exchange program. This follows because 8 U.S.C. § 1182(e) requires one subject to fulfill the foreign residence requirement by residing and being physically present in the country of his nationality or last residence for an aggregate of at least two years following departure from the United States. Dr. Lee-Lewis's residing in Great Britain would not fulfill this foreign residence requirement. Furthermore, her ability to reside in another country other than Montserrat must necessarily be irrelevant to an assessment of program sponsor views, because the USAID is interested in having participants in its program return to their home country to engage in educational and cultural exchange. The purposes of the exchange program are: "to

increase mutual understanding between people of the United States and the people of other countries by means of education and cultural exchanges. Educational and cultural exchanges assist the State Department in furthering the foreign policy objectives of the United States." See 22 C.F.R. § 62.1(a).

65. On September 7, 2007, Linda Walker emailed Mr. Hake indicating that USAID's recommendation on the waiver had been sent to the WRD.

66. It is unknown what materials or documents were sent to the USAID when the program sponsor's views were sought in this case. It appears that Linda Walker handled the request for sponsor's views, but it is unknown whether anyone else from USAID participated in the handling of the case. It is unknown what, if any, deliberations may have taken place concerning this case at that office. It is unknown in what form the sponsor's views were communicated back to the WRD.

67. On information and belief, the USAID nearly always issues negative views to the WRD in cases where it is the program sponsor.

68. On information and belief, the USAID issued negative views on Dr. Lee-Lewis's no objection waiver application on September 7, 2007.

69. On November 13, 2007, Daniel Hoag of the WRD sent Mr. Hake an email stating: "After further review, for immigration purposes, Montserrat is treated as a separate country. We have a separate reciprocity schedule with that country. Thus, the no objection statement for the EV [that is, exchange visitor] must be issued by the Govt of Montserrat. Also, we checked with our Consulate which oversees Montserrat and the country conditions are not as dire as described in applicant's package and the program sponsor is very much opposed to the waiver. Please keep

in mind that there are also other waiver bases that the EV can pursue. If the EV would like to change the basis of the waiver, she can do so prior to a final decision being made under the NOS basis."

70. Mr. Hake responded to Mr. Hoag's email on November 13, 2007, systematically objecting to nearly every aspect of Mr. Hoag's message. More specifically, Mr. Hake objected to Mr. Hoag's rationale that Montserrat is treated as a separate country, providing a detailed analysis supporting his objection. Mr. Hake objected to Mr. Hoag's statement that the country conditions are not as dire as described in the applicant's package by showing that the U.S. Government has formally determined that the volcanic destruction on the island is expected to be ongoing and permanent. Finally, Mr. Hake refuted Mr. Hoag's statement that there were other waiver bases that Dr. Lee-Lewis could pursue.

71. With respect to Mr. Hoag's statement: "Also, we checked with our Consulate which oversees Montserrat and the country conditions are not as dire as described in applicant's package. . . ," it is unknown what kind of communication occurred between the WRD and the Consulate that oversees Montserrat. It is unknown what materials or documents, if any, were sent to this Consulate.

72. The assessment of country conditions by the Consulate that oversees Montserrat must have been inaccurate and an abuse of discretion, in view of the overwhelming amount of objective evidence presented with the waiver application, especially the formal determination by the U.S. Government that the volcanic destruction on Montserrat is expected to be ongoing and permanent.

73. On November 13, 2007, Jinny Chun, Chief of the WRD at that time, sent an email to Mr. Hake stating that Dr. Lee-Lewis needs to obtain a no objection statement from Montserrat. She also indicated that the WRD will not act as an Interested Government Agency for Dr. Lee-Lewis.

74. On November 15, 2007, Jinny Chun sent a follow up email to Mr. Hake confirming that Dr. Lee-Lewis needs to obtain a no objection statement from Montserrat. She also proposed mechanics of how the statement should be transmitted to the WRD.

75. On December 7, 2007, the Government of Montserrat sent correspondence to the U.S. Consular Section, Bridgetown, Barbados, per Jinny Chun's instructions.

76. On June 12, 2008, the WRD sent Mr. Hake a letter indicating that the no objection statement must come from Montserrat.

77. On August 4, 2008, WRD officer, Theresa Marshall, left a message for Mr. Hake. Ms. Marshall indicated that the WRD had received some correspondence from the Government of Montserrat.

