IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JOCELYN ISADA BOLANTE
Alien No. 095 719 764
Kenosha County Detention Center

Petitioner,

v.

GLENN TRIVELINE, Field Office Director, Chicago, U.S. Immigration and Customs Enforcement; DAVID G. BETH, Sheriff of Kenosha County; GARY PRESTON, Detention Division Commander of the Kenosha County Jail; MICHAEL MUKASEY, U.S. Attorney General; MICHAEL CHERTOFF, Secretary of the Dept. of Homeland Security; and CONDOLEEZZA RICE, U.S. Secretary of the State,

Respondents.

Docket No. 08-C-0698

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on August 14, 2008, we caused to be filed a **Petition for Habeas Corpus**, a copy of which is attached hereto, with the Clerk of the Court, United States District Court for the Eastern District of Wisconsin, located at 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JOCELYN ISADA BOLANTE Alien No. 095 719 764 Kenosha County Detention Center Petitioner, v. GLENN TRIVELINE, Field Office Director, Chicago, U.S. Immigration and Customs Enforcement; DAVID G. BETH, Sheriff of Kenosha County; GARY PRESTON, Detention Division Commander of the Kenosha County Jail; MICHAEL MUKASEY, U.S. Attorney General; MICHAEL CHERTOFF, Secretary of the Dept. of Homeland Security; and CONDOLEEZZA RICE, U.S. Secretary of the State, Respondents.	)	Docket No. 08-C-0698

PETITION FOR HABEAS CORPUS

The Petitioner, JOCELYN ISADA BOLANTE ("Bolante"), by and through his attorneys, AZULAYSEIDEN LAW GROUP, hereby respectfully petitions this Honorable Court for a writ of habeas corpus to enter an order granting him release from custody under all appropriate conditions pending. In support thereof, Bolante alleges as follows:

PRELIMINARY STATEMENT

This case raises the fundamental question of whether the REAL ID Act violates the Suspension Clause of the Habeas Corpus Provision, Article I, §9, Cl. 2 of the United States Constitution where U.S. Immigration and Customs Enforcement ("USICE") has detained Bolante for a period in excess of two years without allowing for adequate review in front of a

neutral decision maker of the legality of his detention, the underlying cause of his detention, or the Attorney General's purported interest in his detention.

Under the U.S. Supreme Court's recent decision in *Boumediene v. Bush*, 128 S.Ct. 2229 (2008), Bolante is entitled to meaningful habeas review of his unlawful two-year incarceration by the United States. The Attorney General's continued and prolonged detention of Bolante violates substantive and procedural due process rights accorded to him by the Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States and violates the Suspension Clause and the Separation of Powers framework of the United States Constitution.

JURISDICTION

1. This is a civil action brought pursuant to 5 U.S.C. §704 and 28 U.S.C. §1331 and 1361 and the Fifth and Fourteenth Amendment of the Constitution to compel Respondents, GLENN TRIVELINE, Field Office Director, Chicago, USICE; DAVID G. BETH, Sheriff of Kenosha County; GARY PRESTON, Detention Division Commander of the Kenosha County Jail; MICHAEL MUKASEY, U.S. Attorney General; MICHAEL CHERTOFF, Secretary of the Dept. of Homeland Security ("DHS"); and CONDOLEEZZA RICE, U.S. Secretary of the State, to accord Bolante the due process of law to which he is entitled under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

2. Bolante invokes the jurisdiction of the Court under the general grant of habeas corpus jurisdiction at 28 U.S.C. §2241, *et seq.*, and the All Writs Act at 28 U.S.C. §1651. Section 2241, *et seq.*, confers jurisdiction upon federal courts to grant writs of habeas corpus for persons in custody in violation of the Constitution or laws of the United States and for persons in custody under, or by color, the authority of the United States. "[T]he statute accommodates the necessity for fact-finding that will arise in some cases by allowing the appellate judge or Justice

to transfer the case to a district court of competent jurisdiction, whose institutional capacity for fact-finding is superior to his or her own." *Boumediene*, 128 S.Ct. at 2266.

3. Bolante is guaranteed the privilege of a Writ of Habeas Corpus under the Suspension Clause of Article I, §9, Cl. 2 of the Constitution of the United States.

4. Bolante is guaranteed the right of due process of law under the Fifth and Fourteenth Amendments to the Constitution of the United States, which requires "adequate procedural protection" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (internal quotation marks omitted).

5. Bolante is granted certain rights under Article 36, subparagraph 1 of the Vienna Convention on Consular Relations.

6. Section 106(a) of the REAL ID Act of 2005, Pub. L. 109-13, 119 Stat 231, 310-11 (2005) ("REAL ID Act"), adding the new subsection (a)(5) to 8 U.S.C. §1252, which expressly prohibits the resort to 28 U.S.C. § 2241 for habeas corpus review in removal proceedings, states, in relevant part:

> For purposes of this Act, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms "judicial review" and "jurisdiction to review" include habeas corpus review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, section 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

8 U.S.C. 1252(a)(5). Section 101(f), Pub. L. 109-13, 119 Stat 231, 305, clarifies that the court-stripping provision included in 8 U.S.C. 1252(a)(2)(B), relating to denials of discretionary relief, applies regardless of whether the discretionary decision is made in removal proceedings:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241

> of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. 1252(g). The jurisdiction-stripping provisions of the REAL ID Act do not divest this Court of jurisdiction to review the lawfulness of Bolante's detention in accordance with § 2241 of title 28, because the REAL ID Act is unconstitutional in that it provides no adequate or effective substitute for habeas relief.

VENUE

7. Venue lies in this Court pursuant to 28 U.S.C. §1391(e) in that Bolante currently resides in the custody of Captain GARY PRESTON, Detention Division Commander of the Kenosha County Detention Center in Kenosha, Illinois. No real property is involved in this action, and the Respondents are the United States of America and an agency thereof.

PARTIES

8. Bolante is a citizen of the Philippines.

9. Bolante arrived in the United States on July 7, 2006, as a nonimmigrant on a valid Philippine passport bearing a B1/B2 visa.

10. Respondents USICE and DHS are federal agencies organized and existing under 8 U.S.C. §1551.

11. Respondent, GLENN TRIVELINE, is Field Office Director of the Chicago Office of the USICE whose duties include the administration and enforcement of all functions, powers and duties of the USICE. GLENN TRIVELINE is being sued in her official capacity only.

12. Respondent, DAVID G. BETH, is the Sheriff of Kenosha County whose duties include the administration and enforcement of all functions, powers and duties of law enforcement in Kenosha County is being sued in her official capacity only.

13. Respondent, GARY PRESTON, is the Detention Division Commander of the Kenosha County Jail whose duties include the supervision of the Kenosha county detention facility within which the Bolante is currently detained. GARY PRESTON is being sued in his official capacity only.

14. Respondent, MICHAEL MUKASEY, is the Attorney General of the United States of America, whose duties include the administration and enforcement of all functions, powers and duties of the Department of Justice. Respondent MUKASEY is being sued in his official capacity only.

15. Respondent, MICHAEL CHERTOFF, is the Secretary of DHS whose duties include the administration and enforcement of all functions, powers and duties of DHS. MICHAEL CHERTOFF is being sued in his official capacity only.

16. Respondent, CONDOLEEZA RICE, is the U.S. Secretary of State whose duties include the supervision of the Department of State which is responsible for issuing and revoking visas. CONDOLEEZA RICE is being sued in her official capacity only.

FACTS AND SPECIFIC ALLEGATIONS

17. Bolante is a citizen of the Philippines. He is the former Philippine Department of Agriculture Undersecretary for Finance and Administration under President Arroyo, who took over the presidency from Joseph Estrada in 2001.

18. He arrived in the Los Angeles International Airport ("LAX") on or about July 7, 2006 on what appeared in every aspect to be a valid Philippine passport bearing a multiple entry

B1/B2 visa. However, immediately upon arrival, he was detained and taken into USICE custody. He has remained in jail since that time and has been denied his right to a meaningful review by an Article III court of the Attorney General's authority or cause to detain him.

19. Bolante intended on staying in the United States for approximately two months for the purpose of visiting his son and daughter who were undergoing optional practical training following their studies in the United States, to receive dental care, and to submit an expense report to Rotary International in Chicago, Illinois.

20. Bolante was not an intending immigrant. His non-immigrant intention was evidenced at the time of his arrival by a return ticket in his possession.

21. Immediately upon Bolante's arrival to the United States, two U.S. Customs and Border Protection officers detained him for questioning. At that time, Bolante presented his passport bearing a B1/B2 visa.

22. On that same day, Bolante provided a sworn statement before Officer Rene Arambulo. Officer Rene Arambulo informed Bolante that his B1/B2 visa had been revoked by the United States consular Office in Manila prior to his arrival and that "records indicate that there is an arrest warrant issued to you by the Philippine Senate." After learning that his B1/B2 had been revoked without his notice, Bolante expressed a credible fear of being returned to the Philippines.

23. Just a few months before the last 2004 Philippine presidential election, "fertilizer funds" were released by the Department of Agriculture, prompting suspicion from Estrada loyalists in the Senate that the funds were misappropriated for Arroyo's election campaign. Bolante was among those implicated by the Senate as taking part in the purported "fertilizer

scam" and was called to testify in hearings conducted by the Senate. Despite his cooperation, the Senate apparently issued a warrant for Bolante's arrest, the validity of which he challenged.

24. Bolante did not have prior notice of the revocation of his U.S. visa. The U.S. government maintains that the Manila consular officer allegedly sent two letters to Bolante in February and March of 2006 advising him that his visa was no longer valid. The letters state that Bolante's nonimmigrant visa had been revoked under INA § 214(b) [presumption of immigrant status], because he was a nonimmigrant who intended to remain in the U.S. indefinitely. Bolante did not receive either letter.

25. While in custody on July 20, 2006, DHS served Bolante personally a Notice to Appear (hereinafter "NTA") before the EOIR in San Pedro, California. The NTA was issued on July 13, 2006,

26. The NTA charged Bolante as an arriving alien who is inadmissible to the United States pursuant to INA 212(a)(7)(A)(i)(I), because he was not in possession of a valid unexpired visa when arriving in the United States.

27. Bolante appeared for his master calendar hearing before the Immigration Court in San Pedro, California on July 31, 2006 and requested a change of venue.

28. On August 3, 2006 Immigration Judge Sitgraves ordered the venue for the immigration proceedings to be changed from San Pedro, California to Chicago, Illinois upon consent of the trial attorney and ordered Bolante's case to be transferred to Chicago, Illinois.

29. Bolante was transferred to the Kenosha County Detention Center, located at 4777 88th Avenue, Kenosha, WI 53144, on August 9, 2006, where he has remained illegally in custody of the Attorney General for a period in excess of two years.

30. On or about September 27, 2006, Bolante filed an application for asylum and withholding of removal with the Immigration Court on the grounds that he had a fear of future persecution based upon his political opinion and membership in a particular social group.

31. On or about November 9, 2006, a hearing was held before an Immigration Judge ("IJ") and continued for completion on December 14, 2006 in support of Bolante's applications. Prior to the asylum hearing, the IJ informed Bolante that he did not have jurisdiction to hear issues related to the visa revocation.

