UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

N.S.,

Petitioner,

v.

LAURA HERMOSILLO, et al.,

Respondents.

CASE NO. 2:26-cv-00161-BAT

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR ATTORNEY FEES AND COSTS UNDER EQUAL ACCESS TO JUSTICE ACT

Petitioner requests attorney fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. Dkt. 14. Petitioner seeks an enhanced rate above the statutory rate provided for by EAJA. Respondents do not oppose awarding attorney fees, but contest Petitioner's entitlement to an enhanced fee and contest the reimbursement of costs. Dkt. 15. For the following reasons, the Court awards attorney fees at the statutory rate, not the enhanced rate, but awards the costs Petitioner requests.

BACKGROUND

Petitioner N.S. filed a petition for habeas corpus challenging his detention by United States Customs and Immigration Enforcement. The Court granted the habeas petition on February 6, 2026. Dkt. 11. Petitioner's motion for attorney fees under EAJA was timely filed on

March 6, 2026. Dkt. 14. Counsel requests $550 per hour for 10.4 hours worked by lead counsel, $125 per hour for 1.3 hours of paralegal work, $162.50 in paralegal fees, $5 for the habeas filing fee, and $249 for the pro hac vice admission fee, for a total of $6,136.50 in attorney fees and costs. *Id.* at 3. Under EAJA, the statutory rate authorized for attorney's fees, adjusted for inflation for work performed in 2025, is $258.46 per hour. Dkt. 16 at 5. In the alternative, counsel requests fees at this adjusted statutory rate, which including the other fees and costs would total $3,104.48.

DISCUSSION

If a plaintiff is entitled to an award, a court sets reasonable attorney fees by the lodestar calculation, which multiplies the reasonable hourly rate by the reasonable number of hours expended. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A party may recover EAJA fees and costs only if (1) the party prevailed in the action, (2) the government's position was not "substantially justified" and no special circumstances would make an award unjust, (3) the requested fees and costs are reasonable, and (4) the party filed a timely, supported application. See 28 U.S.C. § 2412(b), (d); *United States v. Milner*, 583 F.3d 1174, 1196 (9th Cir. 2009).

Respondents do not dispute Petitioner prevailed in the action, the government's position was not substantially justified, and the motion was timely, so Petitioner is entitled to attorney fees. Respondents dispute only (1) the enhanced fee as opposed to the lower adjusted statutory fee and (2) the reimbursement of costs for the pro hac vice admission fee.

A. Enhanced Fees

EAJA caps attorney fees at $125 per hour, adjusted for inflation, "unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. §

2412(d)(2)(A)(ii). Three elements must be met to satisfy this requirement: (1) counsel possesses "distinctive knowledge" and "specialized skills"; (2) the knowledge or skills were "needful to the litigation in question"; and (3) competent counsel was "not available elsewhere at the statutory rate." *Nadarajah v. Holder*, 569 F.3d 906, 912–15 (9th Cir. 2009).

Petitioner argues the first element is met because counsel has "distinctive knowledge and 11 years of experience in complex immigration matters, specifically regarding the intersection of constitutional due process and the Immigration and Nationality Act." Dkt. 14 at 6. Lead counsel Cole Enabnit has been an Oregon State Bar member since October 2014; he is the founder and senior attorney at Portland Immigration Law LLC; and he states he has "extensive experience" litigating immigration cases. *Id.* at ¶ 3–4. However, "immigration law expertise, by itself" does not justify the award of enhanced hourly rates "without a showing that the attorneys possess distinctive knowledge or specialized skills necessary to this litigation." *Nadarajah*, 569 F.3d 906 at 913. Immigration law, unlike patent law, is not a specialty justifying *per se* enhanced rates. Counsel includes no further information in support of his "distinctive knowledge" and "specialized skills" beyond the fact he is an immigration lawyer, which is insufficient.

Second, Petitioner argues specialized skills were necessary because counsel "had to immediately decipher complex jurisdictional provisions under the INA, distinguish between § 1225 and § 1226 detention authorities, and rapidly draft a federal habeas petition before Petitioner was transferred out of the jurisdiction." Dkt. 14 at 6. While the distinction between § 1225 and § 1226 is a matter of statutory interpretation and clear Ninth Circuit authority is not yet in place, this Court and others in the District have addressed this issue (and the others presented in the petition) numerous times. The complexity of Petitioner's arguments does not differ markedly from the arguments made in the many other habeas petitions filed over the last

several months in this District presenting similar facts. It cannot be the case that every attorney representing such a petitioner is entitled to enhanced fees by virtue of their status as immigration lawyers, the need to distinguish between § 1225 and § 1226, or the need for rapid drafting of the habeas petition. Relatedly, Petitioner argues the $550 fee is reasonable because this District awarded $850 per hour for lead counsel in *Koonwaiyou v. Blinken*, 724 F. Supp. 3d 1222, 1233–35 (W.D. Wash. 2024). But *Koonwaiyou* appears far more complex than this case, involving a procedural history stretching over nearly 20 years, including two appeals to the Ninth Circuit, and requiring "an intimate understanding of the INA and the ability to navigate complex questions concerning its application in the absence of clear authority from the Ninth Circuit." *Id.* at 1229, 1234.

