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15 UNITED STATES DISTRICT COURT  
 16  
 17 CENTRAL DISTRICT OF CALIFORNIA  
 18  
 19 WESTERN DIVISION

14	CAROLYN ROBB HOOTKINS,	) Case No. CV07-05696 (CAS)
15	et al.,	)
16	Plaintiffs,	) Date: April 20, 2009
17	v.	) Time: 10:00 a.m.
18	JANET NAPOLITANO, Secretary,	) Courtroom: 5
19	U.S. Department of Homeland	) Honorable Christina A. Snyder
20	Security, et al.,	)
21		) DEFENDANTS' OPPOSITION TO
22	Defendants.	) PLAINTIFFS' NOTICE OF MOTION
23		) FOR SUMMARY JUDGMENT
24		) AND MEMORANDUM IN SUPPORT
25		) OF RENEWED MOTION FOR
26		) SUMMARY JUDGMENT
27		)
28		) CLASS ACTION

**MEMORANDUM OF POINTS AND AUTHORITIES**

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**I. INTRODUCTION**

Defendants, by and through their undersigned counsel, respectfully submit this Opposition to Plaintiffs’ Notice of Motion for Summary Judgment and Memorandum in Support of Renewed Motion for Summary Judgment (Plaintiffs’ Renewed Motion for Summary Judgment) (dkt # 113 & 114),<sup>1</sup> with respect to both the claims of Plaintiffs whose cases arise within the jurisdiction of the Ninth Circuit and who are identified members either of the class or subclass certified by this Court (dkt # 108),<sup>2</sup> and Plaintiffs whose cases arise outside the jurisdiction of the Ninth Circuit.<sup>3</sup> This memorandum exceeds the page limitation established by L.R. 11-6 but is within the 35-page limit ordered by the Court (dkt #14). For the reasons set forth *infra* and in the Memorandum of Points and Authorities in Support of Defendants’ Motion for Partial Summary Judgment as to Ninth Circuit Class Plaintiffs (Defendants’ Ninth Circuit Summary Judgment Motion)

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<sup>1</sup> The parties stipulated to and the Court ordered the submission by both parties of a summary judgment motion as to the Ninth Circuit class members and a separate dispositive motion as to Plaintiffs outside the Ninth Circuit (dkt # 111 & 112). However, because Plaintiffs have submitted one dispositive motion as to both the Ninth Circuit class and Plaintiffs outside the Ninth Circuit (dkt # 113 & 114), Defendants submit the instant Opposition as to both the Ninth Circuit class and Plaintiffs outside the Ninth Circuit.

<sup>2</sup> To date, the identified class members are: Carolyn Robb Hootkins, Ana Maria Moncayo-Gigax, Suzanne Henriette De Mailly, Sara Cruz Vargas De Fisher, Raymond Lockett, Elsa Cecilia Brenteson, Pauline Marie Gobeii, Rose Freeda Fishman-Corman, Khin Thidar Win, Li Ju Lu, Purita Manuel Pointdexter, Tracy Lee Rudl, and Dieu Ngoc Nguyen.

<sup>3</sup> Plaintiffs whose cases arise outside the jurisdiction of the Ninth Circuit are Yelena Arias-Angulo, Farah Batool, Sarah Bayor, Agnieszka Bernstein, Maria del Carmen Diaz-Ruiz, Diana G. Engstrom, Dahianna Heard, Stella Standifer, and Gladys Walsh.

1 (dkt #124), and the Memorandum of Points and Authorities in Support of  
2 Defendants' Motion for Partial Summary Judgment as to Plaintiffs Outside the  
3 Ninth Circuit (Defendants' Non-Ninth Circuit Summary Judgment Motion) (dkt  
4 #120), Plaintiffs are not entitled to "immediate relative" status under 8 U.S.C.  
5 § 1151(b)(2)(A)(i), following the death of their respective United States citizen  
6 spouses prior to the two-year anniversary of their marriages. Accordingly,  
7 Plaintiffs are entitled to judgment as a matter of law under either the  
8 Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq.*, or the Mandamus  
9 Act, 28 U.S.C. § 1361, because United States Citizenship and Immigration  
10 Services ("USCIS") did not abuse its discretion in denying or revoking Plaintiffs'  
11 immediate relative petitions (Form I-130) and adjustment of status applications  
12 (Form I-485), and there is no genuine issue as to any material fact. *See* Fed. R.  
13 Civ. P. 56(c).

## 14 II. ARGUMENT

### 15 A. Defendants' Interpretation of 8 U.S.C. § 1151(b)(2)(A)(i) Is 16 Correct.

17 Under 8 U.S.C. § 1151(b)(2)(A)(i), which defines the term "immediate  
18 relatives," aliens married less than two years at the time of the death of the  
19 petitioning spouse no longer qualify for "immediate relative" status as legally  
20 married spouses of United States citizens. *Matter of Varela*, 13 I. & N. Dec. 453  
21 (BIA 1970). In *Varela*, the Board of Immigration Appeals ("BIA" or Board")  
22 determined that the death of the citizen spouse ends the legal marriage, and thus  
23 also ends "immediate relative" status. *Id.* The Board reaffirmed the result in  
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1 *Varela* in a later decision, although the Board stressed the lack of the alien's  
2 standing even to pursue the matter after the citizen spouse had died. *Matter of*  
3 *Sano*, 19 I. & N. Dec. 299 (BIA 1985). Determinations by the Board are binding  
4 on the government in the immigration context and apply nation-wide. *See* 8 C.F.R.  
5 § 1003.1(g).  
6

7         Nevertheless, on April 21, 2006, the U.S. Court of Appeals for the Ninth  
8 Circuit issued a decision with a different interpretation of the relevant statutory  
9 language. *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006). The *Freeman*  
10 court concluded that the death of the United States citizen spouse does not strip the  
11 alien spouse of immediate relative status, even if the citizen spouse dies within two  
12 years of the marriage. *Id.* at 1040-43. The Ninth Circuit determined it was not  
13 required to follow the rule of deference to an authoritative administrative  
14 interpretation because it determined that the Board's decision in *Sano* undermined  
15 the validity of *Varela*. *Freeman*, 444 F.3d at 1038, n.10; *but see National Cable &*  
16 *Telecomm. Ass'n v. Brand X Internet Services*, 545 U.S. 967, 125 S. Ct. 2688, 162  
17 L. Ed. 2d 820 (2005); *Chevron, U.S.A., Inc., v. Natural Res. Def. Council, Inc.*, 467  
18 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984). Without acknowledging the  
19 general rule that marriage ends at death, moreover, the Court held that *Varela* did  
20 not reflect a permissible interpretation of the statute. *Id.* at 1038.  
21  
22  
23

