

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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JOSEPH MEOUCHY, M.D.))
1559 Winona Blvd., Apt. 3B))
Los Angeles, CA 90027))
))
CYNTHIA HAYEK, M.D.)	Civ. No.
1559 Winona Blvd., Apt. 3B))
Los Angeles, CA 90027))
))
C. M.))
1559 Winona Blvd., Apt. 3B))
Los Angeles, CA 90027))
))
Plaintiffs,))
))
v.))
))
REX W. TILLERSON, United States))
Secretary of State))
U.S. Department of State))
2201 C. Street N.W.,))
Washington, D.C. 20520))
))
MARCIA PRYCE, Chief, Waiver Review))
Division, United States Department of State))
Waiver Review Division, CA/VO/L/W))
U.S. Department of State))
SA-17, 11th Floor))
600 19th Street, N.W.))
Washington, D.C. 20522))
))
JOHN F. KELLY, Secretary of Homeland))
Security,))
U.S. Department of Homeland Security))
Washington, D.C. 20528))
))
LORI SCIALABBA, Acting Director,))
U.S. Citizenship and Immigration Services))
Office of the Director MS 2000))
U.S. Citizenship and Immigration Services))

20 Massachusetts Avenue, N.W.)
 Washington, D.C. 20529-2000)
)
 KATHY A. BARAN, Director, California)
 Service Center,)
 U.S. Citizenship and Immigration Services)
 USCIS California Service Center)
 P.O. Box 10129)
 Laguna Niguel, California 92607-1012)
)
 JEFFERSON B. SESSIONS,)
 Attorney General of the United States)
 U.S. Department of Justice)
 950 Pennsylvania Avenue, N.W.)
 Washington, D.C. 20530-0001)
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 Defendants.)
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COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MANDAMUS RELIEF

Plaintiffs by their undersigned lawyer allege as follows:

I. Parties

1. Plaintiff Joseph Meouchy, M.D., (“Dr. Meouchy”) is a citizen of Lebanon. He is currently a resident of Los Angeles, California. His address is 1559 Winona Blvd., Apt. 3B, Los Angeles, California 90027.

2. Plaintiff Cynthia Hayek, M.D., (“Dr. Hayek”) is a citizen of Lebanon. She is currently a resident of Los Angeles, California. Her address is 1559 Winona Blvd., Apt. 3B, Los Angeles, California 90027. She is married to Dr. Meouchy and resides with him.

3. Plaintiff C. M. (“C. M.”) is a U.S. citizen and the two-year-old daughter of Drs. Meouchy and Hayek. She is currently a resident of Los Angeles, California. Her address is 1559 Winona Blvd., Apt. 3B, Los Angeles, California 90027.

4. Defendant Rex W. Tillerson is the United States Secretary of State, the head of the United States Department of State (“DOS”), 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.

5. 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, SA-17, 11th Floor, 600 19th Street, N.W. Washington, D.C. 20522.

6. Defendant John F. Kelly is the United States Secretary of Homeland Security, the head of the United States Department of Homeland Security (“DHS”), 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.

7. Defendant Lori Scialabba is the Acting 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. She is named in her official capacity. Her address is: Office of the Director MS 2000, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue N.W., Washington, D.C. 20529-2000.

8. Defendant Kathy A. Baran is the Director of the USCIS California Service Center, an agency of the United States. She is named in her official capacity. Her address is: USCIS California Service Center, P.O. Box 10129, Laguna Niguel, California 92607-1012.

9. Defendant Jefferson B. Sessions 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

10. This is an action to review administrative agency action of the U.S. State Department and the USCIS. 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 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).

11. Defendants Rex W. Tillerson, Marcia Pryce, John F. Kelly, Lori Scialabba, and Kathy A. Baran had duties to act in conformity with the statute, the regulations, the legislative history, and international law in adjudicating the exceptional hardship waiver applications of Drs. Meouchy and Hayek.

12. Venue is proper in the United States District Court for the District of Columbia under 28 U.S.C. § 1391(e) because this is an action against officers and agencies of the United States in their official capacities, brought in the district where a substantial part of the events or omissions giving rise to the Plaintiffs’ claim occurred. The Defendant Rex W. Tillerson is sued in his official capacity as Secretary of the Department of State, a United States federal agency and resident in this district. The Defendant Marcia Pryce is sued in her official capacity as Chief of the WRD, a United States federal agency and resident in this district. The Defendant John F.

