

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

ALLISON DAWN BLIXT and	:	
L. Z.-B.,	:	
	:	
Plaintiffs,	:	
v.	:	
	:	Civ. No. 2:20-cv-02102-KM-JBC
The UNITED STATES	:	
DEPARTMENT OF STATE and	:	Hon. Kevin McNulty
ANTONY J. BLINKEN in his	:	
official capacity as Secretary, U.S.	:	
Department of State,	:	
	:	
Defendants.	:	

**OPPOSITION TO DEFENDANTS’ MOTION FOR 60-DAY STAY OF
CASE DEADLINES**

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Plaintiffs Allison Dawn Blixt and L. Z.-B., by and through his guardian *ad litem*, Stefania Zaccari, (collectively, “Plaintiffs”) respectfully submit this opposition to *Defendants’ Notice of Motion and Motion for 60-Day Stay of Case Deadlines* (“Motion”) (ECF No. 73) filed in the above-captioned action (“Action”) by Defendants The United States Department of State and The Honorable Antony J. Blinken, in his capacity as Secretary of State (collectively, “Defendants,” and together with Plaintiffs, the “Parties”).

Defendants’ Motion, which was filed late in the afternoon two business days before the extended due date for reply briefs, seeks an essentially unlimited stay of the resolution of this Action while Defendants consider at their convenience whether to amend their internal policy requiring that an individual seeking recognition of U.S. citizenship at birth pursuant to Section 301(g) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1401(g), (“Section 301(g)”) must demonstrate a biological relationship with a U.S. citizen parent. Although the Motion asks for “a 60-day stay of case deadlines” (Motion ¶ 6), Defendants propose merely that the Parties file a joint status report at the end of that period (*id.* ¶ 9). The Motion nowhere commits to deadlines for conclusion of Defendants’ supposed reconsideration of their policies or for any further filings relating to the pending summary judgment motions. The Motion fails to demonstrate that “the interests of

justice mandate such . . . an extraordinary remedy.” *Akishev v. Kapustin*, 23 F. Supp. 3d 440, 445 (D.N.J. 2014) (internal quotation marks and citation omitted).

Plaintiffs are committed to help conserve this Court’s resources and to accommodate efforts to reach a resolution of the Action that does not require this Court’s intervention—indeed, Plaintiffs repeatedly have done so in this Action. But the Motion does not offer any concrete avenue for such a result. Rather, all that Defendants propose is yet another last-minute postponement of deadlines they have known about for months in an action they have been litigating for years. In essence, Defendants say that Plaintiffs should just sit patiently while Defendants take time to decide on their litigation approach. At the end of that process, Defendants note, they might be in a position to agree to a resolution of the Action, but they might not—and they offer no commitment or projection on how long they will take to address the matter. The Motion thus seeks to flout the Court’s previously-ordered deadlines and to run roughshod over the interests of Plaintiffs in finally obtaining recognition that L. Z.-B. is a U.S. citizen at birth and ending the stigma and other concrete harms effected by Defendants’ steadfast resistance to that outcome.

None of the Action, the pending cross-motions for summary judgment, nor the deadline for filing reply briefs in support of those motions were a surprise to Defendants necessitating a stay for Defendants to consider and formulate a position on these issues, which Defendants have been litigating for years. Plaintiffs

commenced this Action in January 2018 in the District of Columbia and it was transferred by joint motion of the Parties to this Court in February 2020. Shortly after the filing of the Action, Plaintiffs agreed to several requests by Defendants to extend the time for Defendants to file a responsive pleading in 2018 based on Defendants' representation that they were "consider[ing] approaches which could resolve the instant litigation." (ECF No. 27; *see also* ECF Nos. 22, 24.) Defendants ultimately decided, however, to move forward with their opposition.

Throughout, Defendants have resisted Plaintiffs' arguments and opposed Plaintiffs' requested relief notwithstanding that an unbroken string of eight federal court decisions has supported Plaintiffs' positions. During the pendency of this Action, at least four other cases were filed taking the same positions and seeking similar relief to those asserted and sought here by Plaintiffs; and in that time, the courts have issued five decisions supporting those arguments and granting that relief. Defendants actively litigated those cases (each time to a loss) and have been fully familiar for years with all the relevant issues, authorities, and considerations.