24         However, on February 2, 2009, the U.S. Court of Appeals for the Third  
25 Circuit issued a decision in accordance with the general rule in the United States  
26 that marriage legally ends when one spouse dies. In *Robinson v. Napolitano*, 554  
27 F.3d 358 (3rd Cir. 2009), *reh'g denied* (2009), the Third Circuit made the precise  
28

1 finding that the terms in 8 U.S.C. § 1151(b)(2)(A)(i) are clear and unambiguous,  
2 and do not permit an immediate relative classification to be applied to widow(er)s  
3 who were married to their citizen spouses for less than two years, like Plaintiffs.  
4 *Robinson*, 554 F.3d at 364. The Third Circuit determined that the two-year  
5 marriage requirement applies to the widow(er) whether or not the citizen spouse  
6 filed an immediate relative petition prior to death. *Id.*

8 For the reasons set forth *infra*, Plaintiffs' claims should be rejected pursuant  
9 to a straightforward application of the express terms of 8 U.S.C.  
10 § 1151(b)(2)(A)(i). Alternatively, even if there is some ambiguity in the statute,  
11 numerous factors including Board precedent, subsequent congressional action, the  
12 final affidavit of support rule, long-standing administrative interpretations, and the  
13 purpose of family-based immigration policy make it clear that Congress did not  
14 intend to enact the interpretation that Plaintiffs invite this Court to adopt.

16  
17 **1. Under 8 U.S.C. § 1151(b)(2)(A)(i), An "Immediate Relative"**  
**Includes A Current "Spouse."**

18  
19 **a. The Terms of 8 U.S.C. § 1151(b)(2)(A)(i) are Clear and**  
**Unambiguous.**

20 Under Step One of the *Chevron* analysis, 8 U.S.C. § 1151(b)(2)(A)(i)  
21 provides a clear definition of "immediate relative" which includes only a *current*  
22 "spouse," and does not include a "widow(er)" or a "surviving spouse." *Chevron*,  
23 467 U.S. at 842-43. The first sentence of section 1151(b)(2)(A)(i) defines the term  
24 "immediate relative" as the spouse, parent, or child of a U.S. citizen. 8 U.S.C.  
25 § 1151(b)(2)(A)(i). As noted, Plaintiffs no longer qualify as an "immediate  
26 relative" under this first sentence because they are not currently a "spouse" of a  
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1 U.S. citizen. The second sentence of the statute provides a narrow exception for  
2 someone who “*was* the spouse of a citizen,” but makes the exception applicable  
3 only when the marriage lasted more than two years. *Id.* (emphasis added).

4 Because Plaintiffs’ respective marriages ended with the deaths of their citizen  
5 spouses, each is an “alien who *was* the spouse of a citizen.” *See id.* (emphasis  
6 added). Thus, the second sentence clearly provides the rule that determines  
7 whether Plaintiffs qualify as “immediate relatives” after the death of their spouses.  
8

9 Because Plaintiffs had been married for less than two years at the time of each  
10 citizen spouse’s death, Plaintiffs cannot qualify as “immediate relatives” under a  
11 straightforward application of the statute. *See Robinson*, 554 F.3d at 364; *see also*  
12 *Turek v. Dep’t of Homeland Security*, 450 F. Supp. 2d 736, 740 (E.D. Mich. 2006).  
13

14 Plaintiffs claim, however, that they qualify for coverage under the first  
15 sentence of section 1151(b)(2)(A)(i) because the statute does not qualify the term  
16 “spouse,” does not define “spouse” in terms of “marriage,” and does not quantify  
17 the time period of marriage. Plaintiffs’ Renewed Motion for Summary Judgment  
18 at 4. Plaintiffs invite this Court to hold that the first and second sentences of the  
19 statute provide “separate” rights and should not be read together *in pari materia*,  
20 because the first sentence purportedly applies only when an I-130 petition has been  
21 filed before the U.S. citizen dies, and the second sentence applies only when an I-  
22 130 has not been filed prior to the death of the citizen spouse. *Id.* at 4-5.  
23

24 According to Plaintiffs, Congress intended to create “two different processes, such  
25 that one or the other applies - either the citizen spouse petitions or, if he dies  
26 without doing so, the alien widow may do so.” *Id.*, quoting *Freeman*, 444 F.3d at  
27  
28

1 1042.

2 Plaintiffs mischaracterize both Defendants' position and the *Robinson*  
3 decision, which do not interpret section 1151(b)(2)(A)(i) as requiring that a citizen  
4 and an alien must be married for at least two years in order for the alien to  
5 immigrate. *See* Plaintiffs' Renewed Motion for Summary Judgment at 4, *citing*  
6 *Freeman*, 444 F.3d at 1039. Plaintiffs also cite the *Freeman* court's observation  
7 that, had Mr. Freeman not died, Mrs. Freeman could have acquired permanent  
8 residence "even though they had not been married for two years." *Id.* at 6,  
9 *quoting Freeman*, 444 F.3d at 1040. They also argue that the *Robinson* court  
10 "mistakenly" thought the citizen and petitioner had to be married for at least two  
11 years. *Id.* at 21, 22, 24, *quoting Robinson*, 554 F.3d at 366.

14 To the contrary, assuming the citizen spouse does not die, the petitioner and  
15 alien need not be married for any length of time in order for the alien to immigrate  
16 as an immediate relative. Rather, the alien must still be a spouse when the Form  
17 I-130 is adjudicated, in order for the alien to qualify as an "immediate relative."  
18 *See* 8 U.S.C. § 1151(b)(2)(A)(i). If the couple has been married for less than two  
19 years, the alien is eligible for immediate relative status and the Form I-130 is  
20 approvable, and provided the Form I-485 is also approved, the alien possesses the  
21 status of an alien lawfully admitted for permanent residence, but on a conditional  
22 basis initially due to the short duration of the marriage. *See* 8 U.S.C.  
23 § 1186a(a)(1) & (g)(1). Thus, if the citizen spouse is alive and still married to the  
24 alien, the duration of the marriage affects whether the conditions apply, not  
25 whether the alien can immigrate.  
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1 But the duration of the marriage becomes critical if the marriage ends with  
2 the citizen's death while the Form I-485 is pending. The Government's position is  
3 that the alien is no longer a spouse under the first sentence of section  
4 1151(b)(2)(A)(i), and cannot immigrate unless under the second sentence the alien  
5 and the citizen were married for at least two years. Upon the death of the citizen  
6 spouse, the alien's status is that s/he "was the spouse of a citizen," under the  
7 second sentence. *See* 8 U.S.C. § 1151(b)(2)(A)(i) (emphasis added). Therefore,  
8 the second sentence is controlling as to Plaintiffs, who cannot immigrate because  
9 their marriages lasted less than two years. This premise is also the basis of the  
10 *Robinson* decision. *Robinson*, 554 F.3d at 364 (the second sentence governs a  
11 widow(er)'s claim as long as s/he was the spouse of the citizen for at least two  
12 years). Contrary to Plaintiffs' argument, *Robinson* does not suggest that an alien in  
13 a current marriage with a living citizen spouse cannot immigrate unless they have  
14 been married for at least two years.