Kelly is sued in his official capacity as the Secretary of Homeland Security, a United States federal agency and resident in this district. The Defendant Lori Scialabba is sued in her official capacity as the Acting Director of the USCIS, a United States federal agency and resident in this district. The Defendant Kathy A. Baran is sued in her official capacity as Director of the USCIS California Service Center, a United States federal agency. Because national policy concerning adjudication of applications for immigration benefits — including I-612 hardship waiver applications — is formulated by the DHS and DOS and implemented by the USCIS, venue is proper in this district.

III. Introduction and Legal Background

13. This section of the complaint gives a brief introduction of what happened and what is at stake, then a summary of the 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.”

14. The State Department issued Not Favorable recommendations on Drs. Meouchy and Hayek’s applications for waivers of the two-year J-1 foreign residence requirement of 8 U.S.C. § 1182(e) (“the foreign residence requirement”). This will require the USCIS to deny both waiver applications. Drs. Meouchy and Hayek are nationals of Lebanon. Lebanon is one of the most violent, dangerous, and unstable countries in the world. The Plaintiffs will face an exceptionally high risk of physical harm due to political and sectarian violence, spillover from the brutal civil war in neighboring Syria, and many other factors, especially the dangers posed by the extreme terrorist group ISIS, which has recently killed many people in Lebanon bombings.

The family will face physical harm from the terrorist group Hezbollah, which has become a dominant force throughout Lebanon. But they would face harm from other directions as well.

15. The applicants' U.S. citizen daughter C. M. will face exceptional medical hardships in Lebanon. She suffered with a skin disorder during her family's two brief visits to Lebanon in 2015, and they fear worsening outbreaks should she have to reside there for two years. She is likely to have further outbreaks triggered by environmental factors and stress. The medical infrastructure, especially emergency response, is inferior compared with the United States.

16. Given the instability in Lebanon, the applicants' U.S. citizen daughter faces exceptional psychological hardship if Drs. Meouchy and Hayek are forced to fulfill their two-year foreign residence requirements. She will be stressed out by the radical change in circumstances to a much more dangerous and uncertain environment. Drs. Meouchy and Hayek will also face an exceptionally high risk of physical harm in Lebanon. While hardships to the applicants are not supposed to count in this kind of waiver application, it is indisputable that severe harm to a parent would subject C. M. to a lifetime of psychological hardships. The chief claim of this action is that the State Department must have abused its discretion, because it could not have come to its negative conclusion through a correct process of reasoned decision-making.

17. 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).

18. 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.

19. Drs. Meouchy and Hayek can only fulfill the requirement in Lebanon. 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," and "last residence" has consistently been interpreted by both the USCIS and the State Department 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.

20. As described with more specificity below, Drs. Meouchy and Hayek became subject to the foreign residence requirement because they came to the United States in J-1 status for graduate medical education. In particular, their programs were sponsored by the Educational Commission for Foreign Medical Graduates ("ECFMG").

21. 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 Drs. Meouchy and Hayek's applications for waivers based on the risk of "exceptional hardships" to their U.S. citizen child. This kind of waiver application commences with the filing of a DS-3035 data sheet form with the State Department. This is followed by the main application, which is submitted on Form I-612, with accompanying evidence, to the USCIS California Service Center.

22. 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 these cases, the State Department issued Not Favorable recommendations. This will require the USCIS to deny the waiver applications.

III. Factual Allegations

23. Dr. Meouchy first entered the United States on his J-1 visa on June 13, 2011, as a nonimmigrant exchange visitor under 8 U.S.C. § 1101(a)(15)(J) to undertake a residency program in internal medicine.

24. Dr. Hayek first entered the United States on her J-1 visa on June 13, 2011, as a nonimmigrant exchange visitor under 8 U.S.C. § 1101(a)(15)(J) to undertake a residency program in pediatrics.

25. Drs. Meouchy and Hayek's J-1 visas were sponsored by the ECFMG.

26. Dr. Meouchy was in valid J-1 status from June 13, 2011 through November 30, 2016. His J-1 status expired on November 30, 2016.

27. Dr. Hayek has been in valid J-1 status since her admission in said status. Her J-1 status expires on June 30, 2017.

28. Dr. Meouchy married Dr. Hayek on August 25, 2013.

29. Drs. Meouchy and Hayek's daughter, C. M., was born on June 30, 2014, in California. Therefore, she is a U.S. citizen by birth.

30. Dr. Meouchy has completed his residency in nephrology (kidney specialist). Dr. Hayek is completing her residency in perinatal and neonatal care (treatment of premature babies). Both of their areas of medical speciality are in short supply in the United States. In addition, both of them are active in their Catholic church in Los Angeles. Denial of a waiver would cause hardships for the U.S. public interest.