78. On August 5, 2008, Mr. Hake sent an email to Theresa Marshall, in which he outlined the procedural irregularities in the case and speculated that the correspondence may be a no objection statement.

79. On August 14, 2008, Mr. Hake sent a fax to Mr. Hoag to follow up on the Lee-Lewis case, referencing the communication with Theresa Marshall, in which she indicated that Mr. Hoag was assigned to the Lee-Lewis case.

80. Sometime between August 14, 2008, and October 2, 2008, the WRD issued a Not Favorable recommendation in the waiver case and transmitted that recommendation to the

USCIS Vermont Service Center. Typically, the WRD sends a copy of the recommendation to the attorney of record in the case. In this case, it did not.

81. It is unclear what the WRD's rationale for issuing the Not Favorable recommendation was, because it was not communicated to Dr. Lee-Lewis or her attorney. Without discovery, it is impossible to know the WRD's rationale for issuing the Not Favorable recommendation. Without discovery, it will be impossible to know whether the WRD's adjudication of the waiver application was in conformity with the law.

82. On information and belief, the WRD has engaged in a pattern and practice of not adhering to its own regulations, the Constitution, and committing other legal violations in adjudicating no objection waiver applications that involve U.S. Government funding. On April 26, 2013, Dr. Lee-Lewis filed a FOIA request to obtain evidence to substantiate this assertion. To date, the State Department has failed to respond as to whether it will comply with the FOIA with respect to Dr. Lee-Lewis's request.

83. The WRD is required by regulation to review the: (1) program, (2) policy, and (3) foreign relations aspects of the waiver application, make a recommendation, and forward it to the appropriate office at USCIS. See 22 C.F.R. § 41.63(d). In this case, it appears the WRD literally "rubberstamped" the views of the USAID, which appears tainted by the analysis of issues of where Dr. Lee-Lewis could reside, which is not germane to the program sponsor views. The negative recommendation may also have been founded on inaccurate views from the consulate that oversees Montserrat.

84. There is no evidence provided that the WRD considered the program, policy, and foreign relations considerations in the case, as it is required to do under its own regulations.

85. The WRD maintains a website outlining the process and procedures for seeking a J-visa waiver. Its address is http://travel.state.gov/visa/temp/info/info_1296.html.

86. That WRD website has a Frequently Asked Questions page that answers the question "Why would a recommendation application be denied by the Waiver Review Division?" The answer states: "Recommendation applications are denied when the reasons given for requesting the waiver do not outweigh the program and foreign policy considerations of the exchange visitor program. For this reason, waiver recommendation applications from exchange visitors who received U.S. Government funding are generally denied."

87. This explanation of such a denial is facially invalid because the WRD is required by law to actually assess the program, policy, and foreign relations aspects of a case under 22 C.F.R. § 41.63(d).

88. The WRD sometimes issues requests for evidence in J-1 waiver cases. The requests for evidence issued by the WRD include, for example, requests that the applicant complete the preliminary filing requirements as well as requests for substantive information regarding the application.

89. The procedures utilized by the WRD for adjudication of J-1 waiver applicants have changed over the past several decades. In particular:

90. The Form DS-3035 did not exist prior to the late 1990's.

91. Most J-1 program and waiver matters used to be handled by an agency called the U.S. Information Agency (USIA). The USIA was abolished in 1999. At that time, its "waiver" functions were transferred to the new WRD within the State Department's Bureau of Consular

Affairs. The USIA started charging a filing fee for the Data Sheet form, which later became the DS-3035, in approximately 1998.

92. On October 2, 2008, the USCIS denied the waiver application on the basis that the State Department had issued an unfavorable recommendation.

93. The denial states: "The United States Department of State has advised that even though a "no objection" statement from your country of nationality has been issued, based on program and policy considerations they are not recommending that you be granted a waiver of the two-year foreign residence requirement of section 212(e) of the Immigration and Nationality Act, as amended." The denial continues: "Accordingly, on the basis of the unfavorable recommendation of the USDOS, you are hereby denied a waiver of the two-year foreign residence requirement of section 212(e). No appeal lies from this decision in accordance with Title 8, Code of Federal Regulations, Part 212.7(c)(11)."

94. Based on the above quoted language, the USCIS issued the denial even though the explanation from the State Department must have comprised a facially invalid explanation for its recommendation. Further, there was no explanation from the USCIS showing that the State Department actually considered the evidence submitted. The record is devoid of evidence that the State Department actually reviewed the program, policy, and foreign relations aspects of the case, as it is required to do under 22 C.F.R. § 41.63(d). Indeed, the USCIS stated that the decision was based on program and policy considerations, and not on foreign relations aspects.