32. On February 9, 2007, the IJ issued an opinion denying Bolante's request for asylum pursuant to 8 U.S.C. §1158(a) and denied Withholding of Removal pursuant to 8 U.S.C. §1231(b)(3), despite finding Bolante was a credible witness in support of his application.

33. On or about February 20, 2007, Bolante filed a notice of appeal with the Board of Immigration Appeals ("BIA") from the IJ decision denying his application for asylum and withholding of removal.

34. The BIA upheld the IJ's decision and Bolante remained in the custody of the Attorney General.

35. On or about July 3, 2007, Bolante timely filed a Petition for Review with the Seventh Circuit Court of Appeals, which to date remains pending.

36. In addition, on or about August 23, 2007, Bolante filed a motion for bond pending the outcome of the Petition for Review before the Seventh Circuit. On or about October 31, 2007, the Seventh Circuit denied Bolante's request for bond. *See Bolante v. Keisler*, 506 F.3d 618, 621 (7th Cir. 2007). It held that Bolante was not entitled to bail pending his appeal of the Board's determination ordering removal, because 8 U.S.C. § 1252(a)(2)(B)(ii), as amended by §

106(c) of the REAL ID Act, strips federal courts of the authority to review the Attorney General's discretionary decision not to parole a detained alien. *Id.*

ARGUMENT

I. THE REAL I.D. ACT HAS UNCONSTITUTIONALLY SUSPENDED BOLANTE'S RIGHT TO CHALLENGE BEFORE A NEUTRAL DECISION MAKER THE ATTORNEY GENERAL'S AUTHORITY TO DETAIN HIM AND THE UNDERLYING FACTS PERTINENT TO THE CAUSE OF DETENTION.

37. Habeas corpus is a writ employed to bring a person before a court to ensure that the party's imprisonment or detention is not illegal. *Boumediene*, 128 S.Ct. at 2243.

38. The Suspension Clause is an "exception" to the "power given to Congress to regulate Courts." *Boumediene*, 128 S.Ct. at 2246 (*quoting* 3 Debates in the Several State Conventions on the Adoption of the Federal Constitution 460-464 (J. Elliot 2d ed. 1876)). "It protects against arbitrary suspension of the writ and guarantees an affirmative right to judicial inquiry into the cause of detention." *Id.*

39. To satisfy the mandate of the Suspension Clause, the habeas court must have sufficient authority to conduct a meaningful review of both the Executive's power to detain and the cause for detention. *Id.* at 2269. The REAL ID Act does not avoid the Suspension Clause mandate because Congress has not provided adequate and effective substitute procedures for habeas corpus. *Id.* at 2275.

40. Congress cannot use principles of exclusion under immigration law to strip persons located within U.S. jurisdictions of the right to petition a federal judiciary for full habeas review. *Id.* at 2259-60. Bolante entered the United States at LAX. LAX is within the constant jurisdiction of the United States. Because Bolante entered the United States in fact and remains physically present within its constant jurisdiction, he is entitled to full constitutional protections, including the Suspension Clause and the benefits of the Separation of Powers doctrine.

Boumediene, 128 S.Ct. at 2246 (the Separation of Powers doctrine protects foreign nationals located within the constant jurisdiction of the United States).

A. Bolante Is Entitled To The Privilege Of Habeas Corpus To Challenge The Legality Of His Detention.

41. Where a person is detained by executive order rather than after being tried and convicted in a court, the need for collateral review is most pressing. *Boumediene*, 128 S.Ct. at 2269.

42. The Attorney General is holding Bolante in custody pursuant to 8 U.S.C. 1226(a), which authorizes the Attorney General to detain an alien "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). It is within the Attorney General's discretionary authority to detain Bolante, though he has not been tried and convicted in a criminal court.

43. The Seventh Circuit has held that 8 U.S.C. § 1252(a)(2)(B), as amended by the REAL ID Act, bars the court of appeals from ordering a habeas petitioner's release from detention pending judicial review of the final order of removal. *Hussain v. Mukasey*, 510 F.3d 739, 742 (7th Cir. 2007); *relying on Bolante*, 506 F.3d 618 (7th Cir. 2007).

44. To satisfy the mandate of the Suspension Clause that the habeas court must have sufficient authority to conduct a meaningful review of the Executive's power to detain, the habeas court must have the means to correct errors in the underlying detention proceedings such that it has the authority to: (a) hear relevant exculpatory evidence by supplementing the record; (b) review relevant law and facts; and (c) order the release of the detainee. *Boumediene*, 128 S.Ct. at 2270-71.

45. The REAL ID Act forecloses an Article III court from considering questions of fact related to discretionary decisions of the Attorney General, which is in direct contravention to

the Supreme Court's holding that the "*judicial officer* must have adequate authority to make a determination in light of the relevant law and *facts*." *Id.* at 2271 (emphasis added).

46. The REAL ID Act unlawfully prevents Bolante from challenging his prolonged detention to the extent mandated by the Suspension Clause, because it constrains the court of appeals to consider only Constitutional claims and questions of law concerning the Attorney General's discretionary decisions without an adequate substitute for the fact-finding required to afford full protection of the writ. *See Kucana v. Mukasey*, ___F.3d ___, 2008 U.S. App. LEXIS 14478, **8-11, 2008 WL 2639039, *3 (July 7, 2008) (holding a petition to review the BIA's discretionary decision not to reopen the underlying removal proceeding may not be considered unless petitioner raises Constitutional claims or questions of law).

47. Once the court of appeals determines the immigration judge followed appropriate and lawful procedures, it has reached the limits of its jurisdiction under the REAL ID Act. As a result, the provisions of 8 U.S.C. § 1252, as amended by § 106(c) of the REAL ID Act, fall short of being a Constitutionally adequate substitute for habeas corpus.

48. Evidence related to the revokation of Bolante's visa is critical to his argument that the government has no authority or cause to detain or deport him. Yet, an immigration judge may not review the consular officer's decision to revoke his visa. Moreover, the REAL ID Act has disadvantaged Bolante by limiting the scope of habeas review to a record that may not be accurate or complete. *Boumediene*, 128 S.Ct. at 2273.

49. The lack of judicial authority to conduct fact-finding of relevant exculpatory evidence discovered after the close of immigration proceeding but during the pendency of judicial review is a violation of the Separation of Powers and the Suspension clause. *See* 8 U.S.C. § 1252(a)(2)(B)(ii).

50. Assuming a decision to revoke a visa could be reviewed at the administrative level, a potential motion to reopen at the administrative level with the possibility of judicial review thereafter does not provide Bolante the due process necessary to alleviate Suspension Clause concerns where (a) that model of review ignores the inherent urgency of a habeas petition; (b) a motion to reopen before the BIA for fact-finding pursuant to a habeas petition does not satisfy the Supreme Court's mandate in *Boumediene* that the habeas court must be able to decide relevant questions of fact; and (c) the BIA's discretionary denial of a motion to reopen is unreviewable by the Seventh Circuit where the habeas petitioner has not raised a Constitutional claim or question of law.

51. The court that "conducts the habeas proceeding must have the means to correct underlying errors." *Boumediene*, 128 S.Ct. at 2270. In order to correct the underlying errors in the revocation of his visa, Bolante must have the means to supplement the record on review and the opportunity to present to the habeas court relevant exculpatory evidence not introduced during the earlier proceedings. *Id.* Another attribute of constitutionally adequate habeas corpus proceeding is that habeas court must have the power to order the conditional release of an individual unlawfully detained. *Id.* at 2266.

52. The above mentioned elements are constitutionally required, *id.* at 2270, yet the REAL ID Act provides neither the district court nor the court of appeals with the subject matter jurisdiction to oversee the judicial administration of these rights as they pertain to Bolante. *See Bolante v. Keisler*, 506 F.3d at 621 (holding that the Attorney General's decision not to release an alien on parole is not judicially reviewable); *see also Bolante v. Achim*, 457 F.Supp.2d 898, 903 (E.D. Wis. 2006) (holding that since the district court lacks jurisdiction to grant a writ, it has no inherent power to grant bail as a means of making the habeas remedy effective).

53. The REAL ID Act's amendments to 8 U.S.C. § 1252 do not provide an adequate and effective alternative to habeas relief previously available under 28 U.S.C. §2241, *et seq.*, and the All Writs Act at 28 U.S.C. §1651, because they strip the federal judiciary of subject matter jurisdiction to (a) review the factual basis of the Attorney General's authority to detain Bolante pending removal from the United States; and, (b) order his release.

54. Accordingly, the REAL ID Act's amendments to 8 U.S.C. §1252, which strip federal courts of habeas jurisdiction in detained alien cases must be declared unconstitutional. Furthermore, habeas review must be reinstated pursuant to the mandate of the Suspension Clause in order that Bolante may demonstrate before the judiciary the unlawfulness of his prolonged detention.

B. The Underlying Cause Of Bolante's Detention, The Revocation Of His Visa, Is Unlawful.

55. No Court or immigration officer has reviewed or had jurisdiction to review the arbitrary revocation of Bolante's visa.

56. The court of appeals must review the BIA's decision to deny asylum as long as Bolante raises a Constitutional claim or question of law in challenging that decision. The basis for his detention, i.e. the revocation of his visa, is inextricably tied to his claim for asylum.

57. Bolante can demonstrate that he is being held in custody by the Attorney General pursuant to the erroneous application or interpretation of relevant law. To date, the purported basis for the consular officer's revocation of Bolante's visa remains unclear. Since there is no obvious basis for the visa revocation, the consular officer's decision to revoke Bolante's visa in-transit is arbitrary. Furthermore, the Attorney General's cause of detention is unlawful because it stems from the underlying erroneous visa revocation.

58. Bolante's continued detention as an arriving alien is unlawful in that the revocation of his visa was contrary to material and formal requirements that a revocation must not be arbitrary. *See* 9 FAM 41.122 Note 2 (attached here to as **Exhibit 1**).

59. Bolante was never informed about the reasons for the revocation of his visa. However, statements by Officer Rene Arambulo made in the course of taking the aforementioned sworn statement indicate that the consular officer revoked Bolante's visa because of an outstanding "arrest warrant" issued by the Philippine Senate (*see* Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, Form I-831 at **Exhibit 2**).

60. The consular office allegedly sent two separate letters to Bolante dated February 15, 2006 and March 20, 2006 (attached hereto as **Exhibits 3 and 4**). The letters, provided to Bolante for the first time during his request for asylum and withholding of removal proceedings, demonstrate that the cause for the visa revocation inexplicably evolved over time. The letters cite a basis for revocation entirely inapposite to the alleged "arrest warrant" issue, which the consular officer initially relied upon in revoking Bolante's visa in-transit. Instead, the letters suggest that Bolante's visa was revoked upon the consular officer's belief that Bolante was an intending immigrant to the United States.

61. In accordance with 9 FAM 41.122 Note 2, which provides instructions to consular officers with regard to visas, the authority to revoke a visa should not be used arbitrarily. The fact that the consular officer's basis for the visa revocation has changed over time points directly to the arbitrariness of the revocation and to the unlawfulness of Bolante's resultant detention.

