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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

SUKHWINDER SINGH, ET AL., Plaintiffs, v. MICHAEL CHERTOFF, Secretary, et al., Defendants.	No. C 08-2362 WDB **STIPULATION TO A BRIEFING SCHEDULE; AND [~~PROPOSED~~] ORDER**

Plaintiffs, by and through their attorneys of record, and defendants, by and through their attorneys of record, hereby stipulate, subject to approval of the Court, to the following:

1. Sukhwinder Singh (Singh) is a native and citizen of India who wishes to adjust his status to that of lawful permanent resident based on an approved I-130 visa petition that his United States citizen brother, Dharam Singh, filed on his behalf on May 9, 1988.

2. The United States Citizenship and Immigration Services (USCIS) approved the I-130 visa petition on September 6, 1991.

3. Singh entered the United States without a valid travel document on November 27, 1991, and was thereafter placed in removal proceedings on September 22, 1994.

4. The defendants maintain that the Department of State notified Singh on September 4, 2000 (through his attorney of record) of the availability of an immigrant visa and the need to come in for

a visa interview appointment; that, on September 4, 2001, the State Department sent Singh (through his attorney of record) a notice of possible termination of registration of the visa; that, on September 5, 2002, the State Department sent Singh (through his attorney of record) a notice that his registration was being terminated and that he had one year to overcome his termination determination; and that, on September 5, 2003, the State Department mailed Singh (through his attorney of record) a final notice of termination.

5. The plaintiffs maintain that neither Singh nor his brother ever received a notice that a visa had become available, that further action was required before Singh could apply for a visa, that the defendants were going to terminate Singh's registration for failure to act upon his petition, or that Singh had a right to have the registration reinstated if he could demonstrate that his failure to apply for a visa was due to circumstances beyond his control.

6. On February 22, 2005, during the pendency of his removal proceedings in Immigration Court, Singh filed an I-485 application for adjustment of status based on the approved I-130. On August 2, 2006, the Department of Homeland Security filed a brief with the Immigration Judge arguing that Singh was ineligible to adjust his status to lawful permanent resident because the "visa upon which respondent seeks to adjust has been revoked pursuant to sections 203(g) and 205 of the Immigration and Nationality Act, as amended ("INA") and 22 C.F.R. § 42.83." The removal proceeding is ongoing.

7. The plaintiffs filed the above-captioned action in this Court on May 5, 2008, seeking a declaration that defendants' termination of Singh's visa registration was a violation of the Administrative Procedure Act and an order immediately reinstating the registration of Singh's approved visa petition.

8. The parties believe that this case can be resolved on cross-motions for summary judgment and that no case management conference is necessary.

9. The parties proposed the following schedule on their cross-motions for summary judgment:

Parties' Cross-Motions for Summary Judgment:	January 23 , 2009
Parties' Cross-Oppositions:	February 13, 2009
Hearing:	~~To set by Court if needed~~ March 4, 2009 at 1:30 p.m.

Dated: December 1, 2008

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

/s/
EDWARD A. OLSEN
Assistant United States Attorney
Attorneys for Defendants

Dated: December 1, 2008

/s/
SARA COPPIN
LAW OFFICE OF ROBERT JOBE
Attorney for Plaintiffs

ORDER

Pursuant to stipulation, IT IS SO ORDERED.

Dated: 12/2/08, 2008

WAYNE D. BRAZIL
United States Magistrate Judge