95. There is no administrative appeal from the November 2, 2008, decision.

96. The Plaintiffs exhausted all of their administrative remedies prior to the grant of the waiver.

97. The missing recommendation by the State Department must have been irrational and contrary to the statutory standards of the APA and the Immigration and Nationality Act, the Department of Homeland Security, and State Department regulations, the intention of Congress in enacting the J-1 visa waiver, and due process of law, in that the State Department failed to state any basis for the denial or discuss any facts relevant to the decision, or demonstrate that it had considered the program, policy, and foreign relations aspects of the case.

98. Following the denial, Dr. Lee-Lewis felt it was hopeless to further pursue the matter. For decades, it was regarded as established law that J-1 waiver denials based on "Not Favorable" recommendations from the State Department's Waiver Review Division (WRD), or its predecessor the U.S. Information Agency (USIA), are not reviewable in federal court. See Brian C. Schmitt & Bruce A. Hake, *Judicial Review of J-1 Waiver Denials Based on Negative State Department Recommendations*, 17 Bender's Immigration Bulletin 1387 (July 15, 2012).

99. Shortly after the commencement of the instant litigation, on August 6, 2013, the State Department reopened Dr. Lee-Lewis's case and issued a favorable recommendation.

100. The USCIS issued an approval notice, granting Dr. Lee-Lewis a waiver of her two-year foreign residence requirement on August 7, 2013.

101. Once the waiver was granted, Dr. Lee-Lewis was then able to use her approved I-140 petition to adjust status, save for the fact that she had been out of status for an aggregate period exceeding 180 days. For this reason, Dr. Lee-Lewis and her husband filed adjustment of status applications with a request that they be accepted nunc pro tunc (that is, retroactively). These adjustment of status applications were filed with the USCIS on November 15, 2013.

102. The USCIS issued a Notice of Intent to Deny (NOID) Dr. Lee-Lewis's adjustment of status application on April 23, 2014. The NOID ignored arguments, evidence, and case law that were presented in the adjustment of status application. Counsel responded to the NOID on May 9, 2014, highlighting the severe deficiencies in the NOID. The USCIS denied both adjustment of status applications on July 3, 2014.

VI. Irreparable Injury

103. If the adjustment of status applications are not approved, the Plaintiffs will suffer irreparable injury.

104. Dr. Lee-Lewis demonstrated in her waiver application, as well as in her adjustment of status application, that her home country of Montserrat was devastated by a volcano. She demonstrated that, at the time of the waiver application, most of the island's population had fled, leaving just a few thousand people on the northern end of the island. Dr. Lee-Lewis demonstrated that the volcano's eruptions are expected to continue indefinitely, and that the eruptions might completely destroy the rest of the island at any time. Dr. Lee-Lewis demonstrated that, in addition to the prospect of the complete destruction of the island, she would be subject to the possibility of contracting the lung disease silicosis and other health risks caused by ash that periodically covers the island.

105. The waiver application showed that on July 6, 2004, the U.S. Department of Homeland Security announced that it was discontinuing Temporary Protected Status ("TPS") for citizens of Montserrat, because the volcanic eruptions are unlikely to cease in the foreseeable future and the destruction is expected to be ongoing and permanent.

106. Ample evidence was provided that Montserrat was severely devastated by a volcano. If the adjustment of status application is denied, Dr. Lee-Lewis and her husband will be exposed to risk of death or serious injury if they are forced to return to Montserrat.

107. Dr. Lee-Lewis demonstrated that if she were forced to depart the United States, the public interest of the United States would be greatly harmed. Specifically, Dr. Lee-Lewis demonstrated that her work in the United States is clearly in the public interest, through accompanying support letters.

VII. Facts Relating to Freedom of Information Act Claim

108. On May 8, 2013, the State Department, Office of Information Programs and Services received a Freedom of Information Act ("FOIA") request from Dr. Lee-Lewis.

109. The FOIA request was correctly addressed to the division of the State Department that receives FOIA requests.

110. The records requested by Dr. Lee-Lewis are not subject to any FOIA exemption.

111. Dr. Lee-Lewis has a statutory right to copies of the records she seeks, and there is no legal basis to withhold these records.