62. The revocation on either basis was not in compliance with Volume 9, Section 41.122 PN1.1 of the Foreign Affairs Manual (*see* **Exhibit 1**), because neither of the two

purported basis of revocation falls under the narrow and limited circumstances justifying revocation.

63. According to Volume 9, Section 41.122 PN1.1 of the Foreign Affairs Manual, a consular officer may only revoke a nonimmigrant visa under four circumstances. These circumstances are limited to when: (1) a consular officer determines that the alien is ineligible under INA 212(a), or INA 222(g) to receive such a visa; (2) the alien is not eligible for the particular visa classification; (3) the alien has been issued an immigrant visa; or (4) the visa has been physically removed from the passport in which it was issued (*see* **Exhibit 1**).

64. A consular officer may not revoke a visa based on a suspected ineligibility. Rather, a consular revocation must be based on an actual finding that the alien is ineligible for the visa pursuant to one of the four enumerated grounds. *See* 9 FAM 41.122 PN1.3 **(Exhibit 1)**; *Wong v. D.O.S.*, 789 F.2d 1380 (9th Cir. 1986) **(Exhibit 5)**.

65. An "arrest warrant" issued by a legislative branch of a foreign government does not establish a ground for inadmissibility pursuant to INA 212(a). Accordingly, it does not provide the material basis for a visa revocation.

66. The Senate's "arrest warrant" is merely a contempt citation calling for Bolante's immediate arrest and detention for failure to appear at a Senate Committee hearing to facilitate legislation. The Philippine government has neither indicted nor otherwise formerly charged Bolante with a crime.

67. Irrespective of the fact a Senate issued contempt citation does not provide a legal basis for the Bolante's arrest without confirmation by a judge, it still does not qualify as a ground that renders an alien inadmissible pursuant to INA 212(a) because a warrant is not covered by the enumerated grounds for inadmissibility.

68. The alleged arrest warrant against Bolante is not enforceable for lack of confirmation by a judge and would not render Bolante inadmissible under INA 212(a). Thus, a determination that Bolante was inadmissible is arbitrary, because it is based upon a suspected ineligibility.

69. Bolante has never stayed beyond the authorized period of admission to the United States; therefore, he cannot be found inadmissible according to INA 222(g).

70. Bolante is eligible for the B1/B2 visa classification, because he is not an intending immigrant. Pursuant to INA 214(b), all aliens are presumed to be intending immigrants unless and until they satisfy the consular officer at the time of the application for visa issuance or at the time of the application for admission to the United States that they qualify for one of the nonimmigrant visa categories defined in INA 101(a)(15).

71. Bolante cannot be detained as an intending immigrant because the U.S. Consulate in Manila had already determined that he qualifies for the B1/B2 nonimmigrant visitor visa under which he sought admission to the United States when he arrived on July 7, 2006. That visa was revoked unlawfully and arbitrarily without prior notice and while Bolante was in-transit, i.e. *after* the determination had already been made that he was not an intending immigrant. When he arrived at LAX, he did so on a facially valid visa. As such, he should not have been detained as an intending immigrant, because nothing had occurred in-transit so as to alter Bolante's status.

72. Furthermore, in addition to the above-mentioned regulations, 9 FAM 41.122 note 2, (1)-(3), requires the consular officer to (a) notify the alien of the intent to revoke a visa; (b) allow the alien the opportunity to show why the visa should not be revoked; and, (c) request that the alien present the travel document in which the visa was issued. (*See* **Exhibit 1**).

73. Bolante never received prior notification or written confirmation as to the time and basis of the consular officer's decision to revoke his visa.

74. As Bolante had not received notice that the U.S. Consular Office in Manila intended to revoke his visa before he applied for admission to the United States, Respondents denied Bolante the opportunity to show why his visa should not be revoked, thereby providing an additional basis for the instant petition.

75. For the foregoing reasons, Bolante can demonstrate that he is being held in custody pursuant to the consular officer's erroneous revokation of his visa.

II. BOLANTE HAS THE RIGHT TO CONTEST BEFORE A NEUTRAL DECISION MAKER WHETHER THE ATTORNEY GENERAL'S PURPORTED INTEREST IS ACTUALLY SERVED BY DETENTION UNDER THE FACTS OF HIS CASE.

76. The government may not detain Bolante for a prolonged period without providing him a neutral forum in which to contest the necessity of his continued detention. *Prieto-Romero v. Clark*, ___F.3d___, 2008 U.S. App. LEXIS 15934, 2008 WL 2853396 (9th Cir. 2008).

77. The Fifth Amendment entitles aliens to due process of law in deportation proceedings. Procedural due process requires the government to make an individualized finding that detention is justified by a legitimate government interest. *Zadvydas*, 533 U.S. at 690-91.

78. Bolante has been in detention in excess of two years without receiving a bond hearing to determine whether the Attorney General's interest is actually served by detention under the facts of his case.

79. Congress cannot authorize the detention of aliens pending a decision on whether the alien is to be removed from the United States as a class without providing the individual alien with an opportunity to show that his detention is not necessary to secure his presence at the time of removal. *Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005).

80. Bolante's prolonged detention without an individualized determination of his dangerousness of flight risk is Constitutionally doubtful. Thus, the Attorney General must provide him a bond hearing unless the government establishes that he is a flight risk or will be a danger to the community.

PRAYER FOR RELIEF

If the continued detention of Bolante is allowed, he and his family will suffer grievous and irreparable harm. The government will suffer no harmful consequences if this Court grants the Writ of Habeas Corpus in light of Bolante's application for relief.

WHEREFORE, Bolante, JOCELYN BOLANTE, by and through the undersigned counsel, prays that this Honorable Court grant the following relief:

A. Accept jurisdiction over this action;

B. Find the Real I.D. Act of 2005 violates the Suspension Clause of the Habeas Corpus Provision, Article I, §9, Cl. 2 of the United States Constitution;

C. Declare the jurisdiction stripping provisions of 8 U.S.C. § 1252, as amended by the Real I.D. Act of 2005, unconstitutional;

D. Grant Bolante a Writ of Habeas Corpus;

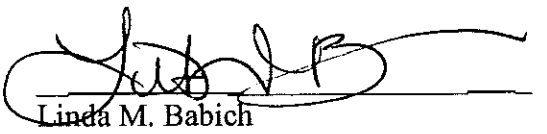
E. Order the Attorney General provide Bolante an individual bond hearing;

F. Order the Respondents to release Bolante from custody;

G. Grant such other and further relief as this Court deems necessary and just in the premises.

Dated: August 14, 2008

Respectfully submitted,



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PART II. NONIMMIGRANT VISAS (22 CFR Part 41)

41.122. PROCEDURAL NOTES

PN1. Revocation of Visas by Consular Officers

PN1.1. Revocation When Alien Found Ineligible After Visa Issuance*(TL:VISA-553; 06-25-2003)*

There are four circumstances under which a consular officer may revoke a nonimmigrant visa:
(1) Consular officer determines that the alien is ineligible under INA 212(a), or INA 222(g) to receive such visa;
(2) The alien is not eligible for the particular visa classification (this includes ineligibility under INA 214(b));
(3) The alien has been issued an immigrant visa; or
(4) The visa has been physically removed from the passport in which it was issued.
PN1.2. Entering Revocations into CLASS*(CT:VISA-663; 12-22-2004)*
The lookout code, "VRVK," must be entered into the Consular Lookout and Support System (CLASS) name check system when a visa that is revoked at post cannot be physically canceled.
PN1.3. When a Consular Officer May Not Revoke a Visa*(CT:VISA-663; 12-22-2004)*

a. A consular officer does not have the authority to revoke a visa based on a suspected ineligibility, or based on derogatory information that is insufficient to support an ineligibility finding. A consular revocation must be based on an actual finding that the alien is ineligible for the visa.

b. Under no circumstances should a consular officer abroad revoke a visa when the alien is in the United States, or after the alien has commenced an uninterrupted journey to the United States. This may only be done by the Visa Office (CA/VO/L/A) or (CA/VO/L/C).

PN2. When Derogatory Information Received

(CT:VISA-663; 12-22-2004)
If a consular officer receives derogatory information on an alien outside the context of a pending visa application, and the information is sufficient to render the alien ineligible for a visa, the officer should first check the Consular Consolidated Database (CCD) to determine whether the alien may be in possession of a valid visa. If not, the alien's name should be entered in CLASS under the appropriate "P" (quasi) ineligibility code, pending some future visa application by the alien. The CAT I or CAT II file should be created to back up the lookout entry. If the alien does have a valid visa, the post should follow the required procedures for processing visa revocation, in accordance with this section.

PN3. Seeking Advisory Opinions

EXHIBIT 1

(CT:VISA-663; 12-22-2004)

In making any new determination of ineligibility as a result of information which may come to light after issuance of a visa, the consular officer must seek and obtain any required Advisory or Security Advisory Opinions (AO or SAO). This applies, for example, to findings of ineligibility under INA 212(a)(6)(C)(i), "misrepresentation"; INA 212(a)(3)(B) "terrorist activity"; or INA 212(a)(3)(C), "foreign policy." Pending receipt of the Department's advisory opinion, the consular officer must enter the alien's name in CLASS under a quasi-refusal code, if warranted.

PN4. Communicating with Alien

PN4.1. Informing Alien of Intent to Revoke Visa*(TL:VISA-277; 05-10-2001)*

22 CFR 41.122(b) requires the consular officer to notify the alien of the intent to revoke a visa, if such notification is practicable. The notice of intent to revoke a visa affords the alien the opportunity to demonstrate why the visa should not be revoked. An after-the-fact notice that the visa has already been revoked would not be sufficient, unless prior notice of intent to revoke was found not to be practicable in the particular case.

PN4.2. When Intent to Revoke Not Practicable*(TL:VISA-277; 05-10-2001)*

A prior notification of intent to revoke a visa would not be practicable if, for instance, the post did not know the whereabouts of the alien, or if the alien's departure is believed to be imminent. In cases where the alien can be contacted and travel is not imminent, prior notice of intent to revoke the visa would normally be required, unless the consular officer has reason to believe that a notice of this type would prompt the alien to attempt immediate travel to the United States.

PN5. Physical Cancellation of Visa

(CT:VISA-663; 12-22-2004)

If a decision to revoke the visa is reached after the case has been reviewed, the consular officer must print or stamp the word "REVOKED" in large block letters across the face of the visa. The consular officer must also date and sign this action and enter any new ineligibilities or derogatory information into the Consular Lookout and Support System (CLASS). Timely entry into CLASS is essential. If located at a post other than the one at which the visa was issued, the title and location of the post should be written below the signature.

PN6. Form DS-4047, Certificate of Revocation of Visa by Consular Officer

(CT:VISA-663; 12-22-2004)

a. Except in a case where a visa is revoked because an immigrant visa has been issued to the alien, the consular officer must complete the Form DS-4047, Certificate of Revocation of Visa by Consular Officer, for the file when a visa is either canceled or revoked, and make the appropriate entry into CLASS. If the visa was issued at another post, a signed copy of the Form DS-4047, should be forwarded to the issuing post.

b. Since a consular revocation is a formal adjudication of eligibility, posts should use a definitive refusal code, rather than a "P" (quasi) lookout entry. This distinction is important because CAT I refusal codes pass into the Department of Homeland Security (DHS) lookout systems, whereas, most CAT I "P" codes do not.

