

QUESTIONS PRESENTED FOR REVIEW

1. Does lost income due to the ETA Alien Labor Certification Officer's (CO's) certification of an ETA Form 9035 - Labor Condition Application (LCA) that is not compliant with 8 U.S.C. § 1182(a)(5)(A) constitute a private property interest for the purposes of establishing a case for a Fifth Amendment taking pursuant to 28 U.S.C. § 1491(a)(1)?
2. Does the failure of the ESA Wage & Hour Division (Administrator) to adjudicate an appeal of a certified LCA filed by an U.S. Worker that clearly presents a "reasonable cause" of a violation of 20 C.F.R. 655.805(a)(1), 20 C.F.R. 655.805(a)(3), 20 C.F.R. 655.805(a)(5), 20 C.F.R. 655.805(a)(7) or 20 C.F.R. 655.805(a)(10), 20 C.F.R. 655.805(a)(9), and 20 C.F.R. 655.805(a)(16) resulting in a certified LCA that is not compliant with 8 U.S.C. § 1182(a)(5)(A) constitute a liability against the United States for a monetary amount allowed by 20 C.F.R. 655.810(e)(2) pursuant to 28 U.S.C. § 1494?

- 2 -

PARTY

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW..... 1
PARTY..... 2
TABLE OF CONTENTS..... 3
TABLE OF AUTHORITIES..... 4
JURISDICTION..... 5
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED... 5
STATEMENT OF CASE..... 6
REASONS FOR GRANTING THE PETITION..... 7
CONCLUSION..... 8
PROOF OF SERVICE..... 9

APPENDIXES

APPENDIX – ORIGINAL ANSWERS TO POINTS IN OPPOSITION,
MEMORANDUM OF OPINION AND MANDATE, CORRECTED
APPELLANT'S BRIEF (SEPERATE COVER), AND ORIGINAL
APPELLANT'S BRIEF - APPENDIX.

TABLE OF AUTHORITIES

CODE OF FEDERAL REGULATIONS.....

 TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES.....

 20 C.F.R. 655.805(a)(1)..... 1

 20 C.F.R. 655.805(a)(10)..... 1

 20 C.F.R. 655.805(a)(16)..... 1

 20 C.F.R. 655.805(a)(3)..... 1

 20 C.F.R. 655.805(a)(5)..... 1

 20 C.F.R. 655.805(a)(7)..... 1

 20 C.F.R. 655.805(a)(9)..... 1

 20 C.F.R. 655.806(a)(2)..... 6

 20 C.F.R. 655.810(e)(2)..... 1

RULES OF THE SUPREME COURT OF THE UNITED STATES.....

 Rule 29..... 9

UNITED STATES CODE.....

 ADMINISTRATIVE PROCEDURE ACT.....

 5 U.S.C. § 701..... 5, 6

 5 U.S.C. § 706..... 5, 6

 CRIMINAL CODE.....

 18 U.S.C. § 1001..... 5, 7, 8

 18 U.S.C. § 1091(a)(4)..... 5

 18 U.S.C. § 1546..... 5, 7, 8

 18 U.S.C. § 241..... 5, 7

 18 U.S.C. § 242..... 5, 7

 IMMIGRATION AND NATIONALITY ACT.....

 8 U.S.C. § 1182(a)(5)(A)..... 1, 5, 7, 8

 8 U.S.C. § 1182(n)..... 7

 8 U.S.C. § 1182(t)..... 7

 8 U.S.C. § 1182(t)(2)(C)..... 5

 8 U.S.C. § 1361..... 7

 JUDICIARY AND JUDICIAL PROCEDURE.....

 28 U.S.C. § 1254(1)..... 5

 JUDICIARY AND JUDICIAL PROCEDURE CODE.....

 28 U.S.C. § 1331..... 6

 28 U.S.C. § 1361..... 5, 6

 28 U.S.C. § 2072..... 6

 28 U.S.C. § 2201..... 6

 TUCKER ACT.....

 28 U.S.C. § 1491(a)(1)..... 1, 5, 6

 28 U.S.C. § 1494..... 1, 5, 6, 7

 28 U.S.C. § 1500..... 5, 6, 7

UNITED STATES CONSTITUTION.....

 BILL OF RIGHTS.....

Fifth Amendment.....1, 5, 7
 UNITED STATES DISTRICT COURT.....
 Liberty Fund Inc. v. Chao.....6

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL CONSOLIDATED PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the *Court of Appeals for the Federal Circuit's* unpublished opinion and mandate regarding my claim filed against the United States. A paper copy of the lower court's opinion is enclosed with this petition.