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17  
18 **b. Plaintiffs' Interpretation Contradicts Canons of Statutory**  
19 **Interpretation and Ignores the Importance of Verb Tenses**  
20 **and Related Statutory Provisions.**

21 Additionally, Plaintiffs' alternative interpretation of the statute runs afoul of  
22 several canons of statutory construction. First, Plaintiffs' reading of the statute  
23 violates the canon of reading statutory provisions *in pari materia* with nearby  
24 related provisions, because they would have this Court find that the first sentence  
25 of section 1151(b)(2)(A)(i) is wholly divorced from the second and creates a  
26 separate right from that created in the first sentence. *See* Plaintiffs' Renewed  
27 Motion for Summary Judgment at 4-5; *Robinson*, 554 F.3d at 364 (holding that  
28

1 “[t]he first sentence of the immediate relative definition cannot be divorced from  
2 the second sentence” but rather the two provisions must be read together).  
3 Likewise, while Plaintiffs argue in effect that the narrow exception provided for a  
4 person who “*was* a spouse” in the second sentence of § 1151(b)(2)(A)(i) should not  
5 preclude them from also seeking coverage under the first sentence, this reading of  
6 the statute violates the canon that the expression of one specific exception should  
7 be interpreted as exclusive of any others. *See* Plaintiffs’ Renewed Motion for  
8 Summary Judgment at 5; *Robinson*, 554 F.3d at 365 (citing the canon of *inclusio*  
9 *unius est exclusio alterius* and holding that “[t]he immediate relative provision  
10 contains one exception . . . i.e., the exception covering the situation of a couple  
11 who had been married for two years at the time of the citizen-spouse’s death,” and  
12 thus courts are not permitted to infer additional exceptions which would allow  
13 aliens who are now widows to be classified as immediate relatives).

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16  
17 Further, Plaintiffs’ implicit argument – that the verb tense used in 8 U.S.C.  
18 § 1151(b)(2)(A)(i) is not relevant, and thus an alien once married to a U.S. citizen  
19 can be considered a spouse forever for purposes of an I-130 petition filed prior to  
20 the citizen spouse’s death — runs contrary to the well-established rule that  
21 “Congress’ use of a verb tense is significant in construing statutes.” *See United*  
22 *States v. Wilson*, 503 U.S. 329, 333, 112 S. Ct. 1351, 1354, 117 L. Ed. 2d 593  
23 (1992). Similarly, Plaintiffs’ argument that the USCIS Memorandum *Effect of*  
24 *Form I-130 Petitioners’ Death on Authority to Approve the Form I-130* (dkt #8,  
25 Defendants’ Notice of Motion and Motion to Dismiss, Exhibit 1) (USCIS  
26 Memorandum), overstates the relevance of the verb tense in the statutory provision  
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28

1 governing the grant of immigrant visas, 8 U.S.C. § 1154(b), is itself mistaken. *See*  
2 Plaintiffs’ Renewed Motion for Summary Judgment at 6-7. That provision  
3 requires that the facts stated in the petition “*are true*” and the intended beneficiary  
4 “is an immediate relative.” As noted by the Third Circuit: “[t]he use of the present  
5 tense in 8 U.S.C. § 1154(b) belies Robinson’s contention that an alien’s marital  
6 status at the time of filing the I-130 petition controls, and makes plain that the facts  
7 in the petition—including the alien’s spousal status—must be true at the time  
8 USCIS decides the petition.” *See Robinson*, 554 F.3d at 363. Accordingly, 8  
9 U.S.C. § 1154(b) supports Defendants’ argument that Plaintiffs were required to be  
10 *current* spouses at the time of adjudication – not only at the time of filing – of their  
11 I-130 petitions in order to be eligible for immediate relative status.  
12

13  
14       Indeed, that an alien seeking relief must satisfy the standards for relief up  
15 until the moment relief is granted is supported by ample precedent from the BIA.  
16 *See, e.g., Matter of Alarcon*, 20 I. & N. Dec. 557, 562 (BIA 1992). Plaintiffs  
17 mistakenly dismiss Defendants’ reliance on *Alarcon* and incorrectly describe its  
18 holding as “limited to admissibility issues.” *See* Plaintiffs’ Renewed Motion for  
19 Summary Judgment at 7. Rather, *Alarcon* unambiguously supports Defendants’  
20 point: “[a]n application for admission to the United States is a continuing  
21 application, and admissibility is determined on the basis of the facts and the law at  
22 the time the application is finally considered.” *Alarcon*, 20 I. & N. Dec. at 562  
23 (citations omitted).  
24

25  
26       Further, Plaintiffs erroneously cite to the Ninth Circuit's judgment in  
27 *Dabaghian v. Civiletti*, 607 F.3d 868 (9th Cir. 1979), for the proposition that  
28

1 "eligibility issues" are decided "at inception," meaning, presumably, at the time of  
2 filing the Form I-130. *Id.* at 7, citing *Dabaghian*, 607 F.2d 868. The *Freeman*  
3 court also cited *Dabaghian*. 444 F.3d at 1040. *Dabaghian*, however, does not  
4 stand for the proposition for which it is cited, nor does it support the *Freeman*  
5 decision. The holding in *Dabaghian* is that a legally valid, non-fraudulent  
6 marriage continues to form the basis for granting adjustment of status "until it is  
7 legally dissolved." *Dabaghian*, 607 F.2d at 869 ("If a marriage is not sham or  
8 fraudulent from its inception, it is valid for the purposes of determining eligibility  
9 for adjustment of status under s. 245 of the Act until it is legally dissolved.") With  
10 respect to the Plaintiffs in the instant case, by contrast, their respective marriages  
11 were legally dissolved by the death of their citizen spouses.  
12  
13

