

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

XIAOSI HU,

Plaintiff,

v.

CYNTHIA MUNITA, et. al.,

Defendant.

Civil Action No. 2:19-cv-01302-RAJ

**ORDER ON MOTION FOR
ATTORNEYS' FEES**

This matter is before the Court on Plaintiff’s motion for attorneys’ fees under the Equal Access to Justice Act (“EAJA”). Dkt. # 18. For the following reasons, the Court **GRANTS** the motion in part.

I. BACKGROUND

On August 16, 2019, Plaintiff Xiaosi Hu (“Plaintiff”) petitioned this Court to review his naturalization application pursuant to 8 U.S.C. § 1447(b). After Plaintiff filed a motion for summary judgment (Dkt. # 15), the parties stipulated to remand the case to United State Citizenship and Immigration Services (“USCIS”) for “prompt adjudication” of Plaintiff’s naturalization application. Plaintiff’s application was subsequently approved, and Plaintiff now seeks to recover attorneys’ fees and expenses incurred in this action under the EAJA. Dkt. # 18. The Government does not dispute that Plaintiff is

1 entitled to fees under the EAJA but objects to Plaintiff's request for fees at an enhanced
2 rate. Dkt. # 21.

3 II. DISCUSSION

4 The EAJA provides for an award of fees to the prevailing party in a civil action
5 against the United States where: (1) the party seeking fees qualifies as the "prevailing
6 party," (2) the government has failed to meet its burden of showing that its positions were
7 substantially justified, or that special circumstances make an award of fees unjust, and (3)
8 the requested fees and costs are reasonable. *Abdur-Rahman v. Napolitano*, 868 F. Supp.
9 2d 1158, 1160 (W.D. Wash. 2012) (citing *United States v. Milner*, 583 F.3d 1174, 1196
10 (9th Cir. 2009)). Here, it appears the Government does not challenge Plaintiff's status as
11 a "prevailing party" or that he is entitled to at least some fees under the EAJA. *See*
12 *generally* Dkt. #21. Instead, the Government objects solely to the reasonableness of
13 Plaintiff's requested fees.

14 A. Entitlement to Enhanced Fees

15 The EAJA permits fees at a statutory rate of \$125 per hour, adjusted for inflation,
16 "unless the court determines that an increase in the cost of living or a special factor, such
17 as the limited availability of qualified attorneys for the proceedings involved, justifies a
18 higher fee." 28 U.S.C. § 2412(d)(2)(A) (ii). Plaintiff requests fees well in excess of the
19 statutory rate, specifically, \$775 per hour for work Mr. Gibbs and \$350 per hour for work
20 by Ms. Collins. Plaintiff also seeks an additional \$4,995 in expenses for the time spent
21 by declarants Margaret Stock and Christopher Strawn who submitted declarations in
22 support of this motion and Plaintiff's motion for summary judgment.

23 The Ninth Circuit applies a three-part test to determine whether enhanced fees are
24 appropriate: "(1) the attorney must possess distinctive knowledge and skills developed
25 through a practice specialty; (2) those distinctive skills must be needed in the litigation;
26 and (3) those skills must not be available elsewhere at the statutory rate." *Natural Res.*

1 *Def. Council, Inc. v. Winter*, 543 F.3d 1152, 1158 (9th Cir. 2008) (internal quotations and
2 citations omitted).

3 Plaintiff argues that his counsel possesses the “distinctive knowledge and skills”
4 necessary to litigate this action. Mr. Gibbs is clearly and accomplished and skilled
5 immigration attorney, with substantial experience handling naturalization actions. Dkt. #
6 26-1 at 7. He has practiced immigration law for over three decades, serving as a
7 founding board member of the Northwest Immigrant Rights Project, and adjunct
8 professor of immigration law at the University of Washington Law School. Dkt. # 18-1
9 at 2-3. Mr. Gibbs has also been a past chairman of the Washington Chapter of the
10 American Immigration Lawyer Association (“AILA”) and lecturer on immigration topics
11 at statewide CLEs sponsored by the Washington State Bar Association, the American
12 Immigration Lawyers Association, and other organizations. *Id.* Plaintiff also offers the
13 declaration of an immigration specialist who attests that Mr. Gibbs is highly skilled, with
14 significant federal court experience. Dkt. # 18-1 at 19. Ms. Collins is also an
15 experienced immigration attorney, with previous experience as an attorney advisor for the
16 U.S. Department of Justice, Executive Office for Immigration Review. Dkt. # 18-1 at 7.
17 While the Government argues that specialized experience handling MAVNI cases
18 specifically is necessary to obtain enhanced fees, the Court does not read this requirement
19 so narrowly. Overall, the Court is satisfied that Plaintiff has sufficiently established that
20 his attorneys possess “distinctive knowledge and specialized skill.”

