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SOUTHERN DISTRICT OF CALIF.

BY:

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DANIEL TARTAKOVSKY, *et al.*,

Plaintiffs,

vs.

PAUL M. PIERRE, *et al.*,

Defendants.

CASE NO. 07CV1667 BEN (BLM)

**ORDER DENYING MOTION FOR  
ATTORNEY'S FEES AND COSTS**

[Dkt. No. 49]

**INTRODUCTION**

Plaintiffs' motion for attorney's fees and costs pursuant to the Equal Access to Justice Act ("EAJA") is presently before the Court. Dkt. No. 49. The Government opposed the motion. Dkt. No. 58. Because the Court finds that Plaintiffs are not prevailing parties, the motion is **DENIED**.

**BACKGROUND**

Plaintiffs filed this action requesting the Court naturalize Plaintiffs pursuant to 8 U.S.C. § 1447(b). Plaintiffs were legal permanent residents of the United States awaiting naturalization to United States citizenship and claimed Defendants failed to timely adjudicate Plaintiffs' naturalization applications. Each Plaintiff had filed an application for naturalization and received an initial interview from U.S. Citizenship and Immigration Services ("USCIS"), however, the interviews occurred before completion of all background checks. Because of the delays in completing the background checks, more than 120 days passed from the interview, allowing Plaintiffs to seek relief from this Court pursuant to § 1447(b).

1 Defendants moved to remand the matter to USCIS for completion of the required background  
2 checks and adjudication of Plaintiffs' applications. Plaintiffs opposed remand. The Court remanded  
3 the matter to USCIS with instructions to adjudicate Plaintiffs' applications without unreasonable delay  
4 and imposed no specific deadline for adjudication.

### 5 DISCUSSION

6 The EAJA provides for an award of attorneys fees and costs in a civil action against the United  
7 States if: (1) the claimant is a "prevailing party;" (2) "the Government's position was not substantially  
8 justified;" (3) "no special circumstances make an award unjust;" and (4) a complete application for  
9 fees was timely filed. *INS v. Jean*, 496 U.S. 154, 158 (1990) (citing 28 U.S.C. § 2412(d)(1)(B)). The  
10 Government contends Plaintiffs are not prevailing parties and that the Government's position was  
11 substantially justified.

12 A prevailing party is one who has "receive[d] at least some relief on the merits of his claim."  
13 *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 603  
14 (2001). "The touchstone of the prevailing party inquiry is . . . the material alteration of the legal  
15 relationship of the parties." *Sole v. Wyner*, 551 U.S. 74, 82 (2007) (citing *Texas State Teachers Ass'n*  
16 *v. Garland Independent School District*, 489 U.S. 782, 792-793 (1989)). It is not enough that "a  
17 plaintiff . . . achieves the desired result because the lawsuit brought about a voluntary change in the  
18 defendant's conduct." *Buckhannon*, 532 U.S. at 601 (rejecting the "catalyst theory"). The Court's  
19 order remanding the matter to USCIS did not afford Plaintiffs relief on the merits of their claims nor  
20 did it materially alter the legal relationship between the parties.

21 Plaintiffs sought a de novo review of the Plaintiffs' applications and naturalization by the  
22 Court. Additionally, Plaintiffs opposed remand and argued that if the Court did remand, it should  
23 impose a hard deadline by which the Government must adjudicate Plaintiffs' applications and asked  
24 the Court to retain jurisdiction to enforce a deadline.

25 The Court remanded to USCIS, specifically declining to set a deadline for adjudication and  
26 finding USCIS was in a better position to interpret the results of the full background checks for  
27 determination regarding naturalization. Additionally, the Court indicated that remand was necessary  
28 to give jurisdiction back to USCIS to complete the applications. This was particularly important in

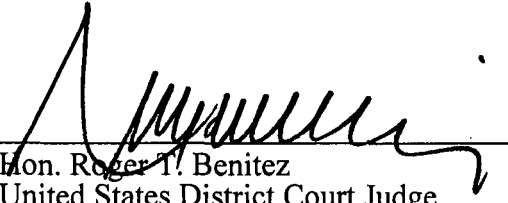
1 this case, given that it appeared Defendants had actually completed the background checks that delayed  
2 adjudication in the first place and this Court maintaining jurisdiction was preventing adjudication of  
3 the applications. The Court's instruction to adjudicate the applications "without unreasonable delay,"  
4 taking into account the practical considerations USCIS faced and acknowledging the agency must  
5 await completion of the full background checks, did not afford Plaintiff any of the relief sought or  
6 change the legal relationship between the parties. Accordingly, Plaintiffs are not prevailing parties and  
7 are not entitled to attorneys fees and costs pursuant to the EAJA.

8 **CONCLUSION**

9 Plaintiffs' motion for attorneys fees and costs pursuant to the EAJA is **DENIED**.

10  
11 **IT IS SO ORDERED.**

12  
13 DATED: August 10, 2009

14   
Hon. Roger T. Benitez  
United States District Court Judge