IV. J-1 Waiver History (Exceptional Hardship Waiver)

31. All applicants for a J-1 exceptional hardship waiver must fill out an electronic Form DS-3035 on the State Department's website.

32. After completing the electronic Form DS-3035, the State Department's website generates (1) a "Waiver Review Division Case Number," (2) a "Waiver Review Division Barcode Page," (3) a "Third Party Barcode Page," (4) an electronic DS-3035 in "pdf" format with the applicant's answers, (5) Supplementary Applicant Information Pages (if necessary), and (6) a "Packet Assembly Checklist" and "Instruction Sheet."

33. All applicants for a J-1 waiver must receive a WRD Case Number from the State Department, which arrives when the DS-3035 is first submitted online.

34. All applicants for a J-1 waiver must pay a \$120.00 filing fee to the State Department for the DS-3035. After filing the DS-3035 online, the applicant must send a hardcopy of the form, plus fee, to a State Department lockbox in St. Louis, Missouri.

35. For exceptional hardship and persecution waiver applications, the main waiver application is filed with the USCIS California Service Center. The application is filed on Form I-612 with accompanying evidence.

36. All applicants for a J-1 waiver must also pay a filing fee to the USCIS. For Drs. Meouchy and Hayek, this fee was \$585.00 per case.

37. On February 24, 2016, Drs. Meouchy and Hayek, through counsel, filled out Form DS-3035 on the State Department's website to initiate the application processes for both J-1 waiver applications.

38. The State Department assigned to Dr. Meouchy's case WRD Case Number 1106713. The State Department assigned to Dr. Hayek's case WRD Case Number 1106729.

39. The State Department generated a "Waiver Review Division Barcode Page" and a "Third Party Barcode Page" for submission with Drs. Meouchy and Hayek's waiver applications. Drs. Meouchy and Hayek, through counsel, paid \$120.00 per case to the State Department via cashier's checks dated February 23, 2016. The State Department Waiver Review Division received Drs. Meouchy and Hayek's signed DS-3035s on March 10, 2016.

40. On June 30, 2016, Drs. Meouchy and Hayek, through counsel, filed their Form I-612 exceptional hardship waiver applications with the USCIS California Service Center. Dr. Meouchy's case was assigned USCIS Case Number WAC-16-196-50823. Dr. Hayek's case was assigned USCIS Case Number WAC-16-196-50789.

41. Drs. Meouchy and Hayek's I-612 materials included their WRD Case Numbers as well as their Forms DS-3035 and their barcode sheets generated by the State Department.

42. Drs. Meouchy and Hayek are statutorily eligible to seek exceptional hardship waivers because they have a qualifying relative, U.S. citizen daughter C. M.

43. As documented in the applications, Drs. Meouchy and Hayek's U.S. citizen child will suffer many exceptional hardships if Drs. Meouchy and Hayek are required to return to

Lebanon for the fulfillment of their two-year foreign residence requirements. Furthermore, on February 23, 2017, the lawyer for Drs. Meouchy and Hayek wrote to the WRD by Priority Mail and 212ewaiver@state.gov to inform the WRD that Dr. Hayek is pregnant, which added a qualifying relative to the application.

44. The USCIS requires J-1 hardship waiver applications to be argued in the alternative, explaining the hardships that would be faced by the U.S. citizen or permanent resident spouse and/or children both in the home country and also in the United States if they were to stay behind while the exchange visitor returned alone. The applicant and her husband systematically explained the hardships their family will face in both travel alternatives. In this case, there is only one travel alternative because Drs. Meouchy and Hayek are both subject to the two-year foreign residence requirement and neither has a right to remain in the United States, and they do not have any close family members in the United States who could care for their child for two years.

45. Drs. Meouchy and Hayek's exceptional hardship waiver applications complied with all statutory and regulatory requirements specified by the Defendants.

46. On October 24, 2016, Drs. Meouchy and Hayek's Form I-612 waiver applications were reviewed by the Director of the California Service Center, Kathy A. Baran. Ms. Baran made the legal determination that Drs. Meouchy and Hayek's daughter would suffer exceptional hardships if waivers are not granted. This finding is evidenced on a Form I-613 prepared by the USCIS. This is a special, one-page transmittal form, a companion to the I-612, that is endorsed on the top by the USCIS, then placed on top of the application when it is transmitted to the State Department. The USCIS never creates an I-613 in an I-612 case unless it has determined that the

case should be approved. As indicated on the I-613, prior to Ms. Baran's review, an Adjudications Officer and a Supervisory Adjudications Officer both made the same finding that Drs. Meouchy and Hayek's daughter would suffer exceptional hardships without the grant of the waivers. Thus, the USCIS supported the approval of waivers for Drs. Meouchy and Hayek.

