

# 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)