14 Finally, in enacting other provisions in the INA, Congress expressly  
15 contemplated that an alien must be a current "spouse" at the time of adjudication  
16 and not a widow(er) in order to qualify as an "immediate relative." Particularly, in  
17 enacting 8 U.S.C. § 1154(b), Congress required that the Secretary *investigate* every  
18 visa petition case. 8 U.S.C. § 1154(b) (emphasis added). The plain language of  
19 this section specifies that the Attorney General (now the Secretary of Homeland  
20 Security) shall approve the immediate relative visa petition only if, "[a]fter an  
21 investigation of the facts in each case, . . . he determines that the facts stated in the  
22 petition are true and that the alien in behalf of whom the petition is made is an  
23 immediate relative . . . ." *Id.* This provision supports the conclusion that the Form  
24 I-130 petitioner must be alive, and the couple must still be married, in order for  
25 USCIS to approve the Form I-130 because otherwise the investigation requirement  
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1 would be frustrated if the citizen spouse were no longer living. Moreover, because  
2 Congress chose to use the present tense in this code provision, the plain reading of  
3 this language is that the facts attested to in the citizen's petition and developed  
4 through investigation must be true at the time of the adjudication of the petition  
5 and that the alien must be an immediate relative at the time of that determination.  
6  
7 *See Wilson*, 503 U.S. at 333 (Congress's use of present tense is significant to  
8 statutory construction); *see also* 8 U.S.C. § 1154(e) (grant of petition is not  
9 sufficient to entitle alien to adjustment; alien must demonstrate eligibility in all  
10 respects at time of adjudication); *Perez-Vargas v. Gonzales*, 478 F.3d 191, 192  
11 (4th Cir. 2007) (noting that alien must satisfy standards for adjustment of status up  
12 until, and at, the time of adjudication; alien may lose eligibility for adjustment  
13 during pendency of application); *Alarcon*, 20 I. & N. Dec. at 562. Accordingly,  
14 related statutory provisions adopted by Congress evince a clear and unambiguous  
15 intent that the term "spouse" in the first sentence of  
16 § 1151(b)(2)(A)(i) refers to a current "spouse" and not a "widow(er)."

17  
18  
19 **c. Defendants' Interpretation Comports with the General Rule**  
20 **in the United States that Marriage Ends with the Death of**  
21 **One Spouse.**

22 Moreover, Defendants' interpretation of the statute is consistent with the  
23 general rule in the United States that a marriage ends upon the death of one spouse.  
24 *See* 52 Am. Jur. 2d Marriage, § 8. In addition, the common, ordinary meaning of  
25 the term "spouse" is a married person. *See* Black's Law Dictionary 1438-39 (8th  
26 ed. 2007) (defining "spouse"). Federal law has adopted this same basic definition  
27 of "spouse" for purposes of the administration of every Federal statute and  
28

1 regulation. 1 U.S.C. § 7 ("[T]he word 'spouse' refers only to a person of the  
2 opposite sex who *is* a husband or a wife") (emphasis added). Unless Congress  
3 clearly intended a specific technical meaning, a statute is to be interpreted  
4 according to the common, ordinary meaning of the words of the statute at the time  
5 of the enactment. *See BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 184, 124  
6 S. Ct.1587, 1593-94, 158 L. Ed. 2d 338 (2004).

8 Plaintiffs overemphasize the fact that the Eighth Edition of Black's Law  
9 Dictionary (2004) has a separate entry for "surviving spouse" under the definition  
10 of "spouse," and therefore conclude that the term "surviving spouse" falls within  
11 the definition of "spouse." Plaintiffs' Renewed Motion for Summary Judgment at  
12 9-10. This conclusion is meritless. The drafters of the dictionary obviously saw a  
13 need to differentiate a "surviving spouse" from a "spouse" with the addition of the  
14 adjective "surviving." Similarly, Plaintiffs' claim to qualify as "immediate  
15 relatives" under the first sentence of the statute must fail because the text does not  
16 explicitly include the term "surviving spouse." *See Robinson*, 554 F.3d at 366  
17 ("The fact that Black's Law Dictionary's entry for spouse defines "surviving  
18 spouse" separately disproves Robinson's hypothesis," and "to conclude that  
19 'spouse' and 'surviving spouse' have the identical meaning is illogical and is  
20 contrary to our understanding of the legal effect of death on a marriage.")

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23  
24 In sum, for the reasons set forth *supra*, pursuant to the Step One *Chevron*  
25 analysis, 8 U.S.C. § 1151(b)(2)(A)(i) is unambiguous and plainly provides that  
26 Plaintiffs cannot be considered "immediate relatives" under the statute because  
27 they are "widow(ers)," not "spouses," nor are they former spouses to a marriage  
28

1 that lasted more than two years.

2 **2. Alternatively, Even If The Definition Of “Immediate Relative” Is**  
3 **Not Clear, The Agency’s Determination Should Be Given**  
4 **Deference And Upheld As A Reasonable Construction Of The**  
5 **Statute.**

6 Even if the plain language of the statute were ambiguous, which it is not, the  
7 agency's interpretation would be entitled to deference. *See Chevron*, 467 U.S. at  
8 842-43; *Moreno-Morante v. Gonzales*, 490 F.3d 1171, 1174 (9th Cir. 2007).

9 **a. Defendants’ Interpretation Is Consistent With BIA**  
10 **Precedent On the Issue.**

11 Under *Chevron* Step Two, if the Court finds the statute ambiguous, it should  
12 reject Plaintiffs’ construction as contrary to BIA precedent. As described *supra*,  
13 the Board has expressly reached the issue presented here, and held that a widow(er)  
14 shall not be considered a “spouse” for purposes of an immediate relative  
15 classification. *Varela*, 13 I. & N. Dec. 453.