112. The State Department issued a receipt letter on May 22, 2013, assigning Dr. Lee-Lewis a case number of F-2013-08173.

113. Other than issuing this receipt letter, the State Department has not responded to the FOIA request in any way.

114. On November 15, 2013, the State Department, Office of Information Programs and Services received a FOIA appeal regarding the State Department's failure to respond to the FOIA request.

115. The State Department has not provided any responsive documents nor has it asserted that any of the FOIA exemptions preclude disclosure of the requested information.

116. Dr. Lee-Lewis has exhausted her administrative remedies with regard to her FOIA request.

COUNT ONE: ABUSE OF DISCRETION
AND VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

117. Paragraphs 1 through 116 above are repeated and realleged as though fully set forth herein.

118. The Defendants's initial denial of Dr. Lee-Lewis's no objection waiver application was contrary to the statutory standards, regulations, legislative history, and congressional intent. This denial was therefore arbitrary and capricious, because the Defendants failed to consider all the evidence in the record before rendering a decision; ignored substantial evidence in the record without any rational basis; failed to weigh the evidence presented against the program, policy, and foreign relations aspects; and/or failed to state a valid reason for the denial.

119. The Defendants's initial adjudication of the no objection waiver application is contrary to the statutory standards, regulations, legislative history, and congressional intent, because there is no evidence that the Defendants reviewed the program, policy, and foreign relations aspects of the case, and the Defendants routinely fail to provide any valid explanation for their recommendations in such cases.

120. On information and belief, the State Department intentionally does not provide the basis for its decisions in J-1 waiver cases so that it can evade judicial review.

121. The Defendants acted outside the scope of discretion granted by Congress.

122. The initial denial of the no objection waiver application delayed the Plaintiffs's ability to file adjustment of status applications.

123. The Defendants's initial denial of the application therefore violated the Administrative Procedure Act, 5 U.S.C. §§ 555(b), 702, and 706(1), and otherwise constituted an abuse of discretion.

COUNT TWO: DECLARATORY JUDGMENT

124. Paragraphs 1 through 123 above are repeated and realleged as though fully set forth herein.

125. This Court has authority to issue a declaratory judgment regarding the rights, privileges, and duties of the parties under 28 U.S.C. § 2201.

126. This Court should issue a declaratory judgment establishing that Dr. Lee-Lewis was eligible for a J-1 waiver, and that due to the extraordinary country conditions present in her home country of Montserrat, she was entitled to a waiver when she initially filed the waiver application.

127. This Court should declare that the Defendants's pattern and practice of the adjudication of waiver applications without properly reviewing the program, policy, and foreign relations aspects of the case, and without stating a valid reason for the unfavorable recommendation, are contrary to the statutory standards, regulations, legislative history, congressional intent, and due process of law.

128. This Court should declare that the Defendants's pattern and practice of denying the majority of no objection waiver applications that are sponsored by the U.S. Government

without properly reviewing the program, policy, and foreign relations aspects of the case, and without stating a valid reason for the unfavorable recommendation, are contrary to the statutory standards, regulations, legislative history, congressional intent, and due process of law. The Court should further declare that the delay in Dr. Lee-Lewis's finding a lawyer capable and willing to file the no objection waiver application was caused by the Defendants's pattern and practice of denying nearly all U.S. Government-funded no objection waiver applications.

129. This Court should declare that the Defendants's initial denial of Dr. Lee-Lewis's waiver application threatened her life, because if she was forced to return to Montserrat, she might be killed or severely injured from the ongoing volcanic activity. A forced return of Dr. Lee-Lewis may also subject her to silicosis and other health risks caused by ash that periodically covers most of the island. The Court should therefore declare that the Defendants's initial denial of Dr. Lee-Lewis's waiver application violated her right to due process of law under the Fifth Amendment to the United States Constitution. This denial and pattern and practice of denying nearly all U.S. Government-funded no objection waiver cases prevented Dr. Lee-Lewis from benefitting from her approved I-140 EB-2 NIW petition.

130. This Court should declare that Dr. Lee-Lewis has a property interest in the application fee that she paid to the State Department for her no objection waiver application. This Court should declare that the Defendants's denial of Dr. Lee-Lewis's waiver application without any rational basis violated her right to due process of law under the Fifth Amendment to the United States Constitution.

