■ ***Forum non conveniens;* forum selection clause.** In an action arising out of injuries sustained by a Minnesota plaintiff while on a transatlantic cruise, Judge Wright granted defendants' motion to dismiss under the doctrine of *forum non conveniens*, finding that the forum selection clause in the underlying contract (which designated a Swiss court as the only proper forum for the litigation) was enforceable, rejecting plaintiffs' arguments that being forced to litigate in Switzerland would be so "difficult" as to effectively deprive them of their day in court, and also rejecting plaintiffs' argument that the forum selection clause was included in an adhesion contract. ***Sheehan v. Viking River Cruises, Inc.***, 2020 WL 6586231 (D. Minn. 11/10/2020).

■ **Grant of motion to strike deposition errata sheet affirmed.** In October 2020, this column noted Magistrate Judge Menendez's grant of defendants' motion to strike plaintiff's deposition errata sheet, in which the plaintiff attempted to—among other things—change "yes" answers to "no."

That order was recently affirmed by Judge Frank, who also rejected the plaintiff's new-found argument that the court reporter's instructions regarding submission of an errata sheet somehow permitted the widespread modifications to his deposition testimony. ***Elsherif v. Mayo Clinic***, 2020 WL 5015825 (D. Minn. 8/25/2020), *aff'd*, 2020 WL 6743482 (D. Minn. 11/17/2020).

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IMMIGRATION LAW

JUDICIAL LAW

■ **No CAT relief; Somali government did not "willfully" turn a blind eye.** The 8th Circuit Court of Appeals held that the record failed to show the Somali government had "willfully" turned a blind eye to Al-Shabaab's activities, notwithstanding the petitioner's argument, in relation to his Convention Against Torture (CAT) claim, that it would acquiesce in his torture. The court found, to the contrary, that the government actively combats the organization and seeks to maintain order in the country. ***Moallin v. Barr***, 19-2743, *slip op.* (8th Cir. 11/23/2020). *https://ecf.ca8.uscourts.gov/opndir/20/11/192743P.pdf*

■ **TPS designation denotes "inspected and admitted" for adjustment of status purposes.** Joining the 6th and 9th Circuits, the 8th Circuit Court of Appeals held that a noncitizen who entered the United States without inspection or admission but later received temporary protected status (TPS) is deemed "inspected and admitted" under 8 U.S.C. §1255(a) (INA § 245A) and thus may adjust to lawful permanent resident (LPR) status. "USCIS's contrary interpretation conflicts with the plain meaning of the INA and is therefore unlawful. *See* 5 U.S.C. § 706(a)(A). We affirm the district court's judgments." ***Velasquez, et al. v. Barr, et al.***, 19-1148, *slip op.* (8th Cir. 10/27/2020). *https://ecf.ca8.uscourts.gov/opndir/20/10/191148P.pdf*

■ **Dream on: DACA update.** As noted in the September edition of *Bench & Bar*, the U.S. Supreme Court rejected, on 6/18/2020, the government's effort to end the Deferred Action for Childhood Arrivals Program (DACA) and remanded the case for further consideration, not because the Department of Homeland Security (DHS) lacked the authority to do so, but because it failed to provide a reasoned explanation for this. In a 5 to 4 majority opinion authored by Chief Justice John G. Roberts, Jr., the Court ruled that it held jurisdiction to review DHS's rescission of DACA under the Administrative Procedure Act (APA). ***DHS v. Regents of the University of California***, 591 U.S. _____, No. 18-587, *slip op.* (2020). *https://www.supremecourt.gov/opinions/19pdf/18-587_5ifl.pdf*

On 7/28/2020, DHS Acting Secretary Chad Wolf issued a memorandum ("Reconsideration of the June 15, 2012 Memorandum Entitled 'Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children'") suspending DACA (i.e., DHS would reject all first-time DACA requests; adjudicate all pending and future properly submitted DACA renewal requests [and associated applications for employment authorization] from current beneficiaries; limit the period of any deferred action granted to one year; and reject all pending and future applications for advance parole from beneficiaries of the DACA policy). *https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf*

On 11/14/2020, the U.S. District Court for the Eastern District of New York granted the plaintiffs' motion for summary judgment, finding Chad Wolf was not lawfully serving as acting secretary of the Department of Homeland Security when he issued his memorandum. ***Battalla Vidal, et al. v. Wolf, et al.*** and ***State of New York, et al. v. Trump, et al.***, Nos. 16-CV-4756 (NGG) (VMS) and 17-CV-5228 (NGG) (VMS) (E.D.N.Y. 11/14/2020). *https://www.dhs.gov/sites/default/files/publications/20_1114_ogc_batalla-vidal-partial-msj-class-cert-order_508.pdf*

On 12/04/2020, the U.S. District Court for the Eastern District of New York ordered the Department of Homeland Security (DHS) to post a public notice, within three calendar days, that it would accept applications for DACA, both first-time and renewal, as well as advance parole requests while, at the same time ordering DHS to extend deferred action grants of DACA and employment authorization to two-year periods. ***Battalla Vidal, et al. v. Wolf, et al.*** and ***State of New York, et al. v. Trump, et al.***, Nos. 16-CV-4756 (NGG) (VMS) and 17-CV-5228 (NGG)