PN7. When to Notify Department Regarding Revocation

(CT:VISA-663; 12-22-2004)

a. If a visa is physically cancelled prior to the alien's departure to the United States, then there is no need to report the revocation to the Department, except in cases involving A, G, C-2, C-3, or North American Treaty Organization (NATO) visas.

b. As required by 22 CFR 41.122(e), the Department (CA/VO/L/A, CA/VO/P/D, S/CPR, and the appropriate country desk), as well as Department of Homeland Security (DHS), Washington, D.C. should be promptly notified whenever any diplomatic or official visa, or any visa in the A, G, C-2, C-3, or NATO classification is formally revoked.

c. As required by 22 CFR 41.122(d) and 22 CFR 41.122(e), in any case in which a visa is revoked but the consular officer is unable to physically cancel the visa, the consular officer must notify the Department (CA/VO/L/C for cases that fall under INA 212(a)(3)(A) and INA 212(a)(3)(B), and CA/VO/L/A for all other cases), local carriers, and the appropriate DHS port(s) of entry. Notice to the Department should be in the format prescribed in **9 FAM 41. 122** PN14.2.

PN8. When Department Revokes a Visa

(CT:VISA-663; 12-22-2004)

a. When the Department revokes a visa, a front channel cable will be sent to post notifying them of the revocation when possible, and furnish a point of contact in the Visa Office.

b. Although the Department is not required to notify the alien of a revocation done pursuant to the Secretary's discretionary authority, unless instructed otherwise, posts should do so, especially in cases where the revoked visa was issued to a government official. Posts should then send a front channel cable to the Department's point of contact and provide information on any action taken.

PN9. Visa Revocations with Political, Public or Police Implications

PN9.1. Keeping the Department Informed*(CT:VISA-663; 12-22-2004)*

a. Consular officers are responsible for keeping the Department (CA/VO/L/A and/or CA/VO/L/C and the appropriate country desk) informed of visa actions that may affect our relations with foreign states or our public diplomacy, or that may affect or impede ongoing or potential investigations and prosecutions by U.S. and other cooperating foreign law enforcement agencies.

b. This is particularly true when consular officers use the power granted them under INA 221(i) as implemented in 22 CFR 41.122 and this section, to revoke the visas of officials of foreign governments, prominent public figures, and objects or potential objects of American and foreign criminal investigations.

c. In such cases the Department's guidance should be sought prior to any visa revocation unless unusual and exigent circumstances prevent such a consultation. In the rare cases when advance consultation is not possible, the Department should be informed as soon as possible after the revocation. Such cables should be directed to CA/VO/L/C or CA/VO/L/A, and the appropriate country desk.

PN9.2. Revocations That May Have Repercussions*(TL:VISA-277; 05-10-2001)*

Consular officers should be alert to the political, public relations, and law enforcement consequences that can follow a visa revocation, and should work with the Department to ensure that all legally available options are fully and properly assessed. The revocation of the visa of a public official or prominent local or international

person can have immediate and long-term repercussions on our political relationships with foreign powers, and on our public diplomacy goals in a foreign state. The visa laws must be applied to such persons like any others, recognizing that certain visa categories, particularly A's and G's, are not subject to the same standards of inadmissibility as others. Precipitant action must nevertheless be avoided in such high profile visa cases. Consultation both within the mission and with the Department may result in a decision that the Department, rather than the consular officer, should undertake the revocation, since Department revocations pursuant to the Secretary's revocation authority provide more flexibility in managing the relevant issues.

PN9.2-1. When Revocation Subject is Object of Criminal Investigation*(TL:VISA-277; 05-10-2001)*

a. In cases where the subject of a revocation is also the object of a criminal investigation involving United States law enforcement agencies, action by a consular officer without prior Department consultation and coordination may:

1. Jeopardize an ongoing investigation;
2. Prejudice an intended prosecution;
3. Preclude apprehension of the subject in the United States;
4. Put informants at risk; or,
5. Damage cooperative law enforcement relationships with foreign police agencies.

b. When a consular officer suspects that a visa revocation may involve U.S. law enforcement interests, the consular officer should consult with law enforcement agencies at post and inform the Department (CA/VO/L/C or CA/VO/L/A) as applicable, of the case and of the post's proposed course of action, to permit consultations with potentially interested entities before a revocation is made.

c. In deciding what cases to report in advance to the Department, posts should err on the side of prudence. It would be in the best interest to report cases requiring no Department action rather than having to inform the Department after the fact in a case that has adverse consequences for American law enforcement or diplomatic interests. Posts should contact CA/VO/L/C for security-related cases, and CA/VO/L/A for others. Posts may wish to notify other functional bureaus, as appropriate.

PN9.3. If Alien in Possession of Another Valid U.S. Visa*(TL:VISA-277; 05-10-2001)*

When a consular officer has taken action to revoke a visa, the officer should determine whether the alien holds another current U.S. visa in the same or another passport. The officer should proceed to revoke that visa as well, provided the grounds for revoking the first visa apply to any other visa the alien may hold, or if independent grounds for revocation apply. In the latter case, the consular officer is also required by 22 CFR 41.122 to give the alien, if practicable, an opportunity to rebut or overcome that ground(s) of ineligibility.

PN10. Importance of Physically Canceling Visa Prior to Alien's Departure/Stopover en Route to the United States

(CT:VISA-663; 12-22-2004)

If the revoking officer has learned that the alien is stopping at a city en route to the United States in which a consular office is located, the revoking post should request the stopover post to attempt to contact the alien and physically cancel the visa. The revoking post should immediately notify the Department (CA/VO/L/A for non-security related ineligibilities and CA/VO/L/C for security-related ineligibilities), info the Department of Homeland Security, (DHS) and the stopover post as described in **9 FAM 41. 122** PN14.2, and update CLASS, as appropriate.

PN10.1. If Visa is Canceled at Stopover Location*(CT:VISA-663; 12-22-2004)*

a. If the stopover post physically cancels the visa, it should notify the revoking post and the Department (CA/VO/L/A or CA/VO/L/C) by telegram.

b. The revoking post should update CLASS and notify the Department (CA/VO/L/A or CA/VO/L/C), as well as the stopover post and DHS to update the report.

PN10.1-1. If Visa is not Canceled at Stopover Location*(CT:VISA-663; 12-22-2004)*

If the stopover post is unable to cancel the visa physically, it should notify the revoking post and the Department (CA/VO/L/A or CA/VO/L/C), provide any additional information, and must also notify all appropriate transportation companies that the visa has been revoked. The letter should be used to notify transportation companies of this action and be delivered to them by the most expeditious and secure means. Neither the revoking post nor the stopover post should prepare a Form DS-4047, Certificate of Revocation of Visa by Consular Officer, unless subsequently instructed to do so by the Department, nor should they inform the alien of the findings. These instructions are predicated on the premise that the alien has commenced an interrupted journey to, or is already in the United States. The revoking post should immediately notify the Department (CA/VO/L/A or CA/VO/L/C), the stopover post, and DHS, to update or file a report as described in **9 FAM 41. 122** PN14.2, and to update CLASS as necessary.

PN10.1-2. If at Stopover Location Revocation Appears Overcome*(TL:VISA-555; 07-17-2003)*

Upon interviewing the alien, should the stopover post conclude that revocation has been overcome and the alien is no longer ineligible, reinstatement of the visa in accordance with PN13 may be warranted. The stopover post should inform the revoking post in detail of its findings, addressing an info copy to the Department, (CA/VO/L/A or CA/VO/L/C). Such a report could form the basis for reinstatement of the visa initiated by the revoking post or the stopover post, provided that it had the concurrence of the revoking post. If posts have a difference of opinion, the case should be submitted to the Department, (CA/VO/L/A or CA/VO/L/C) for determination. Should a determination to reinstate the visa be made, the revoking post, which may be presumed to hold the bulk of pertinent data on the case, would have the responsibility to take the reinstatement actions described in **9 FAM 41. 122** PN15, and update and revise entries in CLASS.

PN10.2. Visa Erroneously Issued by Other Post*(TL:VISA-277; 05-10-2001)*

If a consular officer determines that another post has erroneously issued a visa, that post should be informed in detail of the officer's findings. Such a report could form the basis for revoking the visa, initiated by the issuing post or by the reporting post, with the concurrence of the issuing post. If a difference of opinion ensues between posts, the case should be submitted to the Department (CA/VO/L/A or CA/VO/L/C) for an advisory opinion.

PN10.3. Visa Erroneously Issued by Other Post*(TL:VISA-277; 05-10-2001)*

If a consular officer determines that another post has erroneously issued a visa, that post should be informed in detail of the officer's findings. Such a report could form the basis for revoking the visa, initiated by the issuing post or by the reporting post, with the concurrence of the issuing post. If a difference of opinion ensues between posts, the case should be submitted to the Department (CA/VO/L/A or CA/VO/L/C) for an advisory opinion.

PN11. When Alien Unlikely to Surrender Passport for Revocation

(TL:VISA-555; 07-17-2003)

If a consular officer has reason to believe than an alien, whose visa is subject to be revoked will fail to present the visa, and if the alien has not yet commenced travel, the DHS office at the port of entry and all appropriate transportation companies should immediately be notified that the visa has been revoked. The letter should be used to notify transportation companies of this action and be delivered to them by the most expeditious and

secure means. Concurrently, with the preparation of the letter, the Form DS-4047, Certificate of Revocation of Visa by Consular Officer, is to be prepared and maintained in the appropriate CAT I or CAT II file at post. A telegraphic report as described in **9 FAM 41. 122** PN14.2 and an entry into CLASS must also be made.

PN12. Notice to Department

PN12.1. Ineligible Alien in United States*(TL:VISA-553; 06-25-2003)*

Whenever a consular officer believes that an alien, whose visa is subject to revocation, has commenced an interrupted journey to, or, is already in the United States and physical cancellation of the visa is not possible, the officer should immediately inform the Department (CA/VO/L/A for non-security cases, VO/L/C for security-related cases) of the grounds of ineligibility or other adverse factors, and furnish the information called for by **9 FAM 41. 122** PN14.2. New ineligibilities and other pertinent derogatory information should be entered into CLASS. In addition, if the officer is aware of reasons making it desirable to permit the alien to complete the temporary stay, the officer should report them to the Department, (CA/VO/L/A or CA/VO/L/C). In no case should an officer communicate the findings to the alien concerned. The consular officer should not prepare a Form DS-4047, unless instructed to do so by the Department.