131. This Court should declare that Congress has suggested that a more relaxed attitude be taken in determining whether a waiver should be granted in a case like Dr. Lee-Lewis's. See

House Report 721, Subcommittee of the House Committee on the Judiciary, 87 Cong., 1st Sess. (1961), at 122. See also Matter of Duchneski, 11 I&N Dec. 583 (Dist. Dir. 1966) (waiver recommended for approval by the State Department), and Matter of Coffman, 13 I & N Dec. 206 (Dep. Assoc. Comm'r 1969) (waiver recommended by State Department).

132. This Court should declare that based on congressional intent, program, policy, and foreign relations considerations, Dr. Lee-Lewis's case should have been reviewed under the relaxed standard, because the applicant came to the United States in J-1 status not only to gain but also to impart her already acquired heritage and culture, a duty which she faithfully and successfully performed.

133. This Court should declare that the Defendants's denial of Dr. Lee-Lewis's no objection waiver application is contrary to the law and an abuse of discretion, because the Defendants failed to apply the more relaxed standard of review to her case.

134. This Court should declare that ratified treaties constitute the supreme law of the land under Article VI of the United States Constitution.

135. This Court should declare that President Jimmy Carter signed the International Covenant on Civil and Political Rights ("I.C.C.P.R.") on October 5, 1977. On June 8, 1992, the I.C.C.P.R. was ratified by the United States Senate pursuant to Article II, Section 2 of the United States Constitution. The United States is therefore a party to the I.C.C.P.R.

136. This Court should declare that the Defendants have a duty to adhere to the I.C.C.P.R. when adjudicating waiver applications.

137. This Court should declare that the Defendants's action of initially denying the no objection waiver, without any rational basis, violated the United States's obligations under I.C.C.P.R. Articles 6 and 23.

138. This Court should declare that customary norms of international law are incorporated into federal law.

139. This Court should declare that the right to life, family life, and unity is a well-established norm of customary international law.

140. This Court should declare that the Defendants's actions of initially denying the no objection waiver, in light of the evidence presented in the waiver application, violate the United States's obligations under customary international law.

141. This Court should declare that the Ministry of Education of Montserrat told Dr. Lee-Lewis that she was released from her two-year foreign residence requirement because she could not find a job, and that her reliance on this statement was reasonable.

142. This Court should declare that the USCIS erred in improvidently changing Dr. Lee-Lewis's status from F-1 to H-1B on July 1, 1998, based on Matter of Kim, 13 I. & N. Dec. 316 (Reg. Comm'r 1968).

143. This Court should declare that multiple employers, and at least one lawyer, failed to recognize the J-1 issue during the H-1B petition and extension petitions, and that this lulled Dr. Lee-Lewis into thinking that there was no J-1 problem.

144. This Court should declare that there is no administrative appeal of the USCIS denial of the no objection waiver application under 8 C.F.R. § 212.7(c)(11). This Court should also declare that for decades it was established law that J-1 waiver denials based on "Not

Favorable" recommendations by the State Department's Waiver Review Division (WRD) or its predecessor, the U.S. Information Agency (USIA), are not reviewable in federal court, and therefore Dr. Lee-Lewis's initial feeling of hopelessness in pursuing the denial further was reasonable. This Court should also declare that Dr. Lee-Lewis's delay in filing the instant action was reasonable.

145. This Court should declare that now that the USCIS has approved the waiver application, the Plaintiff Dr. Lee-Lewis is permitted to file for adjustment of status (application for permanent resident status) nunc pro tunc based on her approved I-140 petition. This Court should declare that Plaintiff Selvin Lewis is permitted to file an adjustment of status application as a following to join, derivative beneficiary of Dr. Lee-Lewis's adjustment of status application.

146. This Court should declare that Dr. Lee-Lewis needed the documents requested in her April 26, 2013, FOIA request to establish the equities in her nunc pro tunc adjustment of status application.

147. This Court should declare that the State Department violated the FOIA in failing to respond to Dr. Lee-Lewis's FOIA request.

148. The Court should declare that the USCIS's denial of the Plaintiffs' nunc pro tunc adjustment of status applications was fundamentally unfair because the Plaintiffs could not prove all equities in their case because of the State Department's FOIA violation.

149. This Court should declare that the legislative history of 8 U.S.C. § 1255(k) (§ 111(c) of Pub. L. 105-119, 111 Stat. 2458, Nov. 26, 1997) is devoid of any indication that Congress wanted to preclude nunc pro tunc relief under 8 U.S.C. § 1255(k), and therefore nunc pro tunc relief is not barred by the statute.