(VMS) (E.D.N.Y. 12/04/2020). *http://cdn.cnn.com/cnn/2020/images/12/04/batalla_vidal_et_al_v_nielsen_et_al__nyedce-16-04756__0354.0.pdf*

On 12/07/2020, the Department of Homeland Security (DHS) updated its website to comply with the court's 12/04/2020 order. *https://www.uscis.gov/news/alerts/deferred-action-for-childhood-arrivals-response-to-december-4-2020-order-in-batalla-vidal-et-al-v*

https://www.uscis.gov/i-821d

■ **"Public charge" and inadmissibility.** On 12/2/2020, the 9th Circuit Court of Appeals upheld the preliminary injunctions enjoining the implementation of the Department of Homeland Security's redefinition of the term "public charge," which describes a ground of inadmissibility under immigration law. That redefinition encompasses a change from one who "is or is likely to become primarily dependent on the government for subsistence" to one who is "likely to participate, even for a limited period of time, in non-cash federal government assistance programs." As the court eloquently noted, "Up until the promulgation of this Rule, the concept has never encompassed persons likely to make short-term use of in-kind benefits that are neither intended nor sufficient to provide basic sustenance." The two injunctions were issued by the U.S. District Courts for the Northern District of California and Eastern District of Washington and applied to the city and county of San Francisco, county of Santa Clara, and states of California, Maine, Pennsylvania, Oregon, District of Columbia, Washington, Virginia, Colorado, Delaware, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Rhode Island, and Hawaii. The court did, however, vacate that portion of the injunction issued by the U.S. District Court for the Eastern District of Washington making it nationwide in nature. ***City and County of San Francisco, et al. v. U.S. Citizenship and Immigration Services, et al.*** and ***State of California v. U.S. Department of Homeland Security, et al.*** and ***State of Washington, et al. v. U.S. Department of Homeland Security, et al.,*** Nos. 19-17213, 19-17214, 19-35914, *slip op.* (9th Cir. 12/02/2020). *https://cdn.ca9.uscourts.gov/datastore/opinions/2020/12/02/19-17213.pdf*

■ **H-1B rule changes in the face of APA notice and comment requirements.** Faced with the task of determining whether the Departments of Homeland Security (DHS) and Labor's (DOL) efforts ("Strengthening the H-1B Nonimmigrant Visa Classification Program" and "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens [sic] in the United States") to significantly change the H-1B visa program while dispensing with "due deliberation" were justified in the face of the covid-19 pandemic and its impact on domestic unemployment, the U.S. District Court for the Northern District of California ruled that they were not. It first found the Department of Homeland Security's Rule was issued "'without observance of procedure required by law' and thus must be set aside." At the same time, the court found the Department of Labor had failed to meet its burden "that providing advance notice would have had consequences so dire that notice and comment would not have served the public interest." Given the government's failure to show good cause for dispensing "with the rational and thoughtful discourse that is provided by the APA's notice and comment requirements," the court found the plaintiffs were entitled to judgment in their favor**. *Chamber of Commerce, et al. v. U.S. Department of Homeland Security, et al.***, No. 20-cv-07331-JSW (N.D. Cal. 12/01/2020). *https://www.chamberlitigation.com/sites/default/files/cases/files/20202020/Order%20Granting%20Summary%20Judgment%20-%20U.S.%20Chamber%20v.%20DHS%20%28N.D.%20Cal.%29.pdf*

ADMINISTRATIVE ACTION

■ **Automatic extension of TPS-related documentation for TPS beneficiaries.** The U.S. Department of Homeland Security (DHS) announced its continued compliance with the preliminary injunction orders of the U.S. District Court for the Northern District of California in *Ramos, et al.* v. *Nielsen, et. al.*, No. 18–cv–01554 (N.D. Cal. 10/03/2018); the U.S. District Court for the Eastern District of New York in *Saget, et. al.*, v. *Trump, et. al.*, No. 18–cv–1599 (E.D.N.Y. 04/11/2019); and the U.S. District Court for the Northern District of California to stay proceedings in *Bhattarai* v. *Nielsen*, No. 19–cv–00731 (N.D. Cal. 03/122019). While the 9th Circuit Court of Appeals vacated the injunction on 9/14/2020, it has not yet issued its order to the district court making its ruling effective. As a result, TPS beneficiaries from El Salvador, Honduras, Nepal, Nicaragua, and Sudan will retain their status while the preliminary injunctions in *Ramos* and *Bhattarai* remain in effect. TPS beneficiaries from Haiti will retain their status while the preliminary injunctions in either *Ramos* or *Saget* remain in effect. As such, DHS further announced the automatic extension of the validity of TPS-related employment authorization documents (EADs); notices of action (Forms I–797); and arrival/departure records (Forms I–94), (collectively known as "TPS-related documentation") for those TPS beneficiaries from the aforementioned countries. The extension of those documents will run through 10/04/2021. **85 Fed. Register, 79208-15** (12/9/2020). *https://www.govinfo.gov/content/pkg/FR-2020-12-09/pdf/2020-27154.pdf*

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