PN12.2. Department Revocation and DHS Cancellation of Visa*(CT:VISA-663; 12-22-2004)*

Upon receipt of the consular officer's report, the Department will decide whether the visa should be revoked and, if so, ask DHS to cancel it physically immediately or at such time as the alien may again present the visa at a port of entry. If the decision is to revoke, the Department will normally prepare a Certificate of Revocation for signature by the Deputy Assistant Secretary (DAS) for Visa Services. Alternatively, the Department may inform DHS of the data submitted and give DHS an opportunity to initiate proceedings under the pertinent provisions of INA 237 (Classes of Deportable Aliens). If the latter course is followed, the Department will concurrently request that it be informed of the alien's date of departure and destination, so that, subsequent to the alien's departure from the United States, the visa may be physically canceled and the consular officer instructed to prepare the Form DS-4047. If the visa is physically canceled at a post other than the one at which it was issued, the revoking officer should forward a signed copy of the Form DS-4047, to the issuing post.

PN12.3. Prudential Revocations*(CT:VISA-778; 10-13-2005)*

a. Although consular officers generally may revoke a visa only if the alien is ineligible under INA 212(a) or is no longer entitled to the visa classification, the Department may also revoke a visa if an ineligibility or lack of entitlement is suspected. In addition to the conditions described in **9 FAM 41. 122** PN12.2, the Department may revoke a visa when it receives derogatory information directly from another U.S. Government agency, including a member of the intelligence or law enforcement community. The process is initiated when CA/VO/L/A or CA/VO/L/C receives derogatory information, usually through Bureau of Intelligence and Research (INR). When the derogatory information relates to a suspected 212(a)(3) security ineligibility, it will be evaluated by CA/VO/L/C. Otherwise, derogatory information will be evaluated by CA/VO/L/A. Once it has been determined that the derogatory information appears sufficient to warrant a revocation, the subject's name shall be entered into CLASS, and a Certificate of Revocation will be submitted for signature to the Deputy Assistant Secretary (DAS) of State for Visa Services with a summary of the available intelligence and/or background information, and any other relevant documentation. When the Certificate of Revocation has been signed, it will be communicated within the Department and to other agencies by the following means:

(1) The file is reviewed to ensure that the subject has been entered into CLASS under the appropriate code. For a prudential revocation, the "VRVK" code will be entered as well as any applicable quasi-ineligibility ("P") code that corresponds to the suspected ineligibility. In the case of a prudential revocation based on derogatory information forwarded to VO by INR, the "DPT-00" code will be entered as well as "VRVK" and any applicable

"P" code. For revocations based on a finding of ineligibility, the appropriate ineligibility code is entered, but the "VRVK" code is not required. For additional guidance on the use of the VRVK code, refer to Standard Operating Procedures: No. 11.

(2) Copies of the Certificate of Revocation are sent to the Department of Homeland Security (DHS) and to INR when the revocation relates to INA 212(a)(3)(A), (B) or (F)

(3) A Departmental request to post to attempt to notify the visa holder of the revocation is sent to the issuing post, DHS and, when the revocation relates to INA 212(a)(3)(A), (B) or or the Federal Bureau of Investigation (FBI). (Note: If law enforcement interests require that the subject remain unaware of U.S. Government interest, post will be informed of the revocation but instructed not to notify the subject).

b. Except for revocations based on recommendations from post where the alien may be in the United States, most of the Department's revocations are prudential revocations, which do not constitute permanent finding of ineligibility. They simply reflect that, after visa issuance, information surfaced that has called into question the subject's continued eligibility for a visa. Subjects of prudential revocations are free to reapply and reestablish their eligibilities. If a subject of a CLASS code of "DPT-00" or an ineligibility under INA 212(a) applies for a visa, post must request either a security advisory opinion to CA/VO/L/C or, if there is no "00" entry and the ineligibility code relates to a INA 212(a) subsection other than 212(a)(3)(A), (B), (C), (D), (E), or (F), an advisory opinion other than security to CA/VO/L/A. (If the "VRVK" code is only accompanied by an entry from another post, the adjudicating post should contact the revoking post via email, and, in most cases will not need to send a cable to the Department). Upon receipt of a visa application from a subject of a prudential revocation for whom CLASS reflects a Department entry of a code of "VRVK" or a quasi-ineligibility under an INA section other than 212(a), posts are required to obtain Department approval prior to visa issuance. Posts must submit a Security Advisory Opinion (SAO) request to CA/VO/L/C, in cases with CLASS codes relating to a security-related subsection of INA 212(a), or a request for advisory opinion other than security to CA/VO/L/A, in cases relating to other INA 212(a) subsections.

PN13. Recommendations for Waiver Action

PN13.1. Important Public Relations Implications*(TL:VISA-555; 07-17-2003)*

Consular officers should, in cases having important public relations implications, consider recommending that the alien's temporary admission be authorized pursuant to INA 212(d)(3)(A). If such a decision is made, the case is to be processed in accordance with 9 FAM 40.301 Notes and the additional information called for by PN15 is to be furnished, either to the DHS office abroad or to the Department. Consular officers should note that referral to the Department (CA/VO/L/C) is required in several kinds of cases including, for example, those involving ineligibility under 212(a)(3)(B), "Terrorist Activities, or any case in which the alien's presence or activities in the United States might become a matter of public interest or of foreign relations significance." In the latter cases, consular officers should note the Advisory Opinion procedural requirements under 9 FAM 40.32, especially N4. When the facts justify the recommendation of a waiver under INA 212(d)(3)(A) and the alien is within the jurisdiction of the consular office, the consular officer should inform the alien that a waiver is being recommended. The alien should be asked to temporarily surrender the passport or other document containing the visa, pending final action on the recommended waiver. If the alien refuses to surrender the visa, the officer should formally revoke it as described in **9 FAM 41. 122** PN1 and PN2.

PN13.2. If Waiver Obtained*(CT:VISA-816; 06-21-2006)*

Waiver procedures are described here on the premise that action to revoke a visa has not been made. If a visa has been revoked then reinstatement procedures (see **9 FAM 41. 122** PN15) are needed to undo a revocation. If a waiver is obtained, the consular officer must enter the notation on the visa as required by **9 FAM 41.**

122 PN15.3. A waiver for an ineligibility under section 212(a)(3)(B) of the INA must be requested by the Department. If the waiver limits the number of applications for entry, this information should be included in the notation, for example, "single entry" or "two entries." The alien is to be informed that the visa will be valid only for the period and number of applications for admission authorized by the waiver.

PN14. Entry of Subject Into CLASS and Record of Visa Revocation

(CT:VISA-663; 12-22-2004)

The revoking office should enter the alien's name into the Consular Lookout and Support System (CLASS) in accordance with 9 FAM Appendix D. The original of the Form DS-4047, Certificate of Revocation of Visa by Consular Officer, as well as a copy of the post's letter to transportation companies listing all the addressees, is to be made a part of the Category I file. The issuing post should annotate Form DS-156, Nonimmigrant Visa Application, regarding the revocation and date.

PN14.1. Action Required When Derogatory Information Received After Issuance of Crew-Member Visa

(CT:VISA-816; 06-21-2006)

See 9 FAM 41.41 PN3, "Action Required When Derogatory Information Received Regarding Holder of D Visa," and 9 FAM 41.42 PN2, "Derogatory Information Received After Issuance of a Crew-List Visa."

PN14.2. Report of Derogatory Information Received After Issuance of a Visa

(CT:VISA-663; 12-22-2004)

a. Posts are no longer required to submit a report to the Department on NIV revocations done at post, provided that the visa has been physically canceled prior to the alien's departure for the United States. Exceptions to this procedure are in cases involving A, G, C-2, C-3, North American Treaty Organization (NATO), diplomatic, or official visas, when a report would be required.

b. A VISAS DONKEY SAO should be sent as called for in these notes whenever a visa in one of the above-mentioned categories is revoked, (except when revoked for issuance of an immigrant visa, regardless of whether the visa has been physically canceled.) The telegram should be captioned: "CVIS: REVOCATION," or "CVIS: DEROGATORY INFORMATION DEVELOPED SUBSEQUENT TO VISA ISSUANCE." This telegram will normally be passed to DHS for appropriate action, including entry of pertinent data into DHS lookouts. If the consular officer has reason to believe that the alien may enter the United States via a particular port of entry, the officer may address the cable to DHS, slugging it with the note "Pass to point of entry (POE) (Insert name of port)." The officer should not address DHS if that would contradict the recommendation(s) in items (b) and (k) of this telegram. As necessary and appropriate, other posts can and should be included as INFO addresses. The following items should be included:

(1) Full name of alien, including aliases;

(2) Date and place of birth;

(3) Country of nationality and residence;

(4) Date of issuance or transfer of visa, date of expiration of visa, number of applications for admission, and visa symbol;

(5) Place of visa issuance or transfer;

(6) Type, number, and date and place of issuance of passport;

(7) All sections of law under which the alien is ineligible or is thought to be ineligible;

(8) A full report of the information upon which the finding of ineligibility is based and the consular officer's comments, together with a statement as to whether the information may be furnished DHS and used as a basis for questioning the alien; (Considerations of national security, foreign policy, protection of sources, and the like may warrant not advising the alien of certain information.)

(9) If available, the means of transportation, prospective date and port of arrival, and the alien's address in the United States;

(10) Posts should indicate that the subject has been entered into CLASS; and

(11) Any other pertinent information, including consular officer's recommendations or suggested course of action to be followed by the Department and DHS.

PN15. Reinstatement Following Revocation

(TL:VISA-130; 11-30-95)

If a visa has been revoked and a consular officer subsequently determines that the reason for revocation has been overcome and the alien is no longer ineligible, the visa should be reinstated in accordance with the appropriate procedure as indicated below and in all applicable cases, the procedures in PN15.1 should be taken promptly.

PN15.1. If the Visa has Been Revoked but no Further Action Taken

(TL:VISA-553; 06-25-2003)

If a Form DS-4047, Certificate of Revocation of Visa by Consular Officer, has been prepared in accordance with **9 FAM 41. 122** PN1, but a copy has not been sent to the Department, if the visa has not been physically canceled, and if notices of revocation have not been sent, a brief summary of the pertinent facts is to be entered on the Form DS-4047, indicating that the revocation was withdrawn. If post had already notified the Department or other posts of the revocation, post should notify the Department (and any relevant posts) of the reinstatement by telegram as follows:

"CVIS; ADVISORY OPINIONS, VISAS, BASIS FOR REVOCATION, NIV, JOHN DOE, OVERCOME, REINSTATED THIS DATE."

PN15.2. If the Visa Has Been Revoked and Notices of Revocation Sent

(TL:VISA-130; 11-30-95)

a. If the visa has not been physically canceled, but notices of revocation have been sent and the alien has departed, or if the alien's departure cannot be determined, the Department is to be promptly notified by telegram as follows:

"CVIS: ADVISORY OPINIONS, VISAS, BASIS FOR REVOCATION NIV JOHN DOE OVERCOME. REINSTATED THIS DATE."

b. Any other post involved in the revocation action should be made an INFO addressee of this cable. Notices of reinstatement should be sent by the most expeditious secure means to all parties notified of the revocation.