150. This Court should declare that the USCIS and the State Department erred in initially denying Dr. Lee-Lewis's waiver application, and that an award of equitable relief is available to remedy this error.

151. This Court should declare that the State Department's pattern and practice of violating various sources of law in adjudicating no objection waiver cases that involve U.S. Government funding delayed Dr. Lee-Lewis's ability to find a lawyer who was willing and able to file her no objection waiver application. As such, Dr. Lee-Lewis was unable to utilize her approved I-140 EB-2 NIW petition. This Court should declare that an award of equitable relief is available to remedy this pattern and practice of legal violations by the State Department.

152. This Court should declare that the USCIS has the authority to approve the Plaintiffs's adjustment of status applications.

153. This Court should declare that the USCIS should approve the Plaintiffs's adjustment of status applications based on the equities set forth in that application and based on the fact that the U.S. Government has formally determined that the volcanic destruction on Montserrat is expected to be ongoing and permanent.

COUNT THREE: DUE PROCESS VIOLATION (RIGHT TO LIFE)

154. Paragraphs 1 through 153 above are repeated and realleged as though fully set forth herein.

155. Dr. Lee-Lewis and her husband have a fundamental right to life.

156. The Defendants's initial denial of Dr. Lee-Lewis's waiver application delayed the Plaintiffs's ability to file adjustment of status applications in a timely fashion. This threatens the Plaintiffs's lives, because if they are forced to return to Montserrat, they may be killed or

severely injured from ongoing volcanic activity. A forced return may also subject the Plaintiffs to silicosis and other health risks caused by ash that periodically covers most of the island.

157. The Defendants's pattern and practice of denying nearly all U.S. Government-funded no objection waiver cases delayed Dr. Lee-Lewis's ability to find counsel to file her waiver application.

158. The Defendants's denial of Dr. Lee-Lewis's waiver application violated her right to due process of law under the Fifth Amendment to the United States Constitution. This violation has impacted the Plaintiffs's ability to file adjustment of status applications in a timely manner.

COUNT FOUR: DUE PROCESS VIOLATION (PROPERTY INTEREST)

159. Paragraphs 1 through 158 above are repeated and realleged as though fully set forth herein.

160. Dr. Lee-Lewis has a property interest in the application fee that she paid to the State Department.

161. The Defendants's initial denial of Dr. Lee-Lewis's waiver application without any rational basis violated the Plaintiffs's right to due process of law under the Fifth Amendment to the United States Constitution.

COUNT FIVE: FAILURE TO FOLLOW MORE RELAXED ADJUDICATION STANDARD INTENDED BY CONGRESS

162. Paragraphs 1 through 161 above are repeated and realleged as though fully set forth herein.

163. Congress has suggested that a more relaxed attitude be taken in determining whether a waiver should be granted in a case like Dr. Lee-Lewis's. See House Report 721, Subcommittee of the House Committee on the Judiciary, 87 Cong., 1st Sess. (1961), at 122. See also Matter of Duchneski, 11 I&N Dec. 583 (Dist. Dir. 1966) (waiver recommended for approval by the State Department), and Matter of Coffman, 13 I & N Dec. 206 (Dep. Assoc. Comm'r 1969) (waiver recommended by State Department).

164. Based on congressional intent, program, policy, and foreign relations considerations, Dr. Lee-Lewis's case should have been reviewed under the relaxed standard, because the applicant came to the United States in J-1 status not only to gain, but also to impart, her already acquired heritage and culture, a duty which she faithfully and successfully performed.

165. The Defendants routinely ignore the congressional intent, program, policy, and foreign relations considerations in nearly all U.S. Government-funded no objection waiver cases.

166. The Defendants's initial denial of Dr. Lee-Lewis's no objection waiver application is contrary to the law and an abuse of discretion because the Defendants failed to apply the more relaxed standard of review to her case.

COUNT SIX: VIOLATION OF TREATY

167. Paragraphs 1 through 166 above are repeated and realleged as though fully set forth herein.

168. Ratified treaties constitute the supreme law of the land under Article VI of the United States Constitution.

169. President Jimmy Carter signed the International Covenant on Civil and Political Rights ("I.C.C.P.R.") on October 5, 1977. On June 8, 1992, the I.C.C.P.R. was ratified by the

United States Senate pursuant to Article II, Section 2 of the United States Constitution. The United States is therefore a party to the I.C.C.P.R.