47. The State Department regulation at 22 C.F.R. § 41.63(b)(2)(i) states that the Department of Homeland Security "shall transmit a copy of his [sic] determination together with a summary of the details of the expected hardship . . ." to the State Department. This is obviously necessary to effectuate the adjudication procedure set forth by 8 U.S.C. § 1182(e).

48. Without discovery, it is impossible to know whether Defendant John F. Kelly violated his duty under the statute and regulations by not transmitting a sufficient summary of the details of the expected hardships to the State Department.

49. Without discovery, it is impossible to know whether Defendant John F. Kelly violated his duty under the statute and regulations because the summary of hardships was incomplete, lacking in detail, and otherwise insufficient to convey the depth of the hardships that will be suffered absent a waiver.

50. Without discovery, it is impossible to know whether Defendants John F. Kelly and Lori Scialabba failed to transmit a complete copy of the I-612 waiver application and all supporting materials to defendants Rex W. Tillerson and Marcia Pryce.

51. On or about October 24, 2016, Drs. Meouchy and Hayek's waiver applications were transmitted in unknown form from the USCIS California Service Center to the WRD, with the USCIS seeking the recommendation of the State Department on the waiver applications.

52. On November 4, 2016, the WRD received the Form I-612 waiver applications from the USCIS California Service Center. It is not clear whether the entire waiver applications were received by the WRD.

53. On information and belief, Defendants Rex W. Tillerson and Marcia Pryce failed to receive and/or review the entire I-612 waiver applications and all supporting materials prior to issuing their recommendations.

54. On November 18, 2016, the WRD received something called a Letter of Need in both cases. On information and belief, the WRD requested this document from ECFMG. This is believed to be a document required by regulation for “ECFMG certification,” which is necessary for ECFMG sponsorship, which is necessary for admission to the United States in J-1 status for graduate medical education. See 22 C.F.R. § 62.27(b)(6).

55. The substance of the Letter of Need is unknown.

56. On information and belief, prior to approximately 2010 the State Department did not seek and review Letters of Need in ECFMG-sponsored J-1 hardship waiver cases.

57. Without discovery, it will be impossible to know the substance of the Letter of Need received in both cases.

58. On February 23, 2017, counsel for both applicants wrote to the WRD by Priority Mail and 212ewaiver@state.gov¹ to inform the WRD that Dr. Hayek is pregnant. Counsel communicated by mail and e-mail because materials sent through the U.S. Postal Service often taken many weeks to be associated with the waiver application.

¹ This is an e-mail address used by the WRD to receive inquiries on pending waiver applications.

59. The letter from counsel included a note from Dr. Hayek's OB/GYN confirming she is pregnant, with an estimated due date of May 13, 2017. Counsel stated: "I include this to show that there will now be double the number of qualifying U.S. citizen relatives."

60. The WRD uses the bottom portion of Form I-613 to state its position on waiver applications for transmission to the Department of Homeland Security. The Form I-613 contains a box that allows the State Department to explain the basis for a Not Favorable recommendation.

61. On February 27, 2017, Defendants Rex W. Tillerson and Marcia Pryce issued Not Favorable recommendations on both cases and transmitted said recommendations on Form I-613 to Defendant Kathy A. Baran, Director of the California Service Center.

62. The WRD gave no explanation at all for its denial. In particular, the WRD did not use the allotted space on the I-613 to explain the basis of its recommendations. Historically, the State Department attached a separate sheet, which stated: "Pursuant to 22 CFR [sic] 41.63 (b)(2)(ii), the Waiver Review Division has reviewed the program, policy, and foreign relations aspects of this case and has determined that these considerations outbalance the Exceptional Hardship claims presented. Therefore, it is the recommendation of the Department of State that the foreign residence requirement of INA 212(e) not be waived." No such sheet was attached to the I-613 in Drs. Meouchy or Hayek's cases.

63. The WRD is required by regulation to review the (1) program, (2) policy, and (3) foreign relations aspects of an I-612 case, make a recommendation, and forward it to the appropriate office at the USCIS.

64. The basis of the denial, set forth above, is a facially insufficient reason to issue a Not Favorable recommendation on a Form-I-612 waiver case under State Department regulations.