PN15.3. If the Visa Has Been Revoked and Physically Canceled

(CT:VISA-663; 12-22-2004)

a. If a visa has been revoked, notices of revocation sent, the telegraphic report described in **9 FAM 41. 122** PN7 has been made, and the revoked visa physically canceled, the alien is to be notified of the reinstatement and invited to appear at the consular office. If the alien appears and applies for a new visa, a new visa may be issued with the annotation "reinstated." No fee should be collected for a "REINSTATED" visa unless the prior fee for issuance was refunded when the visa was revoked. The alien should be provided with a letter explaining the visa reinstatement. The Department (CA/VO/L/A) is also to be promptly notified by telegram as follows:

"CVIS ADVISORY OPINIONS, VISAS, BASIS FOR REVOCATION NIV JOHN DOE OVERCOME."

b. Any post involved in the revocation action should be made an INFO addressee of the cable.

PN15.4. If the Alien's Name has Been Entered into CLASS

(CT:VISA-663; 12-22-2004)

If the alien's name has been entered into CLASS and the alien's visa is reinstated, the consular officer should request that the Department CLOK out any relevant CLASS entry. [See 9 FAM PART IV Appendix D].

PN16. Cancellation of Visas by Immigration Officers Under 22 CFR 41.122(h)

PN16.1. Notations Made in Passport*(CT:VISA-663; 12-22-2004)*

When a visa is canceled by an DHS officer, one of the following notations will normally be entered in the alien's passport:

(1) Canceled. Adjusted;

(2) Canceled. Excluded. DHS (Office) (Date);

(3) Canceled. Application withdrawn. DHS (Office) (Date);

(4) Canceled. Final order of deportation/voluntary departure entered DHS (Office) (Date)(e) Canceled. Departure required. DHS (Office) (Date);

(5) Canceled. Waiver revoked. DHS (Office) (Date); and

(6) Canceled. Presented by impostor. DHS (Office) (Date).

PN16.2. Issuing Office Informed of Visa Cancellation*(TL:VISA-555; 07-17-2003)*

Except when a visa is canceled after the alien's status has been adjusted to that of a permanent resident, DHS will directly inform the consular office which issued the visa of the cancellation action.

PN17. Form I-275, Notice of Visa Cancellation/Border Crossing Card Voidance

(CT:VISA-663; 12-22-2004)

Form I-275, Withdrawal of Application/Consular Notification, will be used to inform consular officers at the issuing office of the cancellation action. Form I-275 and any other attached forms should not be released to aliens or their representatives.

PN18. Voidance of Counterfeit Visas

(CT:VISA-663; 12-22-2004)

When DHS has determined through examination that a visa has been altered or is counterfeit, it will void the visa by entering one of the following notations on the visa page, together with the action officer's signature, title, and office location:

(a) Counterfeit visa per testimony of alien (file number); or

(b) Counterfeit visa per telecon, letter, telegram, e-mail from U.S. embassy (U.S. consul).

IMMLS2D PSD FAM II 41.122 PNT

END OF DOCUMENT

U.S. Department of Justice
Immigration and Naturalization Service

Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act

Office: LOS ANGELES, CA, AIRPORT, POE File No: A095 719 764

Statement by JOCELYN I. BOLANTE

In the case of: JOCELYN I. BOLANTE

Date of Birth: August 28, 1951 Gender (circle one): Male Female

At: LOS ANGELES, CA, AIRPORT, POE Date: July 8, 2006

Before: RENE ARAMBULO
(Name and Title)

In the ENGLISH language. Interpreter _____ Employed by _____

I am an officer of the United States Immigration and Naturalization Service. I am authorized to administer the immigration laws and to take sworn statements. I want to take your sworn statement regarding your application for admission to the United States. Before I take your statement, I also want to explain your rights, and the purpose and consequences of this interview.

You do not appear to be admissible or to have the required legal papers authorizing your admission to the United States. This may result in your being denied admission and immediately returned to your home country without a hearing. If a decision is made to refuse your admission into the United States, you may be immediately removed from this country, and if so, you may be barred from reentry for a period of 5 years or longer.

This may be your only opportunity to present information to me and the Immigration and Naturalization Service to make a decision. It is very important that you tell me the truth. If you lie or give misinformation, you may be subject to criminal or civil penalties, or barred from receiving immigration benefits or relief now or in the future.

Except as I will explain to you, you are not entitled to a hearing or review.

U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country. If you fear or have a concern about being removed from the United States or about being sent home, you should tell me so during this interview because you may not have another chance. You will have the opportunity to speak privately and confidentially to another officer about your fear or concern. That officer will determine if you should remain in the United States and not be removed because of that fear.

Until a decision is reached in your case, you will remain in the custody of the Immigration and Naturalization Service.

Any statement you make may be used against you in this or any subsequent administrative proceeding.

Q. Do you understand what I've said to you?
A. Yes.

Q. Any statement you make must be given freely and voluntarily. Are you willing to answer my questions at this time?
A. Yes.

Q. Do you swear or affirm that all the statements you are about to make are true and complete?
A. Yes.

Q. What is your true and complete name?
A. Jocelyn Isada BOLANTE.

Q. Have you ever been known by any other names?
A. No.

Q. When and where were you born?
A. August 28, 1951 in the Philippines. ...(CONTINUED ON I-811)

Page 1 of 2

Received in Court
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EXHIBIT
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19

EXHIBIT
tabbies 2

Alien's Name	File Number	Date
JOCELYN I. BOLANTE	A095 719 764	July 8, 2006

Q. Of what country are you a citizen or national?
A. Philippines.

Q. Are you a citizen or national of a country other than the Philippines?
A. No.

Q. What are the complete and true names of your parents?
A. My father is Vicente BOLANTE and my mother is Salvacion BOLANTE.

Q. Of what countries are your parent citizens or nationals?
A. Philippines.

Q. Do you make any claim to United States citizenship?
A. No.

Q. Do you have any immediate family members who are citizens of the United States?
A. No.

Q. Are you now, or have been a legal permanent resident of the United States of America?
A. No.

Q: What kind of job do you do in the Philippines, or anywhere in the world?
A: I have retired as President of Prudential Life Plan Incorporated. I am busy with agricultural business, real estate development and lending.

Q. Are you under petition to live and work in the United States?
A. No.

Q. On what airline and flight number did you arrive in the United States?
A. I arrived on Asiana Airlines flight OZ 204 from Inchon, Korea.

Q. What documents did you present to the CBP Primary Officer when you arrived?
A. I presented my passport (valid Philippine passport ZZ130690 bearing revoked B1/B2 visa foil 76048089) to two officers who met the passengers at the jet way. Apparently they were looking for me.

Q. What is the purpose of your visit to the United States today?
A. I'm supposed to have exploratory talks with friends for the possible trading business here and then I will proceed to Vancouver, Canada.

Q: How long are you planning to stay in the United States for this trip?
A: I intend to stay for about two months because I also have to see my dentist. I will also submit my expense report to the Rotary International in Chicago being the Treasurer of that group.

Q: Do you have return or ongoing ticket outside the United States?
A: Yes.

Q. What is your intended address while in the United States?
A. Westin, St. Francis Hotel in San Francisco, CA.

Q: What is your address number in the Philippines?
A: 320 Maria Cristina St., Ayala Alabang, Muntinlupa, Metro Manila, Philippines.

...(CONTINUED ON NEXT PAGE)

Signature RENE ARAMBULO Title CBP

U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form I-867A

Alien's Name	File Number	Date
JOCELYN I. BOLANTE	A095 719 764	July 8, 2006

Q: How many times have you visited the United States?
A: I've been coming here since the 80's and have never violated any of your laws.

Q: Can you explain what you were doing in the United States from January 02, 2006 to June 02, 2006?
A: I attended the graduation of my son and I had dental implants.

Q: Have you been arrested or charged with anything inside or outside of the United States?
A: No, not in the Philippines or elsewhere.

Q: Is there an arrest warrant issued against you?
A: No.

Q: Are you aware that you are wanted in the Philippines?
A: No.

Q: Records indicate that there is an arrest warrant issued to you by the Philippine Senate?
A: That is just subpoena to a Senate Committee hearing. It is not an arrest warrant because the court did not issue it. It is politically motivated.

Q: Records also indicate that the Philippine Senate summoned you at least twice during the time you were in the US. Can you explain why you did not have time to submit to the summons?
A: My lawyer said that I did not have to submit to the summons. If it was court ordered, yes, I will because it is a non partisan and unbiased body.

Q: Are you aware that the United States Consular Office in Manila had revoked your visa?
A: No, but my passport is valid.

Q: You are inadmissible into the United States in accordance with section 212(a)(7)(A)(i)(I) [8 U.S.C. 1182] of the Immigration and Nationality Act because records indicate that your visa had been revoked by the United States Consular Office in Manila due to the arrest warrant issued to you by the Philippine Senate. You do not have a valid visa to enter the United States and it appears that you are an intending immigrant without a valid immigrant visa. Since you signified fear of being sent back to your home country, you will be set up to see an Immigration Judge regarding your fear or concern, and until that time you will remain in the custody of the Customs and Border Protection Service. Do you understand what I just said?
A: Yes but I am not an intending immigrant. I intend to stay in the US for 30-45 days only.

Signature	Title
RENE ARAMBULO	CBP

3 (N) 3 Pages

Form I-831 Continuation Page (Rev. 6/12/02)

U.S. Department of Justice
Immigration and Naturalization Service

Jurat for Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act

Q: Why did you leave your home country or country of last residence?

A. I left the Philippines in December to attend the graduation of my son in Arizona. I also attended the Rotary International Assembly in San Diego, CA and Board meetings in Evanston, IL. Attendance in both are mandatory for members of the Board of Directors of Rotary International.

Q. Do you have any fear or concern about being returned to your home country or being removed from the United States?

A. Yes, because Senator Magsaysay, the Senate Committee of Agriculture announced that he will give a reward to anyone who can provide information about my whereabouts.

Q. Would you be harmed if you are returned to your home country or country of last residence?

A. Yes, anyone who is interested in that money can kill me so they can get the rreward. Besides, I don't want to be used in destabilising our duly constituted government, considering the very sensitive political situation in the Philippines.

Q. Do you have any question or is there anything else you would like to add?

A. Yes, please give me a chance. Being barred for five years is a long time. I need to have my dental implants

I have read (or have had read to me) this statement, consisting of 4 pages (including this page). I state that my answers are true and correct to the best of my knowledge and that this statement is a full, true and correct record of my interrogation on the date indicated by the above named officer of the Immigration and Naturalization Service. I have initialed each page of this statement (and the corrections noted on page(s) 2).

Signature: JOCELYN T. SOLANTE

Sworn and subscribed to before me at LOS ANGELES, CA, AIRPORT, POE
on July 7, 2006

RENE ARAMBULO
Officer, United States Immigration and Naturalization Service

Witnessed by: R. RODRIGUEZ

Page __ of __

Form I-870

Embassy of the United States of American

Manila, Philippines

February 15, 2006

Mr. Jocelyn Isada Bolante
320 Ma Cristina Street
Ayala Alabang Village
Muntinlupa 1780

Dear Mr. Bolante:

The Consular Section of the American Embassy Manila would like to inform you that the tourist visa (B1/B2) you currently hold, is not valid for travel at this time. It is requested that you visit the office of Ms. Waltz-Davis concerning this issue. Please feel free to contact us at telephone 528-6300 x2340.

Thank you for your assistance.