JURISDICTION

The date on which the *Court of Appeals for the Federal Circuit* decided my case was Wednesday, June 6, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. My appeals to the U.S. District Court for the Northern District of Texas involved judicial reviews filed pursuant to 28 U.S.C. § 1361 and in accordance with 5 U.S.C. § 701 through 5 U.S.C. § 706. The matter before the U.S. Court of Federal Claims was an original civil action filed under the Tucker Act [28 U.S.C. § 1491(a)(1) contingent 28 U.S.C. § 1494 and 28 U.S.C. § 1500].
2. 8 U.S.C. § 1182(t)(2)(C) allows for H-1B employer's willing to commit civil rights crimes and document fraud [18 U.S.C. § 241 and 18 U.S.C. § 242 under the color of 8 U.S.C. § 1182(a)(5)(A), 18 U.S.C. § 1001, and 18 U.S.C. § 1546] to accomplish a Fifth Amendment taking under the guise of the ETA Alien Labor Certification Officer (CO) for the benefit of an H-1B Nonimmigrant Worker (a.k.a. immigration benefits fraud ... not public use).
3. 8 U.S.C. § 1182(a)(5)(A) was not intended by Congress to be a source of Fifth Amendment takings. Failure of ESA Wage & Hour Division (Administrator), Office of Administrative Law Judges (ALJ), Administrative Review Board (ARB), and Office of the Inspector General, Criminal Investigation Division (IG-CID) to enforce the rule of law has allowed foreign nationals, countries, and entities to effectively commit genocide [18 U.S.C. § 1091(a)(4)] against U.S. Workers.
4. The claims court wrongfully dismissed my claim under the Fifth Amendment because 8 U.S.C. § 1182(t)(2)(C) clearly delegates the authority of the CO pursuant to 8 U.S.C. § 1182(a)(5)(A).

Consequently, the H-1B employers were acting under the sovereign authority of the U.S. establishing accountability under 28 U.S.C. § 1491(a)(1) contingent my compliance with 28 U.S.C. § 1494 and 28 U.S.C. § 1500.

STATEMENT OF CASE

The INA does not provide a right of private action for U.S. Workers. U.S. Workers aggrieved by the certification of a LCA under the H-1B nonimmigrant program may file an appeal with the Administrator. The Administrator has a well documented policy of quashing actionable U.S. Worker alien labor certification appeals via 20 C.F.R. 655.806(a)(2). The Administrator's contempt for the rule of law was documented by the U.S. HOUSE OF REPRESENTATIVES, *Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Claims* during an oversight hearing held on Thursday, June 22, 2006. The video and sworn testimony is available via the Internet. The Administrator's alien labor certification enforcement policy has successfully disenfranchised millions of U.S. Workers. This policy is the **root cause** of the immigration crisis being discussed in Congress.

The U.S. District Court for the Northern District of Texas wrongfully dismissed my petition for judicial due to lack of subject-matter jurisdiction. The government and H-1B employer successfully argued that I had filed an original civil action when the documents on file with the court indicated an application for writ of mandamus (28 U.S.C. § 1361 in accordance with 5 U.S.C. § 701 through 5 U.S.C. § 706), declaratory judgment (28 U.S.C. § 1331 and 28 U.S.C. § 2201), and supplemental writ of mandamus. Being an appeal of a final agency decision (*Liberty Fund Inc. v. Chao*¹), the matter was required by the supreme court (28 U.S.C. § 2072) to follow the Federal Rules of Appellate Procedure (FRAP) and the Fifth Circuit Rules and Internal Operating Procedures. This is not what happened.

The matter was appealed to the Court of Appeals for the Fifth Circuit and wrongfully dismissed for lack of subject-matter jurisdiction. The matter was then docketed with the U.S. Court of Federal Claims as an original civil action under the Tucker Act [28 U.S.C. § 1491(a)(1) contingent 28 U.S.C. § 1494 and 28 U.S.C. § 1500] against the United States. Following the claims court's wrongful dismissal and contemporaneously with my appeal filed in this court, a petition for writ of

1 District court had subject-matter jurisdiction, in action for mandamus relief, to review claims of unreasonable delay by Department of Labor in processing employers' applications for permanent labor certification on behalf of aliens, given that Administrative Procedure Act (APA) required agencies to act within reasonable time authorized reviewing court to compel agency action that was unreasonably delayed. *Liberty Fund, Inc. v. Chao*, D.D.C. 2005, 394 F.Supp.2d 105.

certiorari was filed in the Supreme Court of the United States. The supreme court's denial of my petition for writ of certiorari on the fifth circuit established subject-matter jurisdiction for the federal circuit regarding all three of my claims of failure to adjudicate alien labor certification appeals (28 U.S.C. § 1500).

