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16
17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **WESTERN DIVISION (LOS ANGELES)**
20

21 ANDREW MASON DVASH-)
BANKS AND E.J. D.-B.,)
22)
Plaintiffs,)
23)
v.)
24)
THE UNITED STATES)
25 DEPARTMENT OF STATE,)
and THE HONORABLE)
26 MICHAEL R. POMPEO,)
Secretary of State,)
27)
Defendants.)
28

Case No. 2:18-cv-00523-JFW-(JCx)

**EXCERPTS FROM THE
DEPOSITION OF TERRI
NATHINE FRANCES DAY IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Judge: Hon. John F. Walter
Hearing Date: February 4, 2019
Courtroom: 16

1 Pursuant to Part 4(b) of the Court's Scheduling and Case Management
2 Order (DKT 52), entered on August 21, 2018, attached hereto are excerpts from
3 the deposition of Terri Nathine Frances Day submitted in support of Plaintiffs'
4 Motion for Partial Summary Judgment.

5 Dated: January 7, 2019

Respectfully submitted,

6
7 By: /s/ Alexa M. Lawson-Remer
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Page 24

2 Q. Is it your understanding that the
3 policies that the Toronto consulate follows with
4 respect to how to adjudicate passport and CRBA
5 applications are the same policies that the State
6 Department follows?

7 A. According to my understanding, yes,
8 they are the same policies, as far as what I've
9 seen in the Foreign Affairs Manual, which is the
10 only thing I can attest to, really. And the
11 guidelines that have been given to me by Consular
12 Affairs, yes, they are the same.

Pages 29-30

17 Q. And what was your role in adjudicating
18 those applications?

19 A. My role was to determine if the
20 applicant had a claim to U.S. citizenship either
21 through their parent or their place of birth or
22 whatever reason they were -- you know, whatever
23 reason they were claiming was their purpose for
24 getting it -- acquiring U.S. citizenship. So that
25 was my -- my job was to determine if that was --

1 according to Foreign Affairs Manual and the
2 guidelines that we had, if that was -- if they were
3 entitled to that citizenship.

Page 37

4 Q. And can you explain what you mean by
5 "pending"?

6 A. "Pending," meaning in process, not
7 determined yet.

8 Q. And was it common to put applications
9 into this pending status?

10 A. Could you be a bit more specific? What
11 do you mean by "common"?

Terri Nathine Frances Day

12/20/2018

12 Q. Sure. In your experience, adjudicating
13 applications for U.S. passports and CRBA, was it
14 your typical practice to put an application into
15 pending status?

16 A. If the application called for it, yes,
17 without a doubt I would have put it in a pending
18 status, which -- so pending -- pending
19 documentation could include a birth certificate, a
20 photo, a signature that needed to be done. It
21 could mean a whole list of things. So it was
22 definitely something that was -- that happened
23 fairly frequently.

Page 47

12 Q. And I think before you referred to
13 there's a checklist you go through. Is that a
14 metaphorical checklist or is that a physical
15 checklist?

16 A. That is a metaphorical checklist. We
17 know based on the FAM what documents are required,
18 what things we need to know about the parent and
19 about the parents' relationship with the child. We
20 know that, but you're not going to go through the
21 FAM, you know, line by line. You're going to know
22 what it's asking you, and then you're going to --
23 you're going to say, "Okay, have I seen this?"
24 Yes. "Have I seen this?" No. Et cetera.

Page 48

6 Q. So in that window from January 2017 to
7 March 2017 when you were working at the Toronto
8 consulate, did you have authority to make a final
9 decision whether to approve or deny applications?

10 A. Yes.

Page 59

2 Q. Did you ever consult any other

Terri Nathine Frances Day

12/20/2018

3 documents or guidance of any kind during the course
4 of your adjudication of U.S. passport and CRBA
5 applications?

6 A. I would say no.

7 Q. Did you ever consult the FAM?

8 A. Yes.

9 Q. Was there anything else that you ever
10 consulted?

11 A. I can't -- I can't say with 100 percent
12 certainty. I don't remember specifically, but in
13 my experience, the FAM is the -- is the guideline
14 that is followed. If there are changes and they
15 are communicated to us through our managers, be it
16 in NIV, IV or ACS.

