**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

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| ALLISON DAWN BLIXT and L. Z.-B.<br><br>Plaintiffs,<br>v.<br><br>The UNITED STATES DEPARTMENT OF STATE, *et al.*<br><br>Defendants. | : | Civ. No. 1:18-cv-00124-EGS |

**JOINT STATUS REPORT**

Plaintiffs, Allison Dawn Blixt and L. Z.-B., by and through his court-appointed *guardian ad litem* Stefania Zaccari (jointly, "Plaintiffs"), together with Defendants, the United States Department of State ("State Department") and the Honorable Michael R. Pompeo, in his official capacity as Secretary of State (jointly, "Defendants"; together, with Plaintiffs, the "Parties"), respectfully file this joint status report in accordance with the Court's October 15, 2019 Minute Order in the above-captioned action ("Action").

**I. Stay of Action**

As Plaintiffs previously informed the Court (ECF No. 45), Plaintiff Allison Dawn Blixt was offered and has accepted an employment opportunity in the United States. The Zaccari-Blixt family ("Family") hopes to relocate to the Northeastern United States by the end of 2019. The jurisdiction in which they will reside is yet to be determined. As part of their relocation, Ms. Blixt filed an application for an immigrant visa for her son, minor Plaintiff L. Z.-B. Under the relevant process, Ms. Blixt had to submit the application in the capacity of L. Z.-B.'s stepmother, notwithstanding her status as L. Z.-B.'s legal parent. The United States

Embassy in London issued L. Z.-B. and Stefania Zaccari-Blixt immigrant visas on October 22, 2019, *see* 8 U.S.C. § 1201, which allows L. Z.-B. to seek admission at a port of entry to the United States as a lawful permanent resident. 8 U.S.C. § 1151(a), (b); 8 U.S.C. § 1181; 8 U.S.C. § 1185. If L. Z.-B. moves to the United States prior to the expiration of his visa and meets the other relevant requirements, L. Z.-B. will become a permanent resident of the United States upon entry. *See id.* §§ 1201(c), 1222, 1225(a)–(b); *accord Scialabba* v. *Cuellar de Osorio*, 573 U.S. 41, 49 (2014).

L. Z.-B.'s relocation to the United States could affect the statutory provisions on which he relies for his claims in this Action. Among other things, because L. Z.-B. currently resides outside the United States, he was not eligible to assert a claim under 8 U.S.C. § 1503(a), which may be brought by a plaintiff residing in the United States in the district in which the plaintiff resides. Under Section 1503(a), an individual "who is within the United States" and whom the federal government denies a "right or privilege . . . upon the ground that he is not a national of the United States" may "institute an action . . . for a judgment declaring him to be a national of the United States." 8 U.S.C. § 1503(a). The statutory claims on behalf of L. Z.-B. in this Action were asserted only under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). If L. Z.-B. relocates to the United States, he could assert directly under Section 1503(a) a claim that he acquired citizenship at birth pursuant to Section 301(g) of the Immigration and Nationality Act of 1952 ("INA") (codified at 8 U.S.C. § 1401(g)).[1] Lawsuits brought under Section 1503(a) "shall be filed in the district court of the United States for the district in which such person resides or claims a residence." 8 U.S.C. § 1503(a).

[1] In *Dvash-Banks* v. *U.S. Dep't of State*, No. 2:18-cv-00523 (C.D. Cal.), the district court granted summary judgment to the plaintiffs on their Section 1503(a) claim, declaring that the minor plaintiff acquired U.S. citizenship at birth.

Because a relocation of L. Z.-B. could affect Plaintiffs' statutory claims and likely would require that those claims be heard in a different district, the Parties respectfully submit that it may preserve judicial and party resources for the Court to stay the Action until the currently developing circumstances become clearer. In view of Plaintiffs' current expectation that they will be able to relocate to the United States by the end of 2019, Plaintiffs request that the Court stay the Action until January 17, 2020, and direct the Parties to submit a status report to the Court by that date. Plaintiffs expect that, if by that time L. Z.-B. resides in the United States, they may seek to transfer this Action to the United States jurisdiction to which the Family relocates and thereafter to amend the Complaint to include a claim under 1503(a), which for the reasons discussed above Plaintiffs did not previously assert.

## II. Impact of Plaintiff L. Z.-B.'s Application for Permanent Residency

The Parties agree that based on the facts provided in this status report and Plaintiffs' October 2, 2019 letter to the court, Plaintiff L. Z.-B.'s application for an immigrant visa and subsequent ability upon admission to reside permanently in the United States as a lawful permanent resident does not moot this Action at this time.

**Plaintiffs' Position**

In this Action, L. Z.-B. seeks recognition by the United States government of his pre-existing status as a U.S. citizen at birth. *See Miller* v. *Albright*, 523 U.S. 420, 432 (1998) (plurality opinion) (were plaintiff to prevail in her claim "the judgment in her favor would confirm her pre-existing citizenship rather than grant her rights that she does not now possess.") The D.C. Circuit and district courts within it have recognized the distinction between lawful permanent residence and birthright citizenship. *See Nikoi* v. *Atty Gen. of the United States*, 939 F.2d 1065, 1070 (D.C. Cir. 1991) (contrasting the constitutional right to retain one's citizenship,

absent voluntary disavowal, with the mere "privilege" of residing permanently in the United States); *Entines* v. *United States*, 160 F. Supp. 3d 208, 212 (D.D.C. 2016) (holding that plaintiff's claim for a declaration of birthright citizenship was not moot even though plaintiff was naturalized because a declaration of birthright citizenship would "entitle him to various types of retroactive monetary relief" to which he was not entitled as a naturalized citizen).