16 Plaintiffs challenge the validity of *Varela* on the merits due to the Board’s  
17 later decision that it was procedurally inappropriate for the panel in *Varela* to reach  
18 the merits of the case. Plaintiffs’ Renewed Motion for Summary Judgment at 7-9.  
19 Simply because the *Sano* panel made the procedural determination that the *Varela*  
20 Plaintiff lacked standing to bring her claim does not mean that the substantive  
21 holding in *Varela* is entitled to no weight at all in this case. Indeed, the Court in  
22 *Turek* found the *Varela* opinion particularly instructive. *See Turek*, 450 F. Supp.  
23 2d at 740 (citing *Varela* and holding that it is “persuasive that the BIA had  
24 previously determined that the beneficiary of a spousal immediate relative petition  
25 would be ineligible for that status if the petitioning spouse dies before the statutory  
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1 two-year time period”); *cf. Robinson*, 554 F.3d at 362 (noting that the District  
2 Court failed to cite *Varela*). It is also noteworthy that the Board in *Sano* did not  
3 overrule *Varela*; rather, it determined that to the extent *Varela* conflicts with *Sano*,  
4 “it is hereby modified.” *Sano*, 19 I. & N. Dec. at 301. By contrast, on an unrelated  
5 point also considered by the Board in *Sano*, the Board did overrule a different  
6 Board precedent, *Matter of Arteaga-Godoy*, 14 I. & N. Dec. 226 (BIA 1927), to the  
7 extent it is contrary to *Sano*. Thus, Plaintiffs’ contention that *Varela* “is no longer  
8 good law” is erroneous. Plaintiff’s Renewed Motion for Summary Judgment at 8.  
9  
10 Rather, *Varela* should be given due consideration.  
11

12 **b. Defendants’ Interpretation Is Consistent With Subsequent**  
13 **Congressional Action.**

14 Further supporting the BIA’s interpretation of section 1151(b)(2)(A)(i),  
15 recent congressional action demonstrates that *Varela* was correctly decided  
16 regarding the construction of the statute. Defendants hereby incorporate by  
17 reference the prior arguments set forth in Defendants’ Ninth Circuit Summary  
18 Judgment Motion (dkt # 124) at Part III.A.2.b.  
19

20 **c. Freeman Does Not Comport with Ninth Circuit Precedent.**

21 The *Freeman* decision is inconsistent with the Ninth Circuit’s own prior  
22 precedent. *See Dodig v. INS*, 9 F.3d 1418, 1420 (9th Cir. 1993); *Aboud v. INS*, 140  
23 F.3d 843, 849 (9th Cir. 1998). Defendants hereby incorporate by reference the  
24 prior arguments set forth in Defendants’ Ninth Circuit Summary Judgment Motion  
25 (dkt # 124) at Part III.A.2.c.  
26

27 Further, as discussed *supra*, Plaintiffs mistakenly find significance in the  
28

1 *Freeman* court’s observation that had USCIS adjudicated Mrs. Freeman’s I-485  
2 before Mr. Freeman died, the adjustment of status could have been granted even  
3 though the couple had not been married for two years. Plaintiffs’ Renewed Motion  
4 for Summary Judgment at 6, *quoting Freeman*, 444 F.3d at 1040. Plaintiffs’  
5 reliance on the *Freeman* court’s conclusion that Congress could not have intended  
6 “such strange and unjust results” in authorizing the agency to grant adjustment of  
7 status to immediate relatives married to citizen spouses less than two years, while  
8 at the same time the agency denied adjustment to surviving spouses when the  
9 citizen spouse died prior to the two-year anniversary, is misplaced. The two  
10 circumstances are distinguishable. When the citizen spouse is still alive, USCIS  
11 has the opportunity to fully test the bona fides of the marriage by completing an  
12 investigation, including an interview of the applicant and, if necessary, the citizen  
13 spouse. *See* 8 U.S.C. § 1154(b) (Congress required that the Secretary investigate  
14 every visa petition case); 8 C.F.R. § 245a.19 (all aliens filing adjustment of status  
15 applications must be personally interviewed by an immigration officer). By  
16 contrast, when the citizen spouse has died, USCIS is unable to fully investigate the  
17 bona fides of the marriage, and the statute therefore imposes a two-year marriage  
18 requirement to ensure that only surviving spouses in bona fide marriages adjust  
19 status to Lawful Permanent Resident. 8 U.S.C.  
20 § 1151(b)(2)(A)(i); *see Robinson*, 554 F.3d at 367 (“A marriage that lasted two  
21 years can be presumed to have been bona fide....”)  
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1                   **d.     The Final Affidavit of Support Rule Supports Defendants'**  
2                   **Interpretation.**

3                   In addition, the final affidavit of support rule, 71 Fed. Reg. 35732 (June 21,  
4 2006), supports Defendants' interpretation of the term "spouse" in 8 U.S.C.  
5 § 1151(b)(2)(A)(i). Defendants hereby incorporate by reference the prior  
6 arguments set forth in Defendants' Ninth Circuit Summary Judgment Motion (dkt  
7 # 124) at Part III.A.2.d.  
8

9                   **e.     Long-Standing Administrative Interpretations Support**  
10                  **Defendants' Interpretation.**

11                  Further, deference should be afforded because the Agency's interpretation is  
12 based on administrative interpretations of long-standing duration. Prior to  
13 enactment of the INA, the visa petitioner's death has been a basis for revoking the  
14 approval of the visa petition (*e.g.*, the I-130) since at least 1938. 8 C.F.R. § 25.2  
15 (1938); *cf.* 3 Fed. Reg. 263. The same policy was continued once the INA was  
16 enacted. The INA, Pub. L. 82-414, 66 Stat. 163 (1952), became law on December  
17 24, 1952. *See* 66 Stat. at 281. At the time, the spouse of a citizen was a considered  
18 a "non-quota" immigrant who had to seek a visa on the basis of the marriage. *See*  
19 66 Stat. at 169. Under section 206 of the 1952 Act, the approval of a visa petition  
20 could be revoked for any reason that the Attorney General considered to be "good  
21 and sufficient cause." 66 Stat. at 181. In enacting regulations necessary to  
22 implement the 1952 Act, the Attorney General included via rulemaking the  
23 regulation that a family-based visa petition was revoked automatically by the death  
24 of the visa petitioner. 17 Fed. Reg. 11469, 11482-83 (Dec. 19, 1952)  
25 (promulgating 8 C.F.R. § 206.1(b)(2) and (3)). The INA section relevant here was  
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27  
28

1 most recently amended in 2004 with the Intelligence Reform and Terrorism  
2 Prevention Act of 2004, Pub. L. 108-458, § 5304(c), 118 Stat. 3638, 3736 (2004).  
3 The notion that the Secretary can revoke an I-130 petition for what the Secretary  
4 deems to be good and sufficient cause, *i.e.*, the death of the petitioner, remains  
5 unchanged. *See id.*; *see also* 71 Fed. Reg. 35732, 35735 (June 21, 2006) ("There is  
6 no authority to approve a visa petition after the petitioner dies."). Therefore, since  
7 1938, the settled administrative interpretation has been that the visa petitioner's  
8 death is "good and sufficient cause," 1952 Act, § 206, 66 Stat. at 180, for  
9 revocation of the approval of the visa petition. *Cf.* 8 U.S.C.  
10 § 1155. Therefore, because the death of a visa petitioner revokes approval of a  
11 Form I-130 petition for alien relative as of the date of the approval of the petition,  
12 8 C.F.R. § 205.1(a)(3)(i)(C), it also necessarily follows that the petitioner's death  
13 while the Form I-130 is pending also warrants denial of the petition. Accordingly,  
14 because the Agency's regulatory understanding in this area on which the denials  
15 and revocations of Plaintiffs' I-130 petitions are based is of such long-standing  
16 duration, it should be afforded deference.