65. The WRD's Not Favorable recommendations did not provide any explanation regarding the basis for the denials and did not include the attachment set forth above.

66. The WRD's Not Favorable recommendations did not provide any evidence that the WRD balanced the program, policy, and foreign relations considerations against the exceptional hardships in the case.

67. On February 28, 2017, the WRD's case status website indicated that medical documentation was received in Dr. Hayek's case. No similar annotation was present with respect to Dr. Meouchy's case, even though a new U.S. citizen should have been considered in his waiver application.

68. On information and belief, the WRD did not consider the new, supplemental evidence submitted by Drs. Meouchy and Hayek's counsel, even though said evidence was submitted prior to the issuance of the Not Favorable recommendation in both cases.

69. Counsel for Drs. Meouchy and Hayek wrote an email to Defendant Marcia Pryce and waiver officer Christy Miller-Davis² on March 1, 2017. The email summarized the prior supplemental submission concerning Dr. Hayek's pregnancy that was mailed and emailed to the WRD. Counsel also included new supplemental evidence indicating that Dr. Hayek has been diagnosed with a high-risk pregnancy based on low PAPP1 (pregnancy-associated plasma

² Ms. Miller-Davis is the waiver officer who issued the Not Favorable recommendations in both cases. Her signature appears at the bottom of both I-613s.

protein A 1) level. This is an indicator that Dr. Hayek's baby is at risk of being born prematurely and for being small. The supplemental evidence indicates that Dr. Hayek will need to undergo close monitoring by having ultrasounds every two weeks until delivery. Also included were articles discussing the importance of the PAPPA test result. A copy of the test result was also included.

70. Counsel's March 1, 2017 email stated:

These are rock-solid cases of a pattern I've won many, many times over the years. There is no rational reason for the Not Favorables, especially considering the fact that the decisions were made without knowledge of the updated facts.

Therefore, I respectfully request that you reopen your decisions on these cases, even though I know that is not your usual policy. In the past you've done this for my firm on several occasions when it came to light that a decision was made without you knowing of a crucial update to the facts.

71. To date, the WRD has not responded to this email and the Not Favorable recommendations remain.

72. Out of all ECFMG-sponsored J-1 hardship waiver applications filed by this law firm between approximately 2000 and 2011, not one received a Not Favorable recommendation from the State Department.

73. On information and belief, the State Department changed its internal policies and standards in the adjudication of ECFMG-sponsored J-1 hardship waiver cases on or about 2011. But the statute has not changed. The regulations have not changed. And there has been no public announcement of any such change.

74. In the instant case, the State Department did not provide a reasoned analysis indicating that prior policies and standards of adjudication are being deliberately changed, as it is required to do under general principles of administrative agency law. See Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970).

75. The WRD maintains a website outlining the processes and procedures for seeking a J-visa waiver. Its address is: <http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver.html>.

76. The 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.”

77. The basis of such a denial is facially invalid because the WRD is required to assess the program, policy, and foreign relations aspects of a case under 22 C.F.R. § 41.63. Additionally, Drs. Meouchy and Hayek’s cases did not involve U.S. government funding. Their residency programs were sponsored by the ECFMG.

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

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

80. 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 “program”

functions were transferred to the State Department's Office of Academic Exchange Programs, and 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.

81. J-1 waiver applicants were not required to submit any materials directly to the USIA or State Department prior to sometime in the 1990s. In earlier times, in cases where the Immigration and Naturalization Service (INS, the predecessor to the USCIS) made a finding of exceptional hardship, the District Director would submit a complete copy of the application materials to the USIA or State Department to obtain that agency's recommendation. This required no independent action on the part of the applicant.

82. Given the issuance of the Not Favorable recommendations of the WRD in both cases, the USCIS is statutorily required to deny both waiver applications. See 8 U.S.C. § 1182(e). Historically, the USCIS has issued denials in cases like this with two main reasons. The first basis of the denials is that the State Department had issued a Not Favorable recommendation. This has been done historically by Kathy A. Baran even though the explanation from the State Department comprised a facially invalid explanation for its recommendation.