In *Nikoi*, which addressed whether the plaintiffs had abandoned their eligibility for permanent resident status, the D.C. Circuit stated that plaintiffs "have pointed to no precedent that suggests that a right to permanent resident status is comparable to citizenship." *Nikoi*, 939 F.2d at 1027. Indeed, it is not. There are significant differences between the rights afforded to lawful permanent residents and U.S. citizens. *Cf*. U.S. Const. art. I, §§ 2–3 (requiring that United States senators and representatives be citizens); *id*. art. II, § 1 (requiring that the President be a natural-born citizen); *id*. amend. XII (requiring that the Vice President be a natural-born citizen); *id*. amends. XV, XIX, XXVI (protecting the right of United States citizens to vote from abridgment on certain bases); 18 U.S.C. § 611 (prohibiting aliens, such as lawful permanent residents, from voting in U.S. elections, absent certain exceptional circumstances). In addition, lawful permanent residents are included within the INA's definition of "aliens," 8 U.S.C § 1101(a)(3), and thus are subject to various grounds for deportation, such as the commission of certain criminal offenses. 8 U.S.C. § 1227. Even if lawful permanent residence in the United States were to lead to naturalization, which is granted only at the *discretion* of the United States government, that citizenship still would not provide full relief because it does not afford all the rights and protections of birthright citizenship. *See* U.S. CONST. arts. and amends., *supra* (requiring birth citizenship for certain government offices); 8 U.S.C. § 1451 (providing for the revocation of naturalization).

Even if L. Z.-B. were to become a lawful permanent resident of the United States, that status would not afford him the relief he seeks in this Action, which can occur only if this Court recognizes him as a U.S. citizen at birth with all attendant rights and privileges. Thus, the Family's expected relocation to the United States and requested grant of legal permanent resident status to L. Z.-B. cannot moot this Action. "A case becomes moot only when it is impossible for a court to grant any effectual relief whatsoever to the prevailing party. [A]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Knox* v. *Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307–08 (2012) (internal citations and quotations omitted); *see also Church of Scientology of Cal.* v. *United States*, 506 U.S. 9, 13 (1992)) ("the availability of [a] 'possible remedy' is 'sufficient to [a] prevent [a] case from being moot.'"); *Daingerfield Island Protective Soc'y* v. *Lujan*, 920 F.2d 32, 36 (D.C. Cir. 1990) (the "burden of demonstrating mootness is a heavy one") (internal quotations omitted).

In sum, relocation to the United States would allow Plaintiff L. Z.-B. to pursue an additional claim under Section 1503(a) in the United States jurisdiction to which he relocates; and neither L. Z.-B.'s application for lawful permanent residency status in the United States nor a grant of that application would moot this Action.

**Defendants' Position**:

This Court requested that the government "address what impact, if any, will L. Z.-B.'s application for permanent residency have on this case." Oct. 15, 2019 Minute Order. Two issues bear mention. First, upon his relocation to the United States as a lawful permanent resident, it is possible for L.Z.-B. to challenge the State Department's previous denial of his Consular Report

of Birth Abroad application under 8 U.S.C. § 1503(a), in the district into which he relocates.[2] Further, the procedures for seeking relief set forth in Section 1503(a) provide an adequate remedy at law such that Plaintiffs' current claim under the Administrative Procedure Act would warrant dismissal. *See Alsaidi v. U.S. Dep't of State*, 292 F. Supp. 3d 320, 326 (D.D.C. 2018) ("[C]ourts have repeatedly dismissed APA claims challenging the denial of a passport application or a passport revocation on grounds that the holder is not a U.S. national, reasoning that . . . a judicial declaration of citizenship and entitlement to a passport may be directly sought through 8 U.S.C. § 1503(a)." (quoting *Villarreal v. Horn*, 203 F.Supp.3d 765, 773 (S.D. Tex. 2016)). *See also Dvash-Banks v. Pompeo*, Civ. No. 18-523, 2019 WL 911799 at *5–6 (C.D. Cal. Feb. 21, 2019) (dismissing APA claim and granting § 1503 claim).

Second, should L. Z.-B obtain permanent residency, L. Z.-B could pursue alternative paths to U.S. citizenship while living in the United States as a lawful permanent resident. *See, e.g.*, 8 U.S.C. § 1431 (entitled "Children Born Outside the United States and Residing Permanently in the United States; Conditions Under Which Citizenship Automatically Acquired"); *accord* Opening Brief at 33–34, *E.J.D.-B., et al v. U.S. Dep't of State*, 19-55517 (9th Cir.).

[2] Defendants reserve their right to assert all available defenses against whatever claims, if any, Plaintiffs choose to pursue in this Court or elsewhere.

Dated: October 25, 2019

Respectfully submitted,

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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

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| ALLISON DAWN BLIXT and LUCAS ALEXANDER ZACCARI-BLIXT<br><br>Plaintiffs,<br>v.<br><br>The UNITED STATES DEPARTMENT OF STATE and MICHAEL R. POMPEO in his official capacity as Secretary, U.S. Department of State<br><br>Defendants. | : | Civ. No. 1:18-cv-00124-EGS |

**[PROPOSED] ORDER**

Upon consideration of the Parties' joint status report, and for good cause shown, it is HEREBY ORDERED that this case is STAYED until January 17, 2020. The parties are hereby ORDERED to file a joint status report on or before January 17, 2020, with a recommendation for further proceedings.

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Date

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Emmett G. Sullivan
United States District Judge