17  
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19  
20 **f. Defendants' Interpretation Is Consistent with the Purpose**  
21 **of Family-Based Immigration Policy.**

22 Additionally, Defendants' construction is reasonable because it is consistent  
23 with the purpose of the immediate relative classification. The purpose behind the  
24 "immediate relative" classification is to promote family unity for the U.S. citizen.  
25 *See Robinson*, 554 F.3d at 367 (citations omitted) ("Our holding is consistent with  
26 the core purpose of the U.S. family-based immigration policy: the promotion of  
27  
28

1 family unification for U.S. citizens and lawful permanent residents."); *Turek*, 450  
2 F. Supp. 2d at 739 (the purpose of the classification is "to promote the unity of  
3 families of U.S. citizens"). Once the U.S. citizen passes away, that purpose is no  
4 longer necessarily served by giving the alien widow the ability to adjust her status.  
5 *Id.* (holding that the purpose the statute "can no longer be met here where  
6 Plaintiff's former wife is now deceased"). As such, Defendants' construction of the  
7 statute is not inconsistent with the purpose of the statute.  
8

9 In sum, for the reasons set forth *supra*, if the Court proceeds to a Step Two  
10 *Chevron* analysis, the Agency's construction of the statute should be upheld as  
11 reasonable because it is consistent with Board precedent on the issue, subsequent  
12 congressional action, the final affidavit of support rule, long-standing  
13 administrative interpretations, and the purpose of family-based immigration policy.  
14 Additionally, the Third Circuit decision in *Robinson* necessarily leads to the  
15 conclusion that USCIS's interpretation is reasonable. Because USCIS correctly  
16 interpreted the term "immediate relative" in adjudicating Plaintiffs' Form I-130s  
17 and I-485s, its actions were not arbitrary, capricious, an abuse of discretion, or  
18 otherwise not in accordance with the law, and neither the APA nor the Mandamus  
19 Act affords relief to Plaintiffs.  
20  
21  
22

23 **B. Defendants Properly Require a Substitute Affidavit of Support**  
24 **After the Death of the Petitioner/Sponsor.**

25 Further, Defendants dispute Plaintiffs' averment that the USCIS  
26 Memorandum "does not reflect a lawful interpretation of the holding in *Freeman*  
27 or the clear language of the statute." Plaintiff's Renewed Motion for Summary  
28

1 Judgment at 11-20. To the contrary, for the reasons set forth in Defendants' Ninth  
2 Circuit Summary Judgment Motion, Defendants do not import unlawful  
3 discretionary admissions criteria into the non-discretionary determination of  
4 eligibility for immediate relative status by requiring that a humanitarian request for  
5 reinstatement be filed under 8 C.F.R. § 205.2(a)(3)(C)(2), supported by a properly  
6 filed affidavit of support (Form I-864) executed by an individual who qualifies  
7 under 8 U.S.C. § 1183a(f)(5)(B), following the death of the citizen spouse.  
8 Plaintiffs' Ninth Circuit Summary Judgment Motion at Part III.B (dkt #124); *see*  
9 *id.* at 12-18. In response, Defendants aver the following: 1) *Freeman* does not  
10 apply to any alien who did not apply for adjustment before the deceased citizen  
11 died; 2) the USCIS Memorandum does not make inadmissibility a basis for  
12 denying a Form I-130; 3) an alien whose visa petitioner has died is inadmissible,  
13 unless a substitute sponsor submits a Form I-864 in lieu of any Form I-864 that the  
14 visa petitioner may have submitted; and 4) the automatic revocation regulation is  
15 valid. Defendants hereby incorporate by reference the prior arguments set forth in  
16 Defendants' Ninth Circuit Summary Judgment Motion (dkt # 124) at Part III.B.  
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20 Defendants also note that Congress re-enacted the revocation statute in 1965,  
21 Act of October 3, 1965, Pub. L. 89-236, § 5, 79 Stat. 911, 916 (1965), without  
22 changing what constitutes "good cause" for revocation or questioning this settled  
23 administrative interpretation of the statute. Congress also amended INA section  
24 205 in 2004, again without changing or challenging what qualifies as "good cause"  
25 for revocation. Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L.  
26 108-458, § 5304(c), 118 Stat. 3638, 3736 (2004). Congress, therefore, has  
27  
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1 endorsed and ratified the principle that approval of a visa petition is revoked  
2 automatically if the petitioner dies. *See Lorillard v. Pons*, 434 U.S. 575, 580-81,  
3 98 S. Ct. 866, 870-71, 55 L. Ed. 2d 40, 46 (1978); *Cazarez-Gutierrez v. Ashcroft*,  
4 382 F.3d 905, 916 (9th Cir. 2004). For the reasons set forth *supra*, the automatic  
5 revocation regulation is valid.  
6

7 **C. The Court Should Adopt *Robinson* And Enter Judgment for**  
8 **Defendants Against Plaintiffs Whose Cases Arise Outside the**  
9 **Ninth Circuit.**

10 In denying Defendants' Motion to Dismiss (dkt #8), the Court  
11 acknowledged that *Freeman* is not binding precedent with respect to the claims of  
12 Plaintiffs whose cases arise outside the Ninth Circuit; the Court nevertheless  
13 determined *Freeman* to be "persuasive authority." Order re: Motion to Dismiss at  
14 31 (dkt #36). However, in determining that Plaintiffs residing outside the Ninth  
15 Circuit had stated a claim for relief, the Court noted that "Defendants have cited no  
16 conflicting law from another circuit," *id.* at 32, and advised that "when and if  
17 another circuit reaches a conclusion that is inconsistent with *Freeman*, defendants  
18 may bring such ruling to the attention of this Court." *Id.* at 32-33, n.18. For the  
19 reasons set forth *infra*, Defendants respectfully request that this Court reconsider  
20 this point, apply *Robinson* to cases arising outside the Ninth Circuit and dismiss  
21 those Plaintiffs from this action.  
22  
23