83. In another ECFMG-based hardship waiver denial, the second reason given by Kathy A. Baran states:

In reaching this conclusion, the Waiver Review Division considered a range of facts relevant to assessing program, policy, and foreign relations interests in your case: . . . a) The citizens of Pakistan would greatly benefit from your extensive

training. Your failure to return to fulfill the two-year foreign residence requirement would deny the citizens of Pakistan the opportunity from your acquired training and expertise.³

This is a facially invalid rationale for the denial because it does not show that the State Department adhered to its own regulations, in addition to other law that applies to this case, such as 8 U.S.C. § 1182(e), the legislative history, the U.S. Constitution, and treaty law. It is also unlawful for the State Department to give more weight to the needs of citizens of another country than it does to the interests of U.S. citizens. This is especially true considering the fact that the U.S. government has a statutory duty to protect U.S. citizen qualifying relatives if such citizens would face exceptional hardship. It is expected that a similar decision will be issued in Drs. Meouchy and Hayek's cases.

84. There is no administrative appeal from the future USCIS denials.

85. The Plaintiffs have exhausted their administrative remedies.

86. The February 27, 2017, recommendations by the State Department are 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 intent of Congress in enacting the J-1 visa waiver, and to the due process of law—in that the State Department fails to state any basis for the denial, or discuss any facts relevant to the decision, or demonstrate that it

³ This decision was issued in Khan v. Kerry, 14-cv-1338 (C.D. Cal. filed Feb. 20, 2014). Khan v. Kerry involved an ECFMG-sponsored physician from Pakistan. It involved one healthy, U.S. citizen child. Both parents were subject to the two-year foreign residence requirement. As such, there was only one travel option, where the entire family would need to relocate to the home country. That is the same scenario faced by Drs. Meouchy and Hayek. The Department of State and USCIS immediately acquiesced to the grant of the waiver and the suit was voluntarily dismissed shortly thereafter.

balanced the exceptional hardships with the program, policy, and foreign relations aspects of this case.

87. Drs. Meouchy and Hayek's waiver applications are meritorious and should be approved.

V. Irreparable Injury

88. Absent approval of Drs. Meouchy and Hayek's waiver applications, Plaintiffs will suffer irreparable injury and many severe and exceptional hardships.

89. U.S. citizen Plaintiff C. M. will be susceptible to an exceptional risk of physical harm in Lebanon. Lebanon is one of the most dangerous countries in the world. In Lebanon C. M. would face an exceptionally high risk of physical harm due to political and sectarian violence, spillover from the brutal civil war in neighboring Syria, and many other such factors, especially the dangers posed by the extreme terrorist group ISIS, which has recently killed many people in Lebanon bombings. C. M. would mainly face physical harm from the terrorist group Hezbollah, which has become a dominant force throughout Lebanon. But she would face harm from other directions as well.

90. C. M. will face exceptional medical hardships in Lebanon. She suffered with a skin disorder during her family's two brief visits to Lebanon in 2015, and they fear worsening outbreaks should she have to reside there for two years. She is likely to have further outbreaks triggered by environmental factors and stress. Additionally, compared with her current life in California, in Lebanon C. M. would face exceptional medical hardship risks for many reasons. Environmental conditions are harsh, especially concerning trash collection and air and water pollution. The risk of infectious disease is higher. The medical infrastructure, especially

emergency response, is inferior compared with the United States. C. M. has a history of getting sick on visits to Lebanon. If she must stay there for two years, she might get seriously ill.

91. C. M. will face exceptional psychological hardships if the family is compelled to relocate to Lebanon. All three will be extremely stressed out by the radical change in circumstances to a much more dangerous and uncertain environment. The psychological stress on her parents would translate into psychological and possibly also developmental deficits for C. M. In addition, the applicants themselves would face an exceptionally high risk of physical harm in Lebanon. While hardship to an applicant is not supposed to count in this kind of waiver application, it is indisputable that serious physical harm or death to either or both parents would subject C. M. to additional exceptional psychological hardships.

92. Drs. Meouchy and Hayek's unborn U.S. citizen child will also be susceptible to similar psychological and medical hardships.

93. The denial of the waiver application will cause exceptional hardship to the public interest of the United States. Dr. Meouchy is a nephrologist (kidney specialist). Dr. Hayek is a specialist in perinatal and neonatal care (treatment of premature babies). Both of their areas of medical specialty are in short supply in the United States. In addition, both of them are quite active in their Catholic church in Los Angeles. Denial of a waiver would cause hardships for the U.S. public interest.

94. The above hardships will all exist under the sole travel alternative in which the entire family would relocate to Lebanon for two years. That's true because both Drs. Meouchy and Hayek are independently subject to the two-year foreign residence requirement and neither

has a right to remain in the United States, and they do not have any close family members in the United States that could care for their children for two years.