170. The Defendants have a duty to adhere to the I.C.C.P.R. when adjudicating waiver and adjustment of status applications.

171. The Defendants routinely ignore their duties under the I.C.C.P.R. when adjudicating waiver and adjustment of status applications.

172. The Defendants's action in initially denying the no objection waiver without any rational basis delayed the Plaintiffs's ability to file adjustment of status applications in a timely manner. This has exposed the Plaintiffs to a risk of having to return to Montserrat, which in turn comprises a violation of the United States's obligations under I.C.C.P.R. Articles 6 and 23.

COUNT SEVEN: VIOLATION OF CUSTOMARY INTERNATIONAL LAW

173. Paragraphs 1 through 172 above are repeated and realleged as though fully set forth herein.

174. Customary norms of international law are incorporated into federal law.

175. The right to life, family life, and unity is a well-established norm of customary international law.

176. The Defendants routinely ignore these customary norms of international law in adjudicating no objection waivers that involve U.S. Government funding.

177. The Defendants's actions in initially denying the no objection waiver in light of the evidence presented in the waiver application delayed the Plaintiffs's ability to file adjustment of status applications in a timely manner, which in turn violates the United States's obligations under customary international law.

COUNT EIGHT: VIOLATION OF THE FREEDOM OF INFORMATION ACT

178. Paragraphs 1 through 177 above are repeated and realleged as though fully set forth herein.

179. FOIA requires the Defendants to respond to requests within twenty days.

180. The Defendants have failed to respond to the Plaintiffs's request.

181. FOIA exemptions must be strictly construed in accordance with the Congressional emphasis on open government.

182. The Court should hold the State Department's failure to respond unlawful and order the Defendants to promptly produce the requested records.

183. The Court should further order the State Department to pay Dr. Lee-Lewis's reasonable attorneys' fees and costs, as provided by 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for the following relief:

1. Declare the Defendants's initial adjudication of Dr. Lee-Lewis's no objection waiver application to be in violation of the statute, regulations, legislative intent, agency procedures, treaty law, customary international law, and the Constitution.

2. Declare that the Defendants's initial denial of Dr. Lee-Lewis's waiver application was unlawful; arbitrary and capricious; contrary to the statute, regulations, legislative history, congressional intent; and in violation of the Constitution, the I.C.C.P.R., and customary international law.

3. Declare that Dr. Lee-Lewis was eligible for a J-1 waiver, and that due to the extraordinary country conditions present in her home country of Montserrat, she was entitled to a waiver when she initially filed the waiver application.

4. Declare that the Defendants's adjudication of waiver applications without properly reviewing the program, policy, and foreign relations aspects of the case, and without stating a valid reason for the unfavorable recommendation, is contrary to the statutory standards, regulations, legislative history, congressional intent, and due process of law.

5. Declare that the Defendants's initial denial of Dr. Lee-Lewis's waiver application threatened her life, because if she was forced to return to Montserrat, she could be killed or severely injured from the ongoing volcanic activity. A forced return of Dr. Lee-Lewis may also subject her to silicosis and other health risks caused by ash that periodically covers most of the island. The Court should therefore declare that the Defendants's initial denial of Dr. Lee-Lewis's waiver application violated her right to due process of law under the Fifth Amendment to the United States Constitution.

6. Declare that Dr. Lee-Lewis has a property interest in the application fee that she paid to the State Department for her no objection waiver application. This Court should declare that the Defendants's denial of Dr. Lee-Lewis's waiver application without any rational basis violated her right to due process of law under the Fifth Amendment to the United States Constitution.

7. Declare that Congress has suggested that a more relaxed attitude be taken in determining whether a waiver should be granted in a case like Dr. Lee-Lewis's. See House Report 721, Subcommittee of the House Committee on the Judiciary, 87 Cong., 1st Sess. (1961),

at 122. See also Matter of Duchneski, 11 I&N Dec. 583 (Dist. Dir. 1966) (waiver recommended for approval by the State Department), and Matter of Coffman, 13 I & N Dec. 206 (Dep. Assoc. Comm'r 1969) (waiver recommended by State Department).

8. Declare that based on congressional intent, program, policy, and foreign relations considerations, Dr. Lee-Lewis's case should have been reviewed under the relaxed standard, because the applicant came to the United States in J-1 status not only to gain, but also to impart, her already acquired heritage and culture, a duty which she faithfully and successfully performed.

