Judge Martinez
Judge Tsuchida

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

MEHRAD GHASEDI, Petitioner, v. JULIO HERNANDEZ,[1] etc., *et al.*,[2 3] Respondents.	CASE NO. 2:25-cv-01984-RSM-BAT **FEDERAL RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITION FOR FEES AND EXPENSES PURSUANT TO EAJA**

INTRODUCTION

Petitioner requests that he be awarded $28,585.68 in EAJA fees and $254.00 in costs as compensation for the legal work of his attorneys in the litigation. Petitioner did secure his release from detention and from that perspective was a prevailing party for purposes of EAJA. However, a considerable portion of his Petition was devoted to making unnecessary arguments in support of an

[1] Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, U.S. Immigration and Customs Enforcement Julio Hernandez for Laura Hermosillo/Cammilla Wamsley.

[2] Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Department of Homeland Security Secretary Markwayne Mullin for Kristi Noem.

[3] Bruce Scott is not a federal employee and is not represented by the undersigned in these proceedings. All other respondents, which are represented by the undersigned, are referred to as "Federal Respondents."

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entirely separate claim for relief that was ultimately denied by the Court. Petitioner's request for fees should be reduced for time spent on this separate claim as to which he did not prevail.

Additionally, the Petitioner's claim should be reduced to the extent that he attempts to shift his attorney's business expense, *i.e.,* the cost of a pro hac vice application, to Federal Respondents. Thus, the Petitioner should recover no more than $19,061.26 in EAJA fees.

STATEMENT OF FACTS

The Petition before the Court consisted of two basic claims. The first sought to compel Petitioner's release from detention ("the detention claim"). The second sought an injunction limiting any future effort by Federal Respondents to execute his removal order (the "removal claim"). The Petitioner was successful on his detention claim. However, the Court denied his removal claim.

1. *Detention Claim*

While Petitioner did not deny he is subject to a final order of removal to Iran, he argued that his continuing detention in Federal Respondents' custody pending execution of the removal order was a violation of due process based on his showing that there was no significant likelihood that Federal Respondents would be able to secure his removal to Iran in the reasonably foreseeable future. Federal Respondents disagreed, but the Court determined that Federal Respondents did not sufficiently carry their burden. Specifically, the Court concluded that Federal Respondents claimed recent successes in removing persons to Iran at the time were too generalized. The Court also pointed to the fact that Federal Respondents had not requested or received a travel document from Iran for the Petitioner.[4]

2. *Removal Claim*

Much of the Petition was devoted to a lengthy attack on Federal Respondent's third country removal policy, including a selective survey of other recent cases involving Federal Respondents' exercises of its statutory authority to remove persons subject to an order of deportation to other

[4] Additionally, Federal Respondents argued that Petitioner had not been sufficiently compliant with the terms of his order of supervision and that he had been uncooperative in Federal Respondents' efforts to obtain a travel document on his behalf. Because the Court concluded that neither issue affected its *Zadvydas* analysis, it found it unnecessary to resolve the factual disputes associated with these contentions. Dkt. # 11, p. 12, *ll.* 13-14.

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countries. Dkt. # 1, pp. 13-20, 23-24. The Petition devote approximately 9 pages to this single subject. Petitioner made this argument despite the undisputed fact that Federal Respondents have never indicated to Petitioner in any way, shape or form that a third country removal was being considered in his case. Petitioner's only reason for bringing this claim forward was his "near-paralyzing fear that ICE [would] remove him to a third country." Dkt. # 1, p. 22, ¶ 73. The Court denied Petitioner's claim for injunctive and declaratory relief, concluding that the Petitioner's claimed injury was speculative and speculative injury is not a basis for injunctive relief. Dkt. # 11, p. 16, *ll.* 10-20.[5]

ARGUMENT

I. PREVAILING PARTY AND SUBSTANTIAL JUSTIFICATION

EAJA authorizes the award of attorney fees and expenses, "[e]xcept as otherwise specifically provided by statute," to parties who prevail against the United States in all civil actions (except tort cases and tax cases), but only if certain conditions are met.