The Court set the briefing schedule for the pending cross-motions for summary judgment in Magistrate Judge Clark's Letter Order, dated September 14, 2020 (ECF No. 64), more than five months ago, and Defendants have already filed two briefs in connection with those motions. Nonetheless, this is not the first time Defendants have sought to push off the deadline for the reply briefs. The Court

initially set February 4, 2021 as the deadline for the reply briefs. Although the recent presidential election occurred in November 2020, Defendants waited until January 28, 2021 to request an extension of that deadline. At that time, Plaintiffs consented to a 30-day extension, subject to the Court's approval, to enable the new administration to reconsider its litigation position; but Plaintiffs informed Defendants that Plaintiffs would not consent to a longer, or further, extension. Plaintiffs heard nothing further from Defendants until March 2, when Defendants asked Plaintiffs to consent to their new proposal, an open-ended stay of the Action while Defendants mull over the issues. Significantly, Defendants' Motion does not indicate what, if anything, Defendants did during the previously extended period to address the Action or make any representations as to efforts that Defendants will take to deal with this matter expeditiously and in good faith if a further extension were granted.

This Motion also fails to address the prejudice to Plaintiffs from Defendants' efforts to stop the clock (for as long as Defendants wish) while Defendants think about the policies at issue in this case. It is fundamental that a stay should not be granted when, as here, it would be unduly prejudicial to the non-moving party and the moving party would not suffer hardship if it were denied. *See Akishev*, 23 F. Supp. 3d at 446 (“[T]he movant must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility

that the stay will work damage to someone else.”) (internal quotation marks, alterations, and citation omitted).

In determining whether to grant a stay, courts typically consider the following four factors: “(1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party[;] (2) whether denial of the stay would create a clear case of hardship or inequity for the moving party[;] (3) whether a stay would simplify the issues and the trial of the case[;] and (4) whether discovery is complete and/or a trial date has been set.” *Actelion Pharms. Ltd. v. Apotex Inc.*, 2013 WL 5524078, at *3 (D.N.J. Sept. 6, 2013) (internal quotations, alterations, and citations omitted). Defendants’ stay request fails to satisfy any of these elements.

First, Plaintiffs would suffer undue prejudice because the requested stay “would substantially delay [Plaintiffs’] efforts to diligently proceed” to obtain recognition that L. Z.-B. is a U.S. citizen at birth. *Trusted Transp. Sols. v. Guarantee Ins. Co.*, 2018 WL 2187379, at *4 (D.N.J. May 11, 2018) (internal quotation marks and citation omitted); *see Golden Quality Ice Cream Co., Inc. v. Deerfield Specialty Papers, Inc.*, 87 F.R.D. 53, 56 (E.D. Pa. 1980) (“Any plaintiff in the federal courts enjoys the right to pursue his [or her] case and to vindicate his [or her] claim expeditiously.”). The Parties have been litigating this case for more than three years and this Court permitted the bifurcation of the proceedings in this Action precisely to facilitate the expedited resolution of this issue. Pursuant to the schedule set forth

in Magistrate Judge Clark's September 14, 2020 Letter Order, (ECF No. 64), the Parties filed their cross-motions for partial summary judgment on L. Z.-B.'s claim under 8 U.S.C. § 1503(a) ("Section 1503(a)") more than three months ago, on November 18, 2020 (ECF Nos. 66, 67). The Parties' filing of their short replies in support of their respective motions for partial summary judgment on the Section 1503(a) claim will conclude the briefing on those motions. Staying the Action would unnecessarily prolong the determination of L. Z.-B.'s claim to U.S. citizenship at birth.

Second, Defendants have not adequately articulated how proceeding on the Court-ordered briefing schedule would cause them hardship or inequity. Defendants have had ample time to formulate their position on whether L. Z.-B. is a U.S. citizen at birth. The Court's determination of this narrow question does not depend on, and need not await, the resolution of broader policy issues within the State Department. Plaintiffs concur that Defendants should have an appropriate opportunity to consider modification of any governmental policy, including the one at issue here, but not at the expense of the rights of others. Here, there is no need for the requested stay to accommodate both interests. Indeed, Defendants repeatedly have taken the position that the Action involves only the citizenship determination of one individual (L. Z.-B.) and does not require (or even provide the predicate for) a broad reversal or nullification of the State Department's policy requiring

demonstration of a biological relationship for U.S. citizenship at birth under Section 301(g). (*See, e.g.*, ECF No. 31-1 at 25; ECF No. 66-6 at 13.) Thus, Defendants could simply withdraw their opposition to Plaintiffs' Section 1503(a) claim, effectively resolving this Action, and take as much time as they reasonably need to consider and implement any broad policy changes. Defendants previously have taken similar action, as they have decided not to proceed with appeals from judgments entered against them in two similar actions raising claims concerning Section 301(g). In one case, Defendants initially filed, and later withdrew, an appeal to the Fourth Circuit from a judgment of the District of Maryland, *Kiviti v. Pompeo*, Case No. 20-1882 (4th Cir. Oct. 26, 2020), ECF No. 14 (granting Defendants' withdrawal of appeal); and in another case, Defendants decided not to appeal to the Eleventh Circuit from a judgment of the Northern District of Georgia, *Mize v. Pompeo*, Case No. 19-cv-03331 (N.D. Ga.).