Pages 94-95

23 Q. So you stated earlier that you were
24 personally involved in the adjudication of A.J.'s
25 and E.J.'s applications for U.S. passports and

1 CRBAs; is that correct?

2 A. Yes.

3 Q. And what was your role?

4 A. I was the adjudicating officer. So I
5 took in the -- I -- after the local staff took in
6 the documents, I reviewed them and I certified
7 copies. I gave an oath to the parents and had them
8 sign the documents. I interviewed them, and then I
9 was ultimately responsible for approving or denying
10 those applications.

11 Q. Was anyone else involved in that
12 adjudication? And we'll start with E.J.

13 A. Can I just say for both of them -

14 Q. Sure.

15 A. -- because they were -- they were
16 treated as -- I mean, all the information that's
17 true for one -- in the initial interview phase, as

Terri Nathine Frances Day

12/20/2018

18 far as I knew, it would have been true for the
19 other. So no one was -- I mean, I consulted with
20 my manager about the case, and she brought in
21 Maggie Ramsay as well. But during the -- and
22 during the interview, at a certain point, Maggie
23 Ramsay did speak to the family. So in that way,
24 people were involved, but the ultimate decision was
25 mine.

Pages 110-112

22 Q. And then when you first met the
23 Dvash-Banks family, did you meet them in the
24 waitingroom?

25 A. No. So I would call the family up to

1 my window. I -- we have an intercom. I would say,
2 "Dvash-Banks family to window C."

3 Q. And then I think you testified earlier
4 that at that point, you would have sworn the
5 parents; is that correct?

6 A. Uh-huh.

7 Q. And then what would happen next? What
8 happened next?

9 A. What would happen next is we would
10 begin the interview. They would sign documents,
11 specifically. We would get all the clerical stuff
12 out of the way, and they would sign documents. We
13 would -- I would -- I would confirm their identity
14 to the photos. I would look at the kids. All of
15 that -- those things that you have to do at the
16 very beginning are all clerical things.

17 And then I would determine -- now, the
18 section of the law that they would fall under is
19 already -- you know, we already know the situation.
20 So I'm coming into it with that mind-set. If
21 during the course of the interview I find something
22 out different, then, obviously, I would change.

Terri Nathine Frances Day

12/20/2018

23 But for the most part, you know, I would ask them
24 questions along the lines of, okay, you know, your
25 marriage certificate, when did you get married, et

1 cetera, and then talking about the kids, how they
2 were conceived. If I have any questions about
3 that, I would ask that at that time. And then
4 we -- and then that's when we would get into, okay,
5 how they were conceived, who -- you know, who's
6 biologically related to whom, and then -- and on
7 through.

8 Q. And to the best of your recollection,
9 is this what happened on the day that you
10 interviewed the Dvash-Banks family?

11 A. I would say yes.

Pages 119-120

22 Q: Do you remember anything that
23 Andrew and Elad said to you that made you feel like
24 they thought they were being attacked?)

25 THE WITNESS: I do remember them --

1 especially Andrew saying, you know, these are our
2 children. These are our sons. I'm the dad, and
3 this is -- you know, and Elad, I think is his name,
4 Elad is the dad. You know, we're the parents of
5 these boys. You know, they're -- those kinds of
6 things, which made me kind of feel like -- I mean,
7 they were feeling that they were, you know, being
8 attacked. And it was directed at me, you know, no
9 doubt, not -- not necessarily at the FAM. They
10 probably don't -- have never heard of it until now.
11 But, you know -- so, yeah, that was -- those were
12 the kinds of things that they were saying.

Pages 121-122

19 Q. Still discussing the day of the

Terri Nathine Frances Day

12/20/2018

20 interview, January 4th, 2017, your interaction
21 with -- January 24th -- excuse me - your
22 interaction with the Dvash-Banks family on the day
23 of the interview, and we were talking before the
24 break about your conversation with the Dvash-Banks
25 family; is that correct?