Federal Respondents concede that, under the EAJA standard, Petitioner is the prevailing party. While Federal Respondents do not concede that their position in this lawsuit was other than substantially justified, they choose not to argue the question of substantial justification in response to this fee petition.

II. PETITIONER'S CLAIM FOR FEES SHOULD BE SUBSTANTIALLY REDUCED BASED ON HIS LACK OF SUCCESS ON THE ENTIRELY SEPARATE ISSUES RELATED TO THIRD COUNTRY REMOVAL

Any fee award to Petitioner should be substantially reduced based on lack of success. Courts should exclude from the fee calculation "hours that were not 'reasonably expended.'" *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). In *Hensley*, the Supreme Court held that "the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees . . . [W]here the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained." *Id.* at 440.

[5] Additionally, Petitioner claimed that Federal Respondents acted arbitrarily under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, in detaining him and (in his reply brief) that they violated their own regulations in re-detaining him. The Court declined to address these claims. Dkt. # 11, pp. 17-18.

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1 *Hensley* establishes a two-part test for calculating an appropriate fee award where a party is
2 only partially successful. First, the court must determine whether the plaintiff "fail[ed] to prevail on
3 claims that were unrelated to the claims on which he succeeded." *Hensley*, 461 U.S. at 434. If the
4 successful and unsuccessful claims are unrelated, the hours spent on the unsuccessful claims must be
5 excluded. *Id.* Second, if the successful and unsuccessful claims are related, then the court must
6 determine whether "the plaintiff achieve[d] a level of success that makes the hours reasonably
7 expended a satisfactory basis for making a fee award." *Id.* "Litigants in good faith may raise
8 alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain
9 grounds is not a sufficient reason for reducing a fee." *Id.* at 435. However, where the claims are
10 related and "the plaintiff achieved only limited success, the district court should award only that
11 amount of fees that is reasonable in relation to the results obtained." *Id.* at 440.

12 Under the first part of this two-part test, all claimed fees associated with the Petitioner's
13 claim for injunctive and declaratory relief associated with his removal claim should be disallowed.
14 This claim, whose purpose was to constrain Federal Respondent's exercise of their authority to
15 remove him from the United States, is unrelated to the claim that his continuing immigration
16 detention was unlawful. "Claims are 'unrelated' if they are 'entirely distinct and separate' from the
17 claims on which the plaintiff prevailed." *Sorenson v. Mink*, 239 F.3d 1140, 1147 (9th Cir. 2001).
18 Hours spent on unrelated, unsuccessful claims should be excluded from the fee award. *Id.* "[I]t is
19 the court's prerogative (indeed, its duty) to winnow out excessive hours, time spent tilting at
20 windmills, and the like." *Officers Action League v. Puerto Rico*, 247 F.3d 288, 295-96 (1st Cir.
21 2001).

22 Petitioner's removal claim was just such a claim. "[D]etention always has been considered a
23 separate and distinct matter from a removal proceeding." *Martinez-Vazquez v. I.N.S.*, 346 F.3d 903,
24 906-907 (9th Cir. 2003) (quoting *Richardson v. Reno*, 180 F.3d 1311, 1317 (11th Cir. 1999)). It was
25 unnecessary to raise issues concerning third country removal in this case because at no time did ICE
26 indicate to Petitioner that it was considering him for a third country removal, and this claim was
27 unnecessary to secure his removal from ICE detention, as the results in this case demonstrate. In
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1 other words, the Petitioner expended excessive and unnecessary hours briefing a claim based on
2 nothing more than unfounded fear that he might be removed to a third country.[6] And that claim was
3 unrelated to the claim on which he prevailed, *i.e.*, the lawfulness of his detention.