Third, counsel's declaration states he is unaware of other qualified counsel who would accept the case at the adjusted statutory rate. Dkt. 14-1 at ¶ 3. Petitioner also provides declarations by Oregon immigration lawyers Michael T. Purcell and Geoffrey Doolittle, each stating they would not accept a complex federal immigration habeas case at the EAJA statutory rate and are unaware of a qualified attorney who would be willing to do so. Dkt. 16-1 at ¶ 11–15; Dkt. 16-2 at ¶ 7. But counsel in many similar recent cases have not sought enhanced fees. Respondents argue Petitioner has not demonstrated other competent counsel was unavailable at the statutory rate, but rather has only stated counsel himself is unaware of other counsel who would have taken the case at the statutory rate. Dkt. 15 at 3. The Court agrees and finds Petitioner's bare assertion unconvincing.

Thus, enhanced attorney fees are not warranted. Because the Court declines to award enhanced fees, it does not reach the arguments regarding the reasonableness of the precise fee sought.

B. Reimbursement of Pro Hac Vice Admission Fee

The parties dispute whether Petitioner is entitled to reimbursement of $249.00 for the pro hac vice fee. Respondents point out the Ninth Circuit held pro hac vice fees are not recoverable as "costs" under 28 U.S.C. § 1920. *Kalitta Air L.L.C. v. Cent. Texas Airborne Sys. Inc.*, 741 F.3d 955, 958 (9th Cir. 2013) (reasoning pro hac vice fees are not explicitly mentioned in the statute defining costs, § 1920, which is "narrow, limited, and modest in scope"). Petitioner responds *Kalitta* does not control because that case pertained to "costs," whereas EAJA authorizes recovery of not only "costs" but "reasonable fees and expenses," which Petitioner argues encompasses the pro hac vice fee.

EAJA provides that "a judgment for costs, as enumerated in section 1920 of this title," may be awarded to the prevailing party. 28 U.S.C. § 2412(a)(1). The Ninth Circuit in *Kalitta* construed § 1920 to exclude pro hac vice fees, so Respondents are correct that pro hac vice fees are not recoverable as costs under this provision of EAJA. *See* 741 F.3d 955 at 958.

However, EAJA also provides that "a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party." 28 U.S.C. § 2412(b). The statute defines "reasonable fees and expenses" as follows:

> "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees . . .

§ 2412(d)(2)(A).

The question is whether "reasonable fees and expenses" in § 2412(d)(2)(A) should be construed to include pro hac vice fees. The statutory definition does not explicitly include pro

hac vice fees. But "the expenses enumerated in Section 2412(d)(2)(A) are set forth as examples, not as an exclusive list." *Int'l Woodworkers of Am., AFL-CIO, Loc. 3-98 v. Donovan*, 792 F.2d 762, 767 (9th Cir. 1985). And courts routinely interpret reasonable attorney's fees to include "reasonable out-of-pocket litigation expenses that would normally be charged to a fee-paying client, even if the court cannot tax these expenses as 'costs' under 28 U.S.C. § 1920." *Trs. of Const. Indus. & Laborers Health & Welfare Tr. v. Redland Ins. Co.*, 460 F.3d 1253, 1257 (9th Cir. 2006); *Cmty. Ass'n for Restoration of Env't Inc. v. DeCoster*, 704 F. Supp. 3d 1110, 1120 (E.D. Wash. 2023).

Though the pro hac vice admission fee cannot be included in taxable costs, the Court finds the $249 fee is appropriate to include in attorney's fees, as a reasonable expense that would normally be billed to a fee-paying client. *Etter v. Allstate Ins. Co.*, No. C 17-00184 WHA, 2018 WL 5791883, at *3 (N.D. Cal. Nov. 4, 2018) (awarding pro hac vice fees as "a reasonable and necessary part of the litigation" which is "of the type customarily billed to a fee-paying client); *Adaway v. Aspire Loyalty Travel Sols. LLC*, No. CV-24-02792-PHX-DJH, 2025 WL 1707890, at *7 (D. Ariz. June 18, 2025) (same).

CONCLUSION

For the foregoing reasons, the Court **ORDERS** that Petitioner's application for attorney fees and costs under the Equal Access to Justice Act, Dkt. 14, is **GRANTED IN PART**. Petitioner is awarded attorney fees of $2,687.98, paralegal fees of $162.50, and $254 in costs, totaling $3,104.48.

DATED this 14th day of April, 2026.

BRIAN A. TSUCHIDA
United States Magistrate Judge