21 For purposes of awarding an enhanced rate, however, it is not enough to show that
22 Plaintiff’s counsel had specialized skill. Plaintiff must also show that the specialized skill
23 or knowledge was required for the work performed on this case. *See Nadarajah v.*
24 *Holder*, 569 F.3d 906, 912 (9th Cir. 2009) (EAJA statutory rate may be enhanced “where
25 the attorneys possess distinctive knowledge and specialized skill that was needful to the
26 litigation in question and not available elsewhere at the statutory rate.”) (internal

1 quotation marks and citation omitted). Plaintiff argues that his case implicated a
2 “particularly complex intersection of naturalization law” specifically, the MAVNI
3 program. Dkt. # 18 at 12; Dkt. # 18-1. The Government objects, arguing that Plaintiff’s
4 case was a “straightforward claim under 8 U.S.C. § 1447(b)” (Dkt. # 21 at 9) and that an
5 understanding of MAVNI was not necessary to obtain a remand order. Dkt. # 21 at 11.
6 The Court disagrees. In this case, Plaintiff’s counsel was not seeking a remand order, but
7 rather an adjudication on the merits of Plaintiff’s naturalization application. Such a
8 determination would have required the Court to consider the MAVNI statute, including
9 context regarding the MAVNI background processes as applied to Plaintiff. As a result,
10 counsel’s particular legal expertise was necessary to give Plaintiff a “fair shot” at
11 prevailing in this MAVNI action.

12 Finally, Plaintiff argues that he was unable to identify other qualified attorneys to
13 litigate his case. Plaintiff attests that he attempted to contact several other attorneys and
14 that qualified counsel was not available at the statutory maximum rate given the
15 complexity of the case and time pressures. Dkt. # 19 at ¶ 4. In support of Plaintiff’s
16 assertion, Mr. Strawn attests that there are few attorneys in Seattle with the expertise and
17 willingness to bring a case of this complexity in federal court. Dkt # 18-1 at 18-19. On
18 this record, the Court finds that qualified counsel was not available for this litigation at
19 the maximum rate provided under EAJA.

20 **B. Reasonableness of Requested Fees and Costs**

21 Although the Court concludes that enhanced fees are appropriate, Plaintiff still
22 must show that the requested enhanced rates are “in line with those [rates] prevailing in
23 the community for similar services by lawyers of reasonably comparable skill,
24 experience, and reputation.” *Nadarajah*, 569 F.3d at 916 (citing *Blum v. Stenson*, 465
25 U.S. 886, 895 & n. 11 (1984)). Here, the Court questions the reasonableness of Plaintiff’s
26 requested rate of \$775 per hour for Mr. Gibbs and \$350 per hour for Ms. Collins.

1 Plaintiff offers very little evidence to support Mr. Gibbs' requested rate. In the
2 two 2019 cases relied upon heavily by Plaintiff, the Court awarded another highly skilled
3 and experienced immigration attorney only \$450 per hour. *See Fatty v. Nielsen*, No.
4 C17-1535 MJP, 2019 WL 1979321, at *4 (W.D. Wash. May 3, 2019), *Aden v. Nielsen*,
5 No. C18-1441 RSL, 2019 WL 6683512, at *2 (W.D. Wash. Dec. 6, 2019). And the
6 hourly rate of the "nationally recognized expert on MAVNI" cases appears to be between
7 \$500 and \$600. Dkt. # 26-2, Ex. B. Even assuming Mr. Gibbs is *significantly* more
8 qualified than the attorneys in both of those cases, nothing before the Court justifies the
9 proposed rate.¹ Most recently, the Ninth Circuit awarded Mr. Gibbs himself a \$650
10 hourly rate in connection with an appeal of a Board of Immigration Appeals decision.
11 *See Rodriguez-Pena v. Sessions*, Ninth Circuit No. 15-73879 (Nov. 29, 2018).