Sincerely,

Karen Waltz-Davis
FPU Manager

Page 1

Attachment #1

EXHIBIT 3

Embassy of the United States of America

Manila, Philippines

March, 20, 2006

Mr. Jocelyn Isada Bolante
320 Ma Cristina Street
Ayala Alabang Village
Muntinlupa 1780

Dear Mr. Bolante:

Acting pursuant to the authority contained in Department of State regulations you are hereby informed that as of today, your nonimmigrant visa has been revoked under INA Section 214(b) and is not valid for travel. It is requested that if you have any questions, please contact Ms. Waltz-Davis at 528-6300 x2340.

Sincerely,

Karen Waltz-Davis
FPU Manager

Page 2

EXHIBIT 4

▷

Wong v. Department of State
C.A.9 (Cal.),1986.

Tak-Ming WONG and King-Fong Wong, Yat Sum International Corporation, Plaintiffs-Appellants,
v.
DEPARTMENT OF STATE and Immigration and Naturalization Service, Defendants-Appellees.

No. 84-6567.

Argued and Submitted Oct. 10, 1985.
Decided May 19, 1986.

Aliens brought action against State Department and Immigration and Naturalization Service for alleged violations of Immigration and Nationality Act, Administrative Procedure Act, and due process clause of the Fifth Amendment. The United States District Court for the Central District of California, Consuelo Bland Marshall, J., entered summary judgment affirming revocation of the aliens' nonimmigrant visas. Aliens appealed. The Court of Appeals, Hug, Circuit Judge, held that: (1) requiring aliens to exhaust purported administrative remedies was an abuse of discretion, and (2) physical absence of aliens from consular district was not ground for ab initio revocation of their nonimmigrant visas.

Reversed and remanded.

West Headnotes

[1] Federal Courts 170B ⚿13

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk13 k. Particular Cases or Questions, Justiciable Controversy. Most Cited Cases
No case or controversy existed as to claims of alien and his employer against Department of State and Immigration and Naturalization Service for alleged violations of Immigration and Nationality Act and regulations thereunder, Administrative Procedure Act and due process clause of the Fifth Amendment in connection with revocation of nonimmigrant visas of the alien's wife and their minor children; alien's visa was not revoked, and employer still had benefit of his services. 5 U.S.C.A. §§ 553(b-d), 706; Immigration and Nationality Act, § 104(a), 8 U.S.C.A. § 1104(a); U.S.C.A. Const.Amend. 5.

[2] Federal Courts 170B ⚿724

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(I) Dismissal, Withdrawal or Abandonment
170Bk723 Want of Actual Controversy
170Bk724 k. Particular Cases. Most Cited Cases
Alien's appeal, for herself and as representative of her children, from summary judgment for defendants in alien's action against Department of State and Immigration and Naturalization Service for alleged violations of Immigration and Nationality Act and regulations thereunder, Administrative Procedure Act and due process clause of Fifth Amendment in connection with revocation of nonimmigrant visas, was not moot despite fact that appellants were admitted into the United States pursuant to visa waivers granted by immigration judge; visa waivers afforded appellants only portion of the remedy sought and placed them in substantially less favorable position than had their L-2 visas been reinstated. 5 U.S.C.A. §§ 553(b-d), 706; Immigration and Nationality Act, § 104(a), 8 U.S.C.A. § 1104(a); U.S.C.A. Const.Amend. 5.

[3] United States 393 ⚿127(2)

393 United States
393IX Actions
393k127 Rights of Action Against United States or United States Officers
393k127(2) k. Prior Administrative Claim. Most Cited Cases

EXHIBIT 5

Requiring alien, who brought action for herself and as representative of her children, to exhaust purported administrative remedies of requesting reconsideration of visa revocation by consular officer who revoked their L-2 visas and, either additionally or alternatively, of presenting new applications for nonimmigrant visas to an American consular officer abroad before bringing action against State Department and Immigration and Naturalization Service for alleged violations of Immigration Nationality Act and regulations thereunder, Administrative Procedure Act and due process clause of Fifth Amendment in connection with revocation of nonimmigrant visas, was an abuse of discretion. 5 U.S.C.A. §§ 553(b-d), 706; Immigration and Nationality Act, § 104(a), 8 U.S.C.A. § 1104(a); U.S.C.A. Const.Amend. 5.

[4] Aliens, Immigration, and Citizenship 24 ⚿ 201

24 Aliens, Immigration, and Citizenship
24IV Admission and Visas in General
24IV(E) Revocation or Expiration of Visas
24k201 k. Grounds for Revocation. Most Cited Cases
(Formerly 24k53.4)

Physical absence of alien and her children from consular district was not ground for ab initio revocation of their nonimmigrant visas by consular officer, even though their absence was in contravention of regulation concerning issuance of the visas. Immigration and Nationality Act, §§ 101(a)(15), (a)(15)(L), 212, 212(a), 221(i), 8 U.S.C.A. §§ 1101(a)(15), (a)(15)(L), 1182, 1182(a), 1201(i).

***1381** Howard Hom, Fleming & Hom, Los Angeles, Cal., for plaintiffs-appellants.

Carolyn M. Reynolds, Asst. U.S. Atty., Los Angeles, Cal., for defendants-appellees.

Appeal from the United States District Court for the Central District of California.

Before BROWNING, Chief Judge, and KENNEDY and HUG, Circuit Judges.

HUG, Circuit Judge:

This action concerns the validity of the revocation of nonimmigrant visas by a consular officer. Appellants Tak-Ming Wong, his wife, King-Fong Wong, and his employer, Yat Sum International Corporation, appeal from the district court's summary judgment affirming the revocation of the nonimmigrant visas of Mrs. Wong and the Wongs' minor children. The issues before us on this appeal are: (1) whether the Wongs failed to exhaust their administrative remedies, and (2) whether the applicable statutes and regulations authorized the consular officer to revoke the visas on the grounds asserted.

FACTS

Appellant Yat Sum International Corporation ("Yat Sum"), a subsidiary of Yat Sum Land Investment Company based in Hong Kong, employed Mr. Wong as manager of its California operations. In order to work in the United States, Mr. Wong sought to obtain for himself an intracompany transferee visa, known as an L-1 visa,[FN1] and visas known as L-2 visas for his spouse and minor children. After the initial processing, Mr. Wong, accompanied by his attorney, flew to Pago Pago, American Samoa, to secure the visas for himself and his family. Mrs. Wong and the children did not personally appear for an interview at the American Consulate in Pago Pago. The visa-issuing officer approved the applications and the appropriate endorsement stamps were affixed to all passports.

> FN1. Mr. Wong was classified as an L-1 nonimmigrant pursuant to 8 U.S.C. § 1101(a)(15) (1982).

On May 20, 1983, Mr. Wong and his family arrived at the Los Angeles International Airport from Hong Kong and presented the nonimmigrant visas issued in Pago Pago. In accordance with instructions received by wire on January 24, 1983 from the State Department, the Immigration and Naturalization Service ("INS") inspector questioned them concerning whether they obtained the visas without be-

ing personally present in Pago Pago.[FN2] Mr. Wong stated under oath that while he personally appeared at the American Consulate, his wife and children did not. The INS inspector notified the State Department by telephone of the apparent deficiency, and a State Department official revoked the visas of Mrs. Wong and the children because they had not personally appeared at the American Consulate in Pago Pago. Mrs. Wong and her children were advised that they had not established that they were admissible into the country and were instructed to appear for deferred inspection at the local INS office on May 23, 1983 for a final determination on their admissibility. Mr. Wong, who personally appeared in Pago Pago, was admitted into the country under his L-1 visa.

> FN2. This questioning was specifically instituted in response to the State Department's discovery that nonimmigrant visas were being issued in Pago Pago in apparent violation of the immigration laws and regulations. A pattern developed whereby aliens outside American Samoa were obtaining nonimmigrant visas even though they had never been to Pago Pago, American Samoa.

Mrs. Wong and her children, accompanied by their attorney, appeared for deferred inspection. The INS inspector opined that they did not appear to be admissible and could either withdraw their request for admission or elect to have an exclusion hearing before an immigration ***1382** judge. They opted for a hearing and were served with notices to appear for an exclusion hearing, scheduled to commence on June 2, 1983.

On May 24, 1983, the INS received a teletype from Mr. Goelz, Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, Department of State. Mr. Goelz's teletype states in relevant part as follows:

This is to certify that I, the undersigned consular officer, acting in pursuance of the authority conferred by section 221(i) of the Immigration and Naturalization Act and 22 C.F.R. § 41.134, hereby revoke the nonimmigrant visas, L-2, issued at the office of the Governor of American Samoa, Pago Pago, American Samoa, on November 22, 1982.....

Mrs. Wong and the children were paroled into the United States and have remained since that time.

[1] On July 18, 1983, Mr. Wong, Mrs. Wong, and Yat Sum brought a class action for declaratory and injunctive relief against the Department of State and the INS, alleging violations of the Immigration and Nationality Act, 8 U.S.C. § 1104(a) (1982), 22 C.F.R. §§ 41.130 and 41.134 (1983); the Administrative Procedure Act, 5 U.S.C. §§ 553(b)-(d) and 706 (1982), and the due process clause of the fifth amendment. The district court granted summary judgment to appellees on October 11, 1984.[FN3] Mr. Wong's visa was not revoked, and Yat Sum still has the benefit of his services. The district court correctly ruled that there is no case or controversy as to Yat Sum or Mr. Wong. Mr. Wong does not allege standing as representative of the children to challenge the revocation of their visas. Neither Yat Sum nor Mr. Wong has standing to contest the revocation of Mrs. Wong's visa. We are, thus, here concerned only with the appeal of Mrs. Wong for herself and as representative of her children.

> FN3. The appellants withdrew their request for class certification on October 6, 1983.

STANDARD OF REVIEW

We review *de novo* a grant of summary judgment by the district court, *Lojek v. Thomas*, 716 F.2d 675, 677 (9th Cir.1983). In reviewing agency action, both the district court and this court apply the same deferential standard. The Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* (1982), provides that "the reviewing court shall ... hold unlawful and set aside agency action findings and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Under this deferential

standard, we can reverse the district court's decision to revoke Mrs. Wong's visa only if the Secretary of State violated the law or committed a clear error in judgment. *See Knoetze v. United States,* 634 F.2d 207, 209 (5th Cir.), *cert. denied,*454 U.S. 823, 102 S.Ct. 109, 70 L.Ed.2d 95 (1981); *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.,* 419 U.S. 281, 284-86, 95 S.Ct. 438, 441-42, 42 L.Ed.2d 447 (1974). Traditionally, an agency's interpretation of its own regulations is entitled to a high degree of deference. *Sierra Club v. Clark,* 756 F.2d 686, 690 (9th Cir.1985); *Hawaiian Electric Co. v. EPA,* 723 F.2d 1440, 1447 (9th Cir.1984).

STATUTORY AND REGULATORY BACKGROUND

Under the conditions and limitations prescribed by the Immigration and Nationality Act ("Act") and the regulations promulgated thereunder, a consular officer may issue a nonimmigrant visa to a nonimmigrant who has made a proper application. 8 U.S.C. § 1201(a)(2) (1982). "Consular officer" is defined by 8 U.S.C. § 1101(a)(9) (1982) as "any consular, diplomatic, or other officer of the United States designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas." The regulations designate "commissioned consular officers, the District Administrators of the Trust Territory of ***1383** the Pacific Islands, the Director of the Visa Office of the Department [of State] and such other officers of the Department as he shall designate for the purpose of issuing nonimmigrant visas" as consular officer. 22 C.F.R. § 41.1 (1981).