24 When a United States Court of Appeals renders a decision that is contrary to  
25 the position of the Board's, that decision must be followed only as to cases arising  
26 within the Circuit in which the case was decided; USCIS follows the Board's  
27 decision for cases arising outside the Circuit. *See* USCIS Memorandum at 1,3,6; 8  
28

1 C.F.R. § 1003.1(g). Therefore, USCIS is not required to follow *Freeman* with  
2 respect to Plaintiffs' cases arising outside the Ninth Circuit but instead follows BIA  
3 precedent established in *Varela* and *Sano* and denies an I-130 petition if the couple  
4 is married less than two years at the time of the death of the citizen spouse. *See id.*  
5 at 3. Because the Third Circuit in *Robinson* reached the same conclusion as the  
6 Board, and two federal district courts outside the jurisdiction of the Ninth Circuit  
7 considering this precise issue did so as well, the *Robinson* court's interpretation of  
8 the statute is the appropriate law to apply to Plaintiffs whose cases arise outside the  
9 jurisdiction of the Ninth Circuit. *See Turek*, 450 F. Supp. 2d 736 (E.D. Mich.  
10 2006); *Burger v. McElroy*, 1999 WL 203353 (S.D.N.Y. 1999); *cf. Taing v.*  
11 *Chertoff*, 526 F. Supp. 2d 177 (D. Mass. 2007); *Lockhart v. Chertoff*, 2008 WL  
12 80225 (N.D. Ohio Jan. 7, 2008).

13  
14  
15 In the alternative, if this Court declines to adopt *Robinson* and does not  
16 dismiss Plaintiffs whose cases arise outside the Ninth Circuit on that basis,  
17 Defendants are nevertheless entitled to judgment as a matter of law because  
18 Plaintiffs' claims should be rejected pursuant to a straightforward application of  
19 the express terms of 8 U.S.C. § 1151(b)(2)(A)(i). Alternatively, even if there is  
20 some ambiguity in the statute, the numerous factors set forth *supra* make it clear  
21 that Congress did not intend to enact the interpretation that Plaintiffs invite this  
22 Court to adopt.  
23  
24

25 **D. Plaintiff Nguyen Does Not Qualify As An Immediate Relative**  
26 **Under § 1151(b)(2)(A)(i).**

27 Defendants are entitled to judgment as a matter of law as to Plaintiff  
28

1 Nguyen, a Plaintiff within the jurisdiction of the Ninth Circuit, who entered the  
2 United States on K-1 fiance(e) visa, because she cannot qualify for adjustment of  
3 status due to the termination of her marriage upon the death of her U.S. citizen  
4 spouse. Defendants hereby incorporate by reference the prior arguments set forth  
5 in Defendants' Ninth Circuit Summary Judgment Motion (dkt # 124) at Part III.C.  
6

7 It is significant that Plaintiffs make no reference to the relevant authorities  
8 establishing the K-1 petitioning process in their Renewed Motion for Summary  
9 Judgment but do make an issue of the fact that “[n]owhere within the definition of  
10 immediate relative spouse is the word ‘marriage...’” Plaintiffs’ Renewed Motion  
11 for Summary Judgment at 4. By contrast, the word “marriage” is central to the  
12 claims of Plaintiff Nguyen. *See* 8 U.S.C. § 1255(d) (emphasis added) (restricting  
13 adjustment of status on the basis of a K-1 visa “except ... as a result of the *marriage*  
14 ...” to the U.S. citizen who filed the petition); 8 C.F.R. § 245.1(c)(6) (emphasis  
15 added) (restricting adjustment of status on the basis of a K-1 visa unless “based  
16 upon the *marriage* of the K-1 fiancée ...”). As Plaintiff Nguyen’s claims relate to  
17 the interpretation of the word “marriage” in 8 U.S.C. § 1255(d) and 8 C.F.R. §  
18 245.1(c)(6), unlike the other Plaintiffs, she does not present a claim to “immediate  
19 relative” status under the definition of “spouse” in 8 U.S.C.  
20 § 1151(b)(2)(A)(i).  
21  
22  
23

24 In sum, because the petitioning United States citizen is no longer living,  
25 Plaintiff Nguyen is no longer in a legal marriage. Accordingly, she is no longer  
26 eligible for adjustment of status on the basis of the marriage to the citizen who  
27 petitioned for the K nonimmigrant visa. *See Kalal v. Gonzales*, 402 F.3d 948 (9th  
28

1 Cir. 2005); *cf. Choin v. Mukasey*, 537 F.3d 1116 (9th Cir. 2008) (petitioner who  
2 entered the United States on a K-1 visa, married her K-1 visa sponsor within 90  
3 days, and then divorced him in under two years, should be permitted to adjust to  
4 legal permanent resident status, despite the language of 8 U.S.C. § 1255(d)).

5  
6 Enacted within the Immigration Marriage Fraud Amendments (“IMFA”),  
7 Pub. L. No. 99-639, Section 1255(d) establishes that a K-1 visa holder can adjust  
8 status “on a conditional basis ... as a result of the marriage of the nonimmigrant ...  
9 to the citizen who filed the [K visa petition].” 8 U.S.C. § 1255(d). The Ninth  
10 Circuit in *Choin* determined the language “as a result of the marriage to the  
11 nonimmigrant” to be ambiguous and concluded that the purpose and context of the  
12 statute support the interpretation that “the application must be based on the *fact* of  
13 the marriage,” rather than the *existence of marriage on the date of the adjudication*  
14 of the adjustment application. *Choin*, 537 F.3d at 1119-1120 (emphasis added).  
15 Defendants counter that this interpretation is contrary to the purpose of the IMFA,  
16 which is “to deter immigration-related marriage fraud and other immigration  
17 fraud.” *Id.* at 118, 120, *citing* Pub. L. No. 99-639. The *Choin* holding directly  
18 undermines the spirit and intent of the IMFA. If followed, it would mean that  
19 individuals could come to the United States, duly marry the petitioner within the  
20 90-day period, and shortly thereafter divorce him or her with the confident  
21 expectation that they could remain in the United States. The statute makes no  
22 distinction between those aliens who married and later divorced, those who were  
23 widowed, or those who failed to marry altogether.  
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1           **E. Plaintiff Lockett Has Abandoned His Adjustment of Status**  
2           **Application.**

3           For the reasons set forth in Defendants' Ninth Circuit Summary Judgment  
4 Motion, Plaintiff Lockett, a Plaintiff within the jurisdiction of the Ninth Circuit,  
5 has abandoned his adjustment of status application, and his challenges to the  
6 validity of the USCIS Memorandum and the denial of his I-485 are therefore moot.  
7 Defendants hereby incorporate by reference the prior arguments set forth in  
8 Defendants' Ninth Circuit Summary Judgment Motion (dkt # 124) at Part III.D.