1 A. Yes.

Page 142

19 Q. Did you consider Ontario law to
20 determine whether Andrew and Elad were a married
21 couple?

22 A. In that I had a copy of their marriage
23 certificate from the Ontario government, I -- I
24 looked at that document as a -- as proof of their
25 marriage.

Pages 155-156

24 Q. And is this document Andrew and Elad's
25 Canadian marriage license?

1 A. It would seem to be a marriage license
2 from Ontario, yes. It has their names on it.

3 Q. And did you consider this document to
4 be sufficient proof that Andrew and Elad were
5 married at the time of E.J.'s birth?

6 A. Yes.

Pages 161-162

24 Q. And the marriage license document that
25 is Bates-stamped 00070270-1767 and is marked as

1 Day Exhibit 4, does that refresh your recollection?

2 A. It -- it does. It is a marriage
3 license that has Andrew and Elad's name on it. So
4 if I saw this, I would -- at this point in time I
5 see this, and I would make the determination that
6 they are married, which is -- yeah.

Page 166

16 Q. So does this CRBA that the consulate
17 issued to A.J. reflect that he acquired U.S.
18 citizenship at birth?

19 A. Yes.

20 Q. Is this document, A.J.'s CRBA,
21 consistent, generally, with the form of a CRBA that
22 was in effect in March 2017, to the best of your
23 recollection?

24 A. As far as I recall, yes.

Pages 172-173

5 Q. And can you turn, please, to the
6 document that is Bates-stamped 00070270-1764. And
7 I'll represent for the record that the title of the
8 document is "Statement of Live Birth."

9 A. 1764. Yes

10 Q. What is this document?

11 A. It seems to be a Statement of Live
12 Birth for Ethan Jacob Dvash-Banks.

13 Q. And have you seen this document before?

14 A. Yes, I have.

15 Q. And is this document E.J.'s Canadian
16 birth certificate?

17 A. It would seem to be, yes. A copy of
18 that.

19 Q. And in your review of this document
20 during the process of adjudicating E.J.'s
21 application, did you consider this document to be a
22 true and accurate copy of E.J.'s timely filed
23 Canadian birth certificate?

24 A. Yes.

25 Q. Did you consider this document to be

1 adequate proof that Andrew and Elad Dvash-Banks
2 were E.J.'s parents?

Terri Nathine Frances Day

12/20/2018

3 MS. MARCUS: Objection. Vague as to
4 the term "parents."

5 BY MS. GOLDSMITH:

6 Q. You can answer.

7 A. I need clarification on the term
8 "parents."

9 Q. Did you consider this document to be
10 adequate proof that Andrew and Elad Dvash-Banks are
11 E.J.'s legal parents?

12 A. I would say yes.

Pages 173-174

19 Q. What is this document?

20 A. It is an Ontario -- it seems to be a
21 . . . copy of an Ontario court document that names Elad
22 . . . and Andrew Dvash-Banks as the parents of Ethan
23 . . . Jacob Dvash-Banks.

24 Q. And have you seen this document before?

25 A. I have, yes.

1 Q. Did you consider this document to be
2 adequate proof that Andrew and Elad were E.J.'s
3 parents at the time of E.J.'s birth? And, again,
4 I'm referring to legal parents.

5 A. I would say yes.

Page 217

21 Q. You specifically remember looking at a
22 FAM provision during the time that you were
23 interviewing the Dvash-Banks family's adults?

24 A. Yes

Pages 232-233

23 Q. Would it have made a difference whether
24 you had adjudicated these applications under INA
25 301 versus INA 309 for these cases?

Terri Nathine Frances Day

12/20/2018

1 A. No, it would not have made a
2 difference.

3 Q. Why not?

4 A. Because the biological connection is
5 still required.

6 Q. And your understanding that the
7 biological connection is required, what is that
8 understanding based on?

9 A. It's based on the FAM, what I read in
10 the FAM.

Pages 277-278

18 Q. What is the basis for your opinion that
19 it would not have made a difference whether you had
20 adjudicated E.J.'s application under Section 301
21 versus 309?

22 A. Because both require the biological
23 link -- both require the biological connection.

24 Q. And is your understanding that the
25 basis for that requirement is a provision in the

1 FAM?

2 A. Yes.