Third, it is far from certain that a stay would simplify the issues in the Action. Defendants acknowledge that, even if a stay were granted, they ultimately might elect *not* to make any policy change. (Motion at ¶¶ 3, 6, 8.) Alternatively, Defendants might decide to change the policy in a way that does not provide L. Z.-B. the relief he seeks. As noted above, Defendants previously "consider[ed] approaches which could resolve the instant litigation" (ECF No. 27), but ultimately decided not to pursue any of them; and, Defendants' Motion neither offers

assurances that a policy change would be made (or even seriously considered) nor commits to a timeline for when relief might be available to Plaintiffs through any policy change. (Motion ¶ 6); *see Trusted Transp. Sols.*, 2018 WL 2187379, at *4 (finding undue prejudice when it was not possible to “reasonabl[y] predict[]” when the circumstances underlying the request for stay would change).

Fourth, Plaintiffs’ Section 1503(a) claim is nearing resolution. At the Parties’ request, the Court agreed to bifurcate the proceedings and proceed first to summary judgment on Plaintiffs’ Section 1503(a) claim without additional discovery. (*See* ECF No. 66-6 at 7.) The Parties have only to submit their reply briefs in order to complete the briefing on the pending cross-motions for summary judgment. Moreover, the Parties agree that there is no genuine dispute of material fact in the case and that the Court can resolve Plaintiffs’ Section 1503(a) claim on summary judgment.¹ Plaintiffs fully support, and would work in good faith to promote, any reasonable attempt to conserve judicial resources and avoid asking the Court to address issues or matters that do not require the Court’s attention. The assertion in Defendants’ Motion, however, that a stay would promote “judicial

¹ The Parties deferred the issue of what, if any, discovery would be warranted in connection with Plaintiffs’ constitutional claims until after adjudication of Plaintiffs’ Section 1503(a) claim, as there may be no need for the Court to address the merits of the constitutional claims, depending on the Court’s decision on the Section 1503(a) claim.

economy” through the “potential avoidance of complex questions of statutory and constitutional law” is an overstatement. The pending cross-motions for partial summary judgment concern only the statutory claim and do not require a ruling on claims arising under constitutional law. The only required exercise of judicial resources at this stage is for adjudication of whether L. Z.-B. is a U.S. citizen at birth under Section 301(g). More fundamentally, the Motion offers only the certainty of delay with no indication of any prospect that the requested extension would actually obviate the need for the Court to adjudicate the pending summary judgment motions or otherwise have to resolve the Action. If Defendants really wish to stop imposing unnecessarily on the Court’s resources, they know exactly what should be done: They should withdraw their opposition to Plaintiffs’ summary judgment motion and to the entry of an order recognizing L. Z.-B. as a U.S. citizen at birth, a result that would accord with the uniform decisions of all the federal courts that have addressed (and rejected) Defendants’ interpretation of Section 301(g). Defendants could then take all the time they require to reconsider their immigration policies and procedures.

Accordingly, Plaintiffs respectfully propose that (a) the Parties file their replies in support of their respective cross-motions for partial summary judgment on the Section 1503(a) claim by the current deadline, March 8, 2021; and (b) Defendants report to the Court at or before the March 31, 2021 status conference currently scheduled before Magistrate Judge Clark (see ECF No. 64) whether they

withdraw Defendants' Motion for Partial Summary Judgment on Plaintiffs' Claim Under 8 U.S.C. § 1401 (ECF No. 67) and opposition to Plaintiffs' Motion for Partial Summary Judgment (ECF No. 70). Plaintiffs further respectfully propose that the Court defer ruling on the Parties' cross-motions prior to March 31, 2021, by which time it would be clear whether there is any need for the Court to address the motions. Plaintiffs respectfully submit that this proposal would best promote the interests of justice and conserve judicial resources.

Dated: March 5, 2021

Respectfully Submitted,

/s/ Theodore Edelman

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