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

95. Paragraphs 1 through 94 above are repeated and realleged as though fully set forth herein.

96. The Defendants' denial of Drs. Meouchy and Hayek's I-612 waiver applications is contrary to the statutory standards, the regulations, the legislative history, and the intent of Congress, and it is therefore arbitrary and capricious, because the Defendants failed to consider all the evidence in the record before rendering its decisions; 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 denials.

97. The Defendants' adjudication of the I-612 waiver applications is contrary to the statutory standards, the regulations, the legislative history, and the intent of Congress because there is no evidence that the Defendants reviewed the program, policy, and foreign relations aspects of these cases, and the Defendants routinely fail to provide any valid explanation for their recommendations in such cases.

98. 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.

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

100. The Defendants' denial of the applications therefore violates the Administrative Procedure Act, 5 U.S.C. §§ 555(b), 702, and 706(1), and otherwise constitutes abuse of discretion.

COUNT TWO: DUE PROCESS VIOLATION (RIGHT TO LIFE)

101. Paragraphs 1 through 100 above are repeated and realleged as though fully set forth herein.

102. The Plaintiffs have a fundamental right to life.

103. The Defendants' denials of Drs. Meouchy and Hayek's waiver applications threatens the lives of all family members because if the family is forced to return to Lebanon, they may be killed or severely injured by the ongoing violence in that country. The death or serious injury of any family member would subject the remaining family members to a lifetime of misery and psychological hardships.

104. The Defendants' denial of Drs. Meouchy and Hayek's waiver applications violates the family's right to due process of law under the Fifth Amendment to the United States Constitution.

COUNT THREE: DUE PROCESS VIOLATION (RIGHT TO FAMILY UNITY)

105. Paragraphs 1 through 104 above are repeated and realleged as though fully set forth herein.

106. C. M. has a fundamental right to family unity with her parents, Drs. Meouchy and Hayek.

107. C. M. has a fundamental right to reside in the United States because she is a U.S. citizen.

108. In J-1 exceptional hardship waiver application cases, the USCIS and the WRD apply a multi-pronged hardship waiver analysis that examines whether sufficient hardship exists under all travel alternatives.

109. Reviewing the hardships in all travel alternatives ignores the fundamental rights of U.S. citizens to remain in the United States and the fundamental right to family unity.

110. The Defendants' actions in this case violated C. M.'s fundamental rights under the United States Constitution.

COUNT FOUR: DUE PROCESS VIOLATION (PROPERTY INTEREST)

111. Paragraphs 1 through 110 above are repeated and realleged as though fully set forth herein.

112. Drs. Meouchy and Hayek have a property interest in the application fees that they paid to the State Department.

113. The Defendants' denial of Drs. Meouchy and Hayek's waiver applications without any rational basis violates the Plaintiffs' 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

114. Paragraphs 1 through 113 above are repeated and realleged as though fully set forth herein.

115. Congress has suggested that a more relaxed attitude should be taken in determining whether a waiver should be granted in cases like those of Drs. Meouchy and Hayek. 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 State Department) and Matter of Coffman, 13 I. & N. Dec. 206 (Dep. Assoc. Comm'r 1969) (waiver recommended by State Department).

116. Based on congressional intent, and program, policy, and foreign relations considerations, Drs. Meouchy and Hayek's cases should have been reviewed under the relaxed standard, because the applicants came to the United States in J-1 status not only to gain but also to impart their already acquired knowledge, heritage, and culture, a duty which they faithfully and successfully performed.

117. The Defendants' denial of Drs. Meouchy and Hayek's I-612 waiver applications is contrary to the law and an abuse of discretion because the Defendants failed to apply the more relaxed standard of review to their cases.

**COUNT SIX: FAILURE TO PROVIDE REASONED ANALYSIS
DESCRIBING A MARKED CHANGE IN POLICY IN THE ADJUDICATION OF
ECFMG-SPONSORED I-612 HARDSHIP WAIVER CASES**

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

119. Courts have held that an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed. See Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970).

120. Out of all ECFMG-sponsored J-1 hardship cases filed by this law firm, where the USCIS recommended the case for approval, not one case received a Not Favorable recommendation from the State Department between approximately 2000 and 2011. In the first quarter of 2012, three ECFMG-sponsored cases received Not Favorable recommendations

without any explanation. Between that quarter and the first quarter of 2014, the firm received zero Not Favorable recommendations on ECFMG-sponsored cases. In the first quarter of 2014, the firm then received the ECFMG denial in the Khan v. Kerry case, where the explanation was that the State Department did not want to deprive Pakistani nationals of the training received by the applicant. The State Department put the lives of Pakistani nationals ahead of the life and well-being of a U.S. citizen child. Again, the State Department immediately acquiesced to the grant of the waiver after suit had been filed. From the first quarter of 2014 to the first quarter of 2017, the firm received zero Not Favorable recommendations in ECFMG-sponsored cases. To date in this first quarter of 2017, the firm has received four Not Favorable recommendations. None of these four Not Favorable recommendations in 2017 had any explanation for the erratic change in policy.