12 Given the prevailing market rates for specialized and highly experienced
13 immigration attorneys specializing in complex litigation, the Court determines that an
14 hourly rate of \$650 is more appropriate. *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984);
15 *see also Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011) (courts may rely on their
16 own knowledge of customary rates and their experience concerning reasonable and
17 proper fees). This rate is "in line with those [rates] prevailing in the community for
18 similar services by lawyers of reasonably comparable skill, experience and reputation."

19 The Court is even more skeptical regarding Ms. Collins' proposed rate. The sole
20 basis for Ms. Collins' \$350 hourly rate appears to be an application of the *Laffey* matrix,
21 a measure employed by the D.C. Circuit to calculate hourly rates for attorneys at non-
22 profit organizations. Dkt. # 18-1 at 21. However, the Court questions the applicability of
23 this metric as there appear to be very few cases applying the *Laffey* matrix to requests for
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1 EAJA fees in the Ninth Circuit.² On this record, the Court simply cannot justify the
2 proposed hourly rate. Accordingly, Ms. Collins' rate will be lowered to the inflation-
3 adjusted statutory rate of \$205.25.³ The Court finds the remaining claimed rates are
4 reasonable.

5 The Government also objects to the hours claimed by Plaintiff's counsel. Dkt. #
6 21 at 11-2. On balance, the requested hours are reasonable with a few modifications.
7 The Court will reduce the hours requested for Mr. Vasey's work, as stipulated in
8 Plaintiff's reply brief. Dkt. # 25-1 at 5. Additionally, the Court will reduce Plaintiff's
9 requested fees associated with preparing the instant motion for fees due to counsel's
10 failure to fully meet and confer. This Court's standing order clearly *requires* parties to
11 meet and confer with the opposing party prior to filing any motion. Specifically, it
12 provides:

13 Counsel contemplating the filing of any motion shall first contact opposing
14 counsel to discuss thoroughly, preferably in person, the substance of the
15 contemplated motion and any potential resolution. The Court construes this
16 requirement strictly. Half-hearted attempts at compliance with this rule will
17 not satisfy counsel's obligation . . . All motions must include a declaration
18 by counsel briefly describing the parties' discussion and attempt to
19 eliminate the need for the motion and the date of such discussion. Filings
20 not in compliance with this rule may be stricken.

21 Dkt. # 3 at 4. Plaintiff's counsel insists that he did inform the Government that he
22 intended to seek attorneys' fees (at a \$650 hourly rate) and that the Government indicated
23 that it would oppose enhanced fees. Dkt. # 26 at 6. However, nothing in the record
24 suggests that counsel contacted the Government prior to filing the instant motion to

24 ² The Laffey matrix also appears to be disfavored by the Ninth Circuit. *Prison Legal*
News v. Schwarzenegger, 608 F.3d 446, 454 (9th Cir. 2010).

25 ³ Annually adjusted rates are published here:
26 https://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039 (last visited May 5,
2020).

1 discuss the substance of the motion and any potential resolution. In fact, it is clear such a
2 conversation did not occur as the Government does not dispute a significant portion of
3 the motion. Dkt. # 21 at 12. Although the Court will not strike the motion, it will reduce
4 Plaintiff's request for attorneys' fees associated with this motion by 15%, including any
5 fees associated with Mr. Strawn's declaration.

6 Plaintiff seeks an additional \$4,995 in expenses for the time spent by declarants
7 Margaret Stock and Christopher Strawn who submitted declarations in support of
8 Plaintiff's motion for summary judgment and the instant motion. The Government
9 objects, arguing that Ms. Stock's declaration was unnecessary for Plaintiff to prevail on
10 his § 1447(b) claim. The Court disagrees. As discussed above, Plaintiff was not seeking
11 a boilerplate remand order, but rather a substantive determination on the merits. Ms.
12 Stock's declaration was relevant to the relief sought.

13 III. CONCLUSION

14 For the above reasons, Plaintiff's motion is **GRANTED** in part. Plaintiff is
15 awarded attorney fees and costs under the EAJA in the amount of \$38,927.80.

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17 DATED this 6th day of May, 2020.

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20 The Honorable Richard A. Jones
21 United States District Judge
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