9. Declare that the Defendants's denial of Dr. Lee-Lewis's no objection waiver application is contrary to the law and an abuse of discretion, because the Defendants failed to apply the more relaxed standard of review to her case.

10. Declare that ratified treaties constitute the supreme law of the land under Article VI of the United States Constitution.

11. Declare that President Jimmy Carter signed the International Covenant on Civil and Political Rights ("I.C.C.P.R.") on October 5, 1977. On June 8, 1992, the I.C.C.P.R. was ratified by the United States Senate pursuant to Article II, Section 2 of the United States Constitution. The United States is therefore a party to the I.C.C.P.R.

12. Declare that the Defendants have a duty to adhere to the I.C.C.P.R. when adjudicating waiver applications.

13. Declare that the Defendants's action in denying the no objection waiver without any rational basis violated the United States's obligations under I.C.C.P.R. Articles 6 and 23.

14. Declare that customary norms of international law are incorporated into federal law.

15. Declare that the right to life, family life, and unity is a well-established norm of customary international law.

16. Declare that the Defendants's actions in initially denying the no objection waiver in light of the evidence presented in the waiver application violate the United States's obligations under customary international law.

17. Declare that the Ministry of Education of Montserrat told Dr. Lee-Lewis that she was released from her two-year foreign residence requirement because she could not find a job, and that her reliance on this statement was reasonable.

18. Declare that the USCIS erred in improvidently changing Dr. Lee-Lewis's status from F-1 to H-1B on July 1, 1998, based on Matter of Kim, 13 I. & N. Dec. 316 (Reg. Comm'r 1968).

19. Declare that multiple employers, and at least one lawyer, failed to recognize the J-1 issue during the H-1B petition and extension petitions, and that this lulled Dr. Lee-Lewis into reasonably believing that there was no J-1 problem.

20. Declare that there is no administrative appeal of the USCIS denial of the no objection waiver application under 8 C.F.R. § 212.7(c)(11). This Court should also declare that for decades it was established law that J-1 waiver denials based on "Not Favorable" recommendations by the State Department's Waiver Review Division (WRD), or its predecessor the U.S. Information Agency (USIA), are not reviewable in federal court, and therefore Dr. Lee-Lewis's initial feeling of hopelessness in pursuing the denial further was reasonable. This Court should also declare that Dr. Lee-Lewis's delay in filing the instant action was reasonable.

21. Declare that now that the USCIS has approved the waiver application, Dr. Lee-Lewis is permitted to file an adjustment of status (application for permanent resident status) nunc pro tunc based on her approved I-140 petition. This Court should declare that Plaintiff Selvin Lewis is permitted to file an adjustment of status application as a following to join, derivative beneficiary of Dr. Lee-Lewis's adjustment of status application.

22. Declare that the legislative history of 8 U.S.C. § 1255(k) (§ 111(c) of Pub. L. 105-119, 111 Stat. 2458, Nov. 26, 1997) is devoid of any indication that Congress wanted to preclude nunc pro tunc relief under 8 U.S.C. § 1255(k), and that therefore nunc pro tunc relief is not barred by the statute.

23. Declare that the USCIS and the State Department erred in denying Dr. Lee-Lewis's waiver application, and that an award of equitable relief is available to remedy this error.

24. Declare that the USCIS has the authority to approve the Plaintiffs' adjustment of status applications.

25. Order the USCIS to approve the Plaintiffs' adjustment of status applications based on the equities set forth in those applications and the fact that the U.S. Government has formally determined that the volcanic destruction on Montserrat is expected to be ongoing and permanent.

26. Hold that the State Department's failure to respond to the FOIA request was unlawful, and direct the State Department to promptly produce the documents requested in Dr. Lee-Lewis's FOIA request.

27. Grant an award of attorneys's fees and costs; and

28. Grant such other relief as the Court may deem just and proper.

Dated: New Windsor, Maryland

August 20, 2014

/s/ Brian C. Schmitt
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th of August 2014, a copy of the Second Amended and Supplemental Complaint for Declaratory, Injunctive, and Mandamus Relief was served on the following recipients in accordance with the Notice of Electronic Filing ("NEF"), which was generated as a result of electronic filing in this Court:

Anthony D. Bianco
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/s/ Brian C. Schmitt
Brian C. Schmitt