121. The Defendants' denial of Drs. Meouchy and Hayek's waiver applications without explaining the change in policy and standards violates federal decisional law that mandates such explanations.

COUNT SEVEN: VIOLATION OF TREATY

122. Paragraphs 1 through 121 above are repeated and realleged as though fully set forth herein.

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

124. 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.

125. The Defendants have a duty to adhere to the I.C.C.P.R. when adjudicating waiver applications.

126. The Defendants' action in denying Drs. Meouchy and Hayek's I-612 waiver applications without any rational basis violates the United States' obligations under various articles of the I.C.C.P.R. In particular, it violates Articles 1, 12, 17, 23, and 24, in addition to possible violations of other articles.

COUNT EIGHT: DECLARATORY JUDGMENT

127. Paragraphs 1 through 126 above are repeated and realleged as though fully set forth herein.

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

129. This Court should issue a declaratory judgment establishing that Drs. Meouchy and Hayek are eligible for J-1 waivers and that due to the exceptional hardships that will be suffered by their U.S. citizen child, they are entitled to waivers.

130. This Court should declare that the Defendants' 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 Not Favorable recommendation, is contrary to the statutory standards, regulations, legislative history, congressional intent, and due process of law.

131. This Court should declare that if the WRD issues Favorable recommendations on both waiver applications, the USCIS is required by law, under 8 U.S.C. § 1182(e), to grant the waiver applications.

132. This Court should declare that the denial of Drs. Meouchy and Hayek's waiver applications violates their family's right to due process of law under the Fifth Amendment to the United States Constitution.

133. This Court should declare that C. M. has a fundamental right to family unity with her parents.

134. This Court should declare that C. M. has a fundamental right to reside in the United States because she is a U.S. citizen.

135. This Court should declare that the USCIS and WRD policy of examining all travel alternatives violates the fundamental right to family unity and the fundamental right of U.S. citizens to reside in the United States.

136. This Court should declare that the Defendants' actions in these cases violated C. M.'s rights under the United States Constitution.

137. This Court should declare that Drs. Meouchy and Hayek have a property interest in the application fees that they paid to the State Department.

138. This Court should declare that the Defendants' denial of Drs. Meouchy and Hayek's waiver applications without any rational basis violates the Plaintiffs' right to due process of law under the Fifth Amendment to the United States Constitution.

139. This Court should declare that Congress suggested a more relaxed standard be applied in waiver cases like Drs. Meouchy and Hayek's, where both applicants were brought over to impart their already acquired knowledge and skill as well as gain additional training.

140. This Court should declare that Drs. Meouchy and Hayek's cases should be reviewed under the relaxed standard suggested by Congress, which has historically been followed by the Defendants.

141. This Court should declare that the State Department has a duty to explain its change in policy and standards with respect to the adjudication of J-1 hardship cases where ECFMG is the sponsor.

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

143. This Court should declare that the Defendants' denial of the I-612 hardship waiver applications violates various articles of the I.C.C.P.R.

144. This Court should declare that the United States Government has a statutory duty under 8 U.S.C. § 1182(e) to protect the lives of U.S. citizen qualifying relatives if it is proven that such a relative would face exceptional hardships.

145. This Court should declare that the United States Government, in balancing "program, policy, and foreign relations" in J-1 waiver cases, may not give more weight to the putative interests of citizens of foreign countries than it does to the life and security of U.S. citizen qualifying relatives.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for the following relief:

A. Declare the Defendants' adjudication of Drs. Meouchy and Hayek's I-612 waiver applications to be in violation of the statute, regulations, legislative intent, agency procedures, treaty law, and the Constitution;

B. Declare that Drs. Meouchy and Hayek are statutorily eligible for waivers under 8 U.S.C. § 1182(e);

C. Declare that the Defendants' denial of Drs. Meouchy and Hayek's waiver applications 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;

D. Declare that Drs. Meouchy and Hayek's waiver application are meritorious and should be approved;

E. Order the Defendants to approve the waiver applications;

F. Grant an award of attorneys' fees and costs; and

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

Dated: March 15, 2017

/s/ Brian C. Schmitt
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