9           **F. Plaintiff De Maily Has Abandoned Her Adjustment of Status**  
10           **Application.**

11           Plaintiff De Maily, a Plaintiff within the jurisdiction of the Ninth Circuit,  
12 has also abandoned her adjustment of status application. *See* 8 C.F.R. §  
13 245.2(a)(4)(B). She has stated that she now resides in Belgium. Declaration of  
14 Suzanne De Maily at 1, ¶ 2 (dkt #58). In fact, she departed the United States in  
15 June 2005, more than 2 years before the filing of the instant action. *Id.* at 3, ¶ 8.  
16 By doing so, she abandoned her adjustment of status application. *See* 8 C.F.R.  
17 § 245.2(a)(4)(B). Her challenge to the validity of the USCIS Memorandum and to  
18 the denial of her Form I-485 is, therefore, moot. Moreover, as an alien who is not  
19 in the United States after having been admitted to the United States, and who does  
20 not reside in the United States, Plaintiff De Maily has no right to judicial review of  
21 an administrative decision that she is not eligible to immigrate. *See Kleindienst v.*  
22 *Mandel*, 408 U.S. 753, 762, 92 S. Ct. 2576, 2581, 33 L. Ed. 2d 683, 691 (1974);  
23 *Braude v. Wirtz*, 350 F.2d 702, 706 (9th Cir. 1965).  
24  
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1           **G. Robinson Requires Rejection of Plaintiff Standifer's Claim.**

2           As discussed *supra*, the law of the Third Circuit establishes that the death of  
3 a citizen while the citizen's Form I-130 petition is pending adjudication ends the  
4 alien beneficiary's claim to immediate relative status as the spouse of a citizen.  
5 *Robinson*, 554 F.3d at 364. For the reasons set forth in Defendants' Non-Ninth  
6 Circuit Summary Judgment Motion, the claims of Plaintiff Standifer, who resides  
7 within the jurisdiction of the Third Circuit, are governed by the *Robinson* decision.  
8 Defendants hereby incorporate by reference the prior arguments set forth in  
9 Defendants' Non-Ninth Circuit Summary Judgment Motion (dkt # 120) at Part  
10 III.A.2.  
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13           Plaintiffs anticipate that a petition for a writ of *certiorari* will be filed by  
14 plaintiff's counsel in *Robinson*, and request on that basis that this Court place  
15 Plaintiff Standifer's case in abeyance pending the decision on the anticipated  
16 *certiorari* petition. Plaintiffs' Renewed Motion for Summary Judgment at 28.  
17 However, whether a petition for *certiorari* will in fact be filed in *Robinson* at some  
18 future date, and whether the Supreme Court will grant *certiorari*, are both  
19 speculative. Thus, this Court should not hold Plaintiff Standifer's case in abeyance  
20 but rather should enter judgment as a matter of law in Defendants' favor with  
21 respect to Plaintiff Standifer.  
22  
23

24           In the alternative, if this Court decides to hold Plaintiff Standifer's case in  
25 abeyance, Defendants submit that the cases of all Plaintiffs should be held in  
26 abeyance, pending a decision by the Supreme Court on the anticipated writ of  
27 *certiorari*. The rationale for holding Plaintiff Standifer's case in abeyance applies  
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1 equally to the other Plaintiffs because the Supreme Court's decision potentially  
2 impacts the claims of either the Ninth Circuit class Plaintiffs or the Plaintiffs  
3 outside the jurisdiction of the Ninth Circuit.  
4

5 **H. Plaintiff Heard Was Granted Adjustment of Status.**

6 Because Plaintiff Heard, a Plaintiff outside the jurisdiction of the Ninth  
7 Circuit, has been granted adjustment of status, Defendants are entitled to summary  
8 judgment as to Plaintiff Heard. Defendants hereby incorporate by reference the  
9 prior arguments set forth in Defendants' Non-Ninth Circuit Summary Judgment  
10 Motion (dkt # 120) at Part III.B.  
11

12 **I. The Petition Filed On Behalf Of Plaintiff Lu Was Properly**  
13 **Revoked.**

14 Because USCIS properly revoked the Form I-130 petition filed on behalf of  
15 Plaintiff Lu, a Plaintiff outside the jurisdiction of the Ninth Circuit, under 8 C.F.R.  
16 § 205.1(a)(3)(i)(C), Defendants are entitled to summary judgment with respect to  
17 Plaintiff Lu. Defendants hereby incorporate by reference the prior arguments set  
18 forth in Defendants' Non-Ninth Circuit Summary Judgment Motion (dkt # 120) at  
19 Part III.C. Further, Plaintiff Lu resides in Guangzhou, China. First Amended  
20 Complaint for Declarative and Injunctive Relief and Petition for Writ of  
21 Mandamus at 23, ¶ 100. As an alien who has not been admitted to, and does not  
22 reside in, the United States, Plaintiff Lu is not entitled to judicial review of an  
23 administrative decision that she is not eligible to immigrate. *See Kleindienst*, 408  
24 U.S. at 762; *Braude*, 350 F.2d at 706.  
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2 **CERTIFICATE OF SERVICE**

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5 Case No. CV07-05696 (CAS)

6 I hereby certify that on this 23rd day of March 2009, true and correct copies  
7 of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFFS' NOTICE**  
8 **OF MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN**  
9 **SUPPORT OF RENEWED MOTION FOR SUMMARY JUDGMENT**, with  
10 attached **DECLARATION OF MICHAEL J. SHERIDAN AND EVIDENCE**  
11 **IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS'**  
12 **RENEWED MOTION FOR SUMMARY JUDGMENT**, and **[PROPOSED]**  
13 **ORDER DENYING PLAINTIFFS' RENEWED MOTION FOR SUMMARY**  
14 **JUDGMENT**, and **DEFENDANTS' STATEMENT OF GENUINE ISSUES OF**  
15 **MATERIAL FACT IN OPPOSITION TO PLAINTIFFS' RENEWED**  
16 **MOTION FOR SUMMARY JUDGMENT** were served pursuant to the district  
17 court's ECF system as to ECF filers on March 23, 2009, to the following ECF  
18 filers:  
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/s/ Patricia E. Bruckner  
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