The provisions of 8 U.S.C. § 1201(g) specify that a nonimmigrant visa shall not be issued by the consular officer if (1) it appears to the consular officer that the alien is ineligible to receive a nonimmigrant visa under 8 U.S.C. § 1182, or any other provision of law, (2) the application fails to comply with the Act, or the regulations issued thereunder, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa under 8 U.S.C. § 1182, or any other provision of law. 8 U.S.C. § 1201(g) (1982). The statute requires that an alien's application for a nonimmigrant visa shall be made in such form and manner as prescribed by the regulations. 8 U.S.C. § 1202(c) (1982). 22 C.F.R. § 41.110(a) (1983) sets forth the manner for making visa applications.

> [E]very alien applying for a regular or official visa shall make application to the consular officer in the consular district in which he has as his residence, except that a consular officer shall at the direction of the Department, or may in his discretion, accept an application for a nonimmigrant visa from an alien having no residence in the consular district *if the alien is physically present therein.*
>
> [Emphasis added.] FN4
>
> FN4. 8 U.S.C. § 1202(e) (1982) also requires that the application be signed and verified by oath before the consular officer unless otherwise prescribed by the regulations. This aspect of the application procedure was not designated as a ground for the revocation and is not contended by the Government to be the basis for the revocation.

Congress has conferred upon the consular officer and the Secretary of State plenary power to revoke a visa in the following language.

> After the issuance of a visa or other documentation to any alien, the consular officer or the Secretary of State may at any time, in his discretion, revoke such visa.... [S]uch revocation shall invalidate the visa or other documentation from the date of issuance....
>
> 8 U.S.C. § 1201(i) (1982).

Under the Foreign Service Act of 1980, 22 U.S.C. § 3921 (1982), the Secretary of State is charged with administering and directing the Foreign Service, which includes consular officers. In implementing his statutory authority to revoke nonimmigrant

visas, the Secretary of State has adopted regulations delegating to all consular officers the power to revoke nonimmigrant visas and specifying the grounds and procedures for doing so.

The provisions of 22 C.F.R. § 41.134(a) (1983), authorize a consular officer to revoke a nonimmigrant visa subsequent to its issuance on two specific grounds: ineligibility to receive the visa under section 212(a) of the Act, 8 U.S.C. § 1182(a), and nonentitlement to the nonimmigrant classification under section 101(a)(15) of the Act, 8 U.S.C. § 1101(a)(15). Section 41.134(a) states as follows:

Grounds for revocation. A consular officer is authorized to revoke ab initio a nonimmigrant visa issued to an alien if, subsequent to the issuance of such visa, he finds that at the time of issuance the alien was ineligible under section 212(a) of the Act to receive such visa or was not entitled to the nonimmigrant classification under section 101(a)(15) of the Act specified in such visa.

An alien whose visa has been revoked has the right to request that the consular officer reconsider his decision to revoke. 22 C.F.R. § 41.134(g)(1) (1981).

DISCUSSION

A. *Mootness*

[2] We are informed that appellants were admitted into this country on November 8, 1985 pursuant to the visa waivers granted by the immigration judge. The Government contends that the appeal is ***1384** now moot. Because the visa waivers afford appellants only a portion of the remedy sought and place appellants in a substantially less favorable position than had their L-2 visas been reinstated, this appeal is not moot.

The doctrine of mootness requires courts to dismiss cases where "the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Murphy v. Hunt,* 455 U.S. 478, 481, 102 S.Ct. 1181, 1183, 71 L.Ed.2d 353 (1982) (per curiam) (quoting *United States Parole Commission v. Geraghty,* 445 U.S. 388, 396, 100 S.Ct. 1202, 1208, 63 L.Ed.2d 479 (1980)); *accord Walker v. Huston,* 689 F.2d 901, 902 (9th Cir.1982). Where "interim relief or events have completely and irrevocably eradicated the effects of [an] alleged violation" of law and there is no reasonable expectation that the violation will recur, a case is moot. *County of Los Angeles v. Davis,* 440 U.S. 625, 631, 99 S.Ct. 1379, 1383, 59 L.Ed.2d 642 (1979). Partial relief in another proceeding does not moot an action seeking additional relief. 13A C. Wright, A. Miller & E. Cooper, Federal Practice & Procedure § 3533.2 at 242-43 (2d ed. 1984).

Appellants seek reinstatement of their nonimmigrant visas and, thus seek the benefits flowing to an L-2 visa holder that are otherwise unavailable to a nonimmigrant entering this country on a visa waiver. For example, an L-2 visa holder has a right to revalidation of the visa before its expiration, a right that is not available to a nonimmigrant entering and residing in this country without such documentation. 22 C.F.R. § 41.125(g) (1981). Appellants have not already received everything they ask for in this action. Their claim is not moot.

B. *Exhaustion of Remedies*

The district court held that it lacked subject matter jurisdiction because of Mrs. Wong's "failure ... to exhaust administrative remedies, ... and a failure to state a claim for which relief can be granted." Presumably, the district court agreed with the Government's contentions that the visa holders are required to request reconsideration of the visa revocation by the consular officer who revoked their L-2 visas and, either additionally or alternatively, are required to present new applications for nonimmigrant visas to an American consular officer abroad.FN5

FN5. The Government does not contend

that the exclusion hearing is an administrative procedure that must be exhausted as a remedy for a visa revocation.

Unless statutorily mandated, application of the doctrine of exhaustion of administrative remedies lies in the sound discretion of the district court. *See Reid v. Engen,* 765 F.2d 1457, 1462 (9th Cir.1985). This judicially created doctrine "does not limit jurisdiction; rather, it permits courts to decide whether to exercise jurisdiction." *Rodrigues v. Donovan,* 769 F.2d 1344, 1348 (9th Cir.1985). Where, as here, there is no statutory or regulatory exhaustion requirement, the administrative agency's interest in applying its expertise, making a proper record, and maintaining an efficient, independent administrative system should be balanced against the interests of private parties in finding adequate redress. *Shelter Framing Corp. v. Pension Benefit Guaranty Corp.,* 705 F.2d 1502, 1509 (9th Cir.1983), *rev'd on other grounds sub nom.Pension Benefit Guaranty Corp. v. R.A. Gray & Co.,* 467 U.S. 717, 104 S.Ct. 2709, 81 L.Ed.2d 601 (1984).

[3] We find that under either theory asserted by the Government and presumably relied upon by the district court, it was an abuse of discretion to require exhaustion of these purported administrative remedies. A request for reconsideration to the person making the decision is not generally considered a procedure that must be exhausted. In this particular case, a request for reconsideration of the consular officer's revocation order would have been futile because the consular officer who revoked the visas indicated in his deposition that he would not reconsider any revocation based on lack of physical presence. Further, requiring the appellants to leave ***1385** the United States to submit an application for a new nonimmigrant visa at another consulate is not a remedy for an error in revoking these visas. The appellants are entitled to litigate the validity of the revocation of their nonimmigrant visas that were issued.

C. *Revocation of the Visa Ab Initio*

The district court appears to have ruled in the alternative that the visa was properly revoked under the applicable statutes and regulations. We therefore also address that issue as a matter of law, which may be determined in this appeal without the necessity of a remand.

Although 8 U.S.C. § 1201(i) grants to the Secretary of State broad authority to revoke a nonimmigrant visa, the regulation that implements that authority, 22 C.F.R. § 41.134(a), delegates that authority to all consular officers, but circumscribes such authority to two limited instances: if it is found that the visa holder was ineligible under 8 U.S.C. § 1182 to receive such visa, or if the visa holder was not entitled to nonimmigrant classification under 8 U.S.C. § 1101(a)(15).

[4] The parties have consistently maintained that Mr. Goelz, Deputy Assistant Secretary for Visa Services, acted in his capacity as a consular officer in revoking the nonimmigrant visas. 22 C.F.R. § 41.1 defines "consular officer" as including the Director of the Visa Office of the Department and his designate. Mr. Goelz, a lawfully recognized consular officer, revoked the nonimmigrant visas on the basis that Mrs. Wong and the children were not physically present within the consular district. Such a basis is not one of the permissible grounds enunciated by 22 C.F.R. § 41.134(a). The evidence reflects that Mrs. Wong and her children do not fall within either of these categories and, as such, the *ab initio* revocation of their nonimmigrant visas was improper.

8 U.S.C. § 1182(a) specifies 33 categories of people who are ineligible for visas and who shall be excluded from admission to the United States. Grounds for ineligibility include insanity, drug addiction, criminal conviction and the like. It is not contended that any of these exclusionary categories are applicable to the Wongs.

8 U.S.C. § 1101(a)(15) classifies persons entitled to nonimmigrant status. The Wongs were issued L-2 visas as the wife and children of an alien admitted

under an L-1 visa pursuant to the terms of 8 U.S.C. § 1101(a)(15)(L). There is no contention that they are not properly classified as nonimmigrants under 8 U.S.C. § 1101(a)(15)(L). There is no dispute that Mr. Wong has an ongoing business relationship with Yat Sum in this country and that the requisite familial relationship exists between Mr. Wong and his wife and children.

Although the consular officer is supposed to assure the physical presence of the applicant within the consular district before issuing the nonimmigrant visa, this procedural deficiency is not one of the grounds specified for revocation of the visa after its issuance. Instead, the regulation looks to the substance of the visa qualifications-whether the alien is inappropriately classified for the type of visa obtained and whether the alien is within the group of people listed in 8 U.S.C. § 1182(a) that would be ineligible for a visa regardless of their classification.

The regulation makes good sense. Upon issuance of a visa by the consular officer, the alien should be able to expect that the consular officer has taken all the necessary steps to assure that the appropriate procedural details have been fulfilled. Relying on this, Mrs. Wong and her children traveled to the United States. To revoke a nonimmigrant visa at that stage because the consular officer failed to ensure that the correct procedures were followed, when the alien is actually qualified to receive the visa, seems harsh, indeed. Aliens entering any foreign country are naturally quite dependent upon the consular officers to ensure that the appropriate procedural requirements to obtain visas to enter the foreign country are satisfied. The revocation***1386** regulation appropriately draws a distinction between substantive eligibility for the visa and procedural defects in its issuance.

The physical presence requirement is a procedural requirement that falls outside the authorized grounds for visa revocation set forth in 22 C.F.R. § 41.134(a). While the absence of Mrs. Wong and the children from the place where the nonimmigrant visas were issued was in contravention of a regulation concerning the issuance of the visas, that circumstance cannot support a revocation of their otherwise lawfully issued nonimmigrant visas. The consular officer had no authority under the governing regulation to revoke the visas. We reverse the district court's summary judgment for appellees and remand with instructions to enter judgment for Mrs. Wong and to vacate the order revoking the visas of Mrs. Wong and her children.

REVERSED AND REMANDED.

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