

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Maria Del Carmen Medina Tovar v. Laura B. Zuchowski

Tovar v. Zuchowski · No. 18-35072 · Decided February 12, 2020

SUMMARY

The Ninth Circuit’s amended opinion affirmed summary judgment for the government in a dispute over when a spousal relationship must exist for derivative U-visa status. Applying Chevron, the court held that the governing statute is ambiguous and that USCIS reasonably required the relationship to exist when the principal U-visa petition was filed. The court also rejected the plaintiffs’ equal-protection challenge; Judge Watford dissented.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	N. Randy Smith; Paul J. Watford; Ryan D. Nelson
JURISDICTION	Federal
DECIDED	February 12, 2020
DOCKET	18-35072
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from the district court's grant of summary judgment to the government in an action seeking declaratory and injunctive relief from USCIS's denial of derivative U-visa status for the principal petitioner's husband.
STANDARD OF REVIEW	De novo review of the district court's grant of summary judgment; Chevron review of the agency's construction of the statute; rational-basis review of the equal-protection challenge.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Maria Del Carmen Medina Tovar, Adrian Jovan Alonso Martinez v. Laura B. Zuchowski, Chad F. Wolf, William P. Barr

TOPICS

[u visa](#) [statutory interpretation](#) [chevron deference](#) [equal protection](#) [judicial review of agency action](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the phrase "accompanying, or following to join" in 8 U.S.C. § 1101(a)(15)(U)(ii) unambiguously requires a qualifying spousal relationship to exist when the principal U-visa petition is filed or instead leaves a gap for the agency to fill.
2. Whether 8 C.F.R. § 214.14(f)(4), which requires the qualifying relationship to exist when the initial U-visa petition is filed and to continue through adjudication of the derivative petition and admission, is a reasonable interpretation of the U-visa statute.
3. Whether the regulation violates equal protection by treating derivative spouses differently from derivative children and from spouses of refugees, asylees, and other visa holders.

HOLDINGS

1. The U-visa statute is ambiguous and does not directly answer when a qualifying spousal relationship must exist for derivative U-visa status.
2. The regulation requiring the qualifying spousal relationship to exist when the initial U-visa petition is filed and to continue through adjudication of the derivative petition is a reasonable interpretation of the ambiguous statute and is entitled to Chevron deference.
3. The regulation does not violate equal protection under the Fifth Amendment's Due Process Clause.

KEY QUOTATIONS

"The United States Citizenship & Immigration Service ("USCIS") permissibly construed the statutory phrase "accompanying, or following to join" in 8 U.S.C. § 1101(a)(15)(U)(ii) when it adopted its regulation, 8 C.F.R. § 214.14(f)(4), requiring that a spouse's qualifying relationship exists at the time of the initial U-visa petition and that the qualifying relationship continues throughout the adjudication of the derivative petition." (6)

"It is reasonable for the agency to require that qualifying relationships exist at the time of the initial U-visa application, where U-visa status provides only limited, temporary, nonimmigrant status to alien victims of crime (already present in the United States) based on their aid to law enforcement." (16-17)

"Because significant differences exist between the categories of spouses and the requirements for obtaining status, "there is a rational relationship between the disparity of treatment" among spouses and it furthers a "legitimate governmental purpose." (24)

FACTUAL BACKGROUND

Maria Medina Tovar, a Mexican citizen who had lived in the United States since childhood, was the victim of a serious crime in Oregon and assisted law enforcement. She filed her U-visa petition on June 14, 2013, then married Adrian Alonso Martinez on September 21, 2015, and was granted U-visa status effective October 1, 2015. USCIS denied Martinez's derivative U-visa petition because the marriage did not exist when Tovar filed her initial petition.

PROCEDURAL HISTORY

Maria Medina Tovar filed a U-visa petition in 2013 and married Adrian Alonso Martinez in 2015, after filing the petition but before receiving U-visa status. USCIS denied Martinez's derivative petition because the marriage did not exist when Tovar filed her initial petition. The plaintiffs sued in the District of Oregon; on cross-motions for summary judgment, the district court upheld the regulation and denied the plaintiffs' equal-protection challenge. The Ninth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 292 (1988)
- Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-44 (1984)
- Herrera v. USCIS, 571 F.3d 881, 885 (9th Cir. 2009)
- Darby v. Cisneros, 509 U.S. 137, 154 (1993)
- Navajo Nation v. U.S. Forest Service, 535 F.3d 1058, 1074 (9th Cir. 2008)
- Bragdon v. Abbott, 524 U.S. 624, 631 (1998)
- Community for Creative Non-Violence v. Reid, 490 U.S. 730, 739-40 (1989)
- Goodyear Atomic Corp. v. Miller, 486 U.S. 174, 184-85 (1988)
- Rodriguez v. Sony Computer Entertainment America, LLC, 801 F.3d 1045, 1052 (9th Cir. 2015)
- Contreras Aybar v. Johnson, 295 F. Supp. 3d 442, 455 (D.N.J. 2018), *aff'd sub nom. Contreras Aybar v. Secretary, U.S. Department of Homeland Security*, 916 F.3d 270 (3d Cir. 2019)
- Cuozzo Speed Technologies, LLC v. Lee, 136 S. Ct. 2131, 2142 (2016)
- National Cable & Telecommunications Association v. Brand X Internet Services, 545 U.S. 967, 980 (2005)
- INS v. Aguirre-Aguirre, 526 U.S. 415, 425 (1999)
- Ruiz-Diaz v. United States, 618 F.3d 1055, 1061 (9th Cir. 2010)
- Garcia-Mendez v. Lynch, 788 F.3d 1058, 1064-65 (9th Cir. 2015)
- Environmental Defense v. Duke Energy Corp., 549 U.S. 561, 574, 576 (2007)
- Atlantic Cleaners & Dyers, Inc. v. United States, 286 U.S. 427, 433 (1932)
- Consejo de Desarrollo Economico de Mexicali, A.C. v. United States, 482 F.3d 1157, 1170 n.4 (9th Cir. 2007)
- City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985)
- Plyler v. Doe, 457 U.S. 202, 216 (1982)
- Aleman v. Glickman, 217 F.3d 1191, 1197, 1200 (9th Cir. 2000)
- Nordlinger v. Hahn, 505 U.S. 1, 15 (1992)
- Fournier v. Sebelius, 718 F.3d 1110, 1123 (9th Cir. 2013)
- Tuan Anh Nguyen v. INS, 533 U.S. 53, 61 (2001)
- Miller v. Albright, 523 U.S. 420, 433-45 (1998)

- *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994)
- *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 367 (2001)
- *Bona v. Gonzales*, 425 F.3d 663, 670 (9th Cir. 2005)
- *Schneider v. Chertoff*, 450 F.3d 944, 956 (9th Cir. 2006)
- *Landin-Molina v. Holder*, 580 F.3d 913, 919 (9th Cir. 2009)
- *Matter of Naulu*, 19 I. & N. Dec. 351, 352 n.1 (BIA 1986)
- *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019)
- *Pereira v. Sessions*, *Pereira v. Sessions*, 138 S. Ct. 2105, 2113 (2018)

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