4 Federal Respondents are not contesting the Petitioner's right to seek relief on any claim to
5 which he believes he is entitled to relief. But here, Petitioner is attempting to shift the cost burden of
6 his unsuccessful efforts to obtain relief on an entirely separate issue to Federal Respondents. Under
7 the authorities cited above, because he did not prevail on that unrelated claim, his effort should be
8 rejected and a commensurate reduction in the attorney's fees awarded to Petitioner should follow.

9 To adjust Petitioner's claim for fees to adjust for his unsuccessful effort to obtain relief on
10 this distinct third country removal claim, Federal Respondents believe that a one-third reduction in
11 the lodestar is appropriate. If no other deductions from the Petitioner's claimed hours are taken, a
12 one-third reduction in his claimed hours yields 73.73 hours. Multiplied by the claimed EAJA rate
13 yields an attorney's fee claim of $19,056.25.

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15 III. THE COURT SHOULD DISALLOW THE PETITIONER'S REQUEST FOR REIMBURSEMENT OF THE COST OF HIS PRO HAC VICE APPLICATION

16 Petitioner seeks recovery of the $249.00 fee his attorney expended on an application to
17 appear pro hac vice in this District. That claim should be disallowed. Costs related to obtaining pro
18 hac vice admission are non-compensable costs of doing business and are not chargeable to the
19 federal government. *See Miller v. Alamo,* 983 F.2d 856, 862 (8th Cir. 1993) (26 U.S.C. § 7430);
20 *Clay v. Berryhill*, 2019 WL 12711724, at *1 (W.D. Tenn. July 29, 2019) ("The court finds that pro
21 hac vice fees are the attorney's business expense and not recoverable under the EAJA."); *Doyle v.*
22 *Berryhill*, 2018 WL 6332848, at *1 (S.D. Ga. Nov. 6, 2018), *report and recommendation adopted*,
23 2018 WL 6331692 (S.D. Ga. Dec. 4, 2018). Accordingly, the Petitioner's request to be compensated
24 for this expense should be denied.

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27 [6] For example, by Federal Respondent's calculation, Petitioner's counsel spent more than 31 hours preparing what would otherwise would have been a relatively simple and straightforward Petition.

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IV. EFFECT OF ASSIGNMENT

The Supreme Court has held that a fee award under 28 U.S.C. § 2412(d) is payable to the litigant and is therefore subject to a Government offset to satisfy a pre-existing debt that the litigant owes the United States. *Astrue v. Ratliff*, 560 U.S. 586, 588 (2010). The Petitioner here has executed a purported assignment of his right to receive EAJA fees to his attorney. However, such an assignment, if valid, does not cause the EAJA payment to be exempt from the Treasury's offset program.

Under the Anti-Assignment Act, a claim against "the United States may not be assigned to a third party unless [certain] technical requirements are met." *United States v. Kim*, 806 F.3d 1161, 1169 (9th Cir. 2015); 31 U.S.C. § 3727. "[I]n modern practice, the obsolete language of the Anti-Assignment Act means that the Government has the power to pick and choose which assignments it will accept and which it will not." *Kim*, 806 F.3d at 1169–1170.

Here, there is no information on whether the Petitioner owes any debt to the government. Therefore, if the Court awards Petitioner EAJA fees pursuant to this Petition, it should order that the payment of the EAJA fee be paid directly to Petitioner's counsel, subject to any administrative offset due to outstanding federal debt and subject to the Government's waiver of the requirements under the Anti-Assignment Act.

CONCLUSION

For the foregoing reasons, the Department submits that petition for fees should be partially denied. Petitioner should recover no more than $19,056.25 of his claimed attorney's fees. He should recover no more than $5.00 of his claimed expenses. The Court should order that the combined EAJA fee of $19,061.26 be paid directly to Petitioner's counsel, subject to any administrative offset due to outstanding federal debt and subject to the Government's waiver of the requirements under the Anti-Assignment Act.

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CERTIFICATION

I certify that this memorandum contains 1,902 words, in compliance with Local Civil Rule LCR 7(e)(2).

DATED this 1st day of April 2026.

Respectfully submitted,

s/ Brian C. Kipnis
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