The government's argument that I sought a judicial review in the claims court is false. The matter was docketed as an original civil action against the United States. The government's argument that there is no actionable Fifth Amendment taking is false. The H-1B employers were acting under the sovereign authority of the United States while committing civil rights crimes and document fraud for the purpose of a Fifth Amendment taking for the benefit of a H-1B nonimmigrant worker. The government's argument that I am not an officer or agent of the United States is true and is not relevant to the subject-matter before the court. There is no case law regarding a complaint filed pursuant to 28 U.S.C. § 1494² where a plaintiff is demanding relief **FROM** the United States. Consequently, the case law cited by the government where the plaintiff is demanding relief to be paid **TO** the United States and is not relevant to the subject-matter of my appeal.

I am a long-term aggrieved party of the Administrator's alien labor certification enforcement policy and have filed numerous prima facie alien labor certification appeals which were effectively dismissed with prejudice. This petition covers three of my actionable alien labor certification appeals.

REASONS FOR GRANTING THE PETITION

8 U.S.C. § 1182(a)(5)(A), 8 U.S.C. § 1182(n), 8 U.S.C. § 1182(t), and 8 U.S.C. § 1361 are the statutory provisions establishing both the permanent and temporary H-1B visa programs. Agency tribunal decisions with regard to the permanent H-1B visa program adjudicated by the CO and *Board of Alien Labor Certification Appeals* (BALCA) contradict agency tribunal decisions with regard to the temporary H-1B visa program adjudicated by the Administrator, ALJ, and ARB. Furthermore, the Administrator's national alien labor certification enforcement policy is in criminal violation [18 U.S.C. § 241 and 18 U.S.C. § 242 under the color of 8 U.S.C. § 1182(a)(5)(A)] of U.S. Worker's rights to due process under the Fifth Amendment and allows for unabated criminal fraud (18 U.S.C. § 1001 and 18 U.S.C. § 1546) regarding LCAs certified under the temporary H-1B visa program.

Based upon my empirical observations, L-1 along with H-1B

2 28 U.S.C. § 1494 Accounts of officers, agents or contractors - The United States Court of Federal Claims shall have jurisdiction to determine the amount, if any, **due to or from the United States** by reason of any unsettled account of any officer or agent of, or contractor with, the United States, or a guarantor, surety or personal representative of any such officer, agent or contractor, and to render judgment thereon, where - ...

nonimmigrant workers appear to be a large portion of the source of the demand for illegal alien labor and do not fit any reasonable definition of temporary worker permit program. The data also seems to support the a theory that foreign nationals entering the country under the L-1 and H-1B visa programs are looting (a.k.a. outsourcing/off-shoring) American businesses. For these reasons it is of imperative public importance that my petition for writ of certiorari is granted.

CONCLUSION

After the September 11, 2001 attacks Congress increased U.S. Worker's unemployment benefits to nine months and the vast majority of U.S. Workers exceeded their unemployment benefit allowance. During that same period the maximum number of H-1B nonimmigrant workers allowed to enter the country was also exceeded. Their entry, continued presence, and additional entry H-1B nonimmigrant workers over the past six years is not supported by labor market conditions as required by 8 U.S.C. § 1182(a)(5)(A). Consequently, the vast majority of LCAs certified during this period are a product of fraud (18 U.S.C. § 1001 and 18 U.S.C. § 1546). For this reason it is of imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.

Respectfully submitted,

Mark J. Watson
Friday, June 8, 2007

SUPREME COURT OF THE UNITED STATES

MARK J. WATSON,

Petitioner,

v.

UNITED STATES,

Respondents.

PROOF OF SERVICE

I, Mark J. Watson, do swear or declare that on this date, Friday, June 8, 2007, as required by Supreme Court Rule 29, I have served the enclosed *Motion for Leave to Proceed in Forma Pauperis* and *Original Consolidated Petition for Writ of Certiorari* on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

1. Mr. Gregg M. Schwind, *Trial Attorney*, U.S. DEPARTMENT OF JUSTICE, *Civil Division, Commercial Litigation Branch*, 1100 L Street, N.W., Washington, D.C. 20530;
2. OFFICE OF THE SOLICITOR GENERAL, 950 Pennsylvania Ave., NW, Washington, D.C. 20530-0001.

I declare under penalty of perjury that the foregoing is true and correct. Executed on Friday, June 8, 2007.

Mark J. Watson