

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DEMOS REVELIS, and)
MARCEL MAAS (A077 644 072),)
))
Plaintiffs,)
))
v.)
))
JANET NAPOLITANO, Secretary,)
Department of Homeland Security, and)
ERIC H. HOLDER, Jr., Attorney)
General of the United States,)
))
Defendants.)

Case No. 11-cv-1991

PETITION FOR DECLARATORY JUDGMENT & OTHER RELIEF

The Plaintiffs, DEMOS REVELIS and MARCEL MAAS, by and through their own and proper persons, and through their attorneys, JUSTIN R. BURTON and ERIN C. COBB, of the LAW OFFICES OF KRIEZELMAN BURTON & ASSOCIATES, LLC, move this Honorable Court for a Declaratory Judgment and for other relief, and in support thereof state as follows:

Introduction

1. This is an action seeking to allow a U.S. citizen spouse to petition for his foreign national spouse to become a permanent resident of the United States. The couple is denied this opportunity solely because their marriage is a same sex marriage.
2. The Plaintiffs have been in a committed relationship for 8 years. They married in the State of Iowa on December 24, 2010. Plaintiff Demos Revelis is a U.S. citizen. Plaintiff Marcel Maas is a foreign national.

3. Pursuant to the Immigration and Nationality Act, marriage to a United States citizen is a qualifying relationship that provides the foreign national a basis by which to adjust his or her status to that of a lawful permanent resident of the United States. 8 U.S.C. § 1151(b)(2)(A). Permanent residency in the United States allows a foreign national to reside and work in the United States, and to travel into and out of the country. It can also lead to U.S. citizenship.
4. Though Plaintiff Revelis is a U.S. citizen, and though he is married to Plaintiff Maas, the Defense of Marriage Act prohibits U.S. Citizenship & Immigration Services from determining that their relationship provides Plaintiff Maas a basis by which to become a permanent resident of the United States. By operation of the Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (Sept. 21, 1996), their legally valid same-sex marriage is not recognized by federal law, and thus the Immigration and Nationality Act. *See* 8 U.S.C. § 1151(b)(2)(A).
5. Plaintiff Revelis is therefore prevented from petitioning for his spouse to be able to live and work in the United States, and has been treated differently than other similarly situated individuals without justification, in violation of the right of equal protection secured by the due process clause of the Fifth Amendment of the Constitution of the United States.

Jurisdiction and Venue

6. This action arises under the Constitution of the United States and the laws of the United States. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331; 28 U.S.C. §§ 2201-2202 and 5 U.S.C. § 701 et seq.

7. The Northern District of Illinois is a proper venue for this action under 28 U.S.C. § 1391(e), because the defendants maintain offices in this District, the events giving rise to this claim occurred in this district, and the plaintiffs reside in this district.

The Parties

8. Plaintiff Demos Revelis is a United States citizen. He was born in Oakbrook, Illinois. He currently resides in Chicago, Illinois.
9. Plaintiff Marcel Maas is a native and citizen of Netherlands. He resides in Chicago, Illinois.
10. Defendant Janet Napolitano is sued in her official capacity as Secretary of the Department of Homeland Security. The Secretary of the Department of Homeland Security is responsible for the administration and enforcement of the Immigration and Nationality Act. 8 U.S.C. § 1103(a).
11. Defendant Eric H. Holder, Jr., is sued in his official capacity of the Attorney General of the United States. The Attorney General is the chief federal officer responsible for the enforcement of the federal laws of the United States.

Immigration Law Framework

12. Should a U.S. citizen and his foreign national spouse decide to make the United States their home, the U.S. citizen may file a visa petition (Form I-130) which, if approved, provides his spouse the basis by which he can apply for lawful permanent residency in the United States. 8 U.S.C. §§ 1151(b)(2)(A)(i), 1154(a)(1)(A)(i).
13. Ordinarily, whether a marriage-based visa petition will be approved depends upon (1) whether the marriage is legally valid in the place where it was celebrated, and (2) whether

the marriage was entered into in good faith, i.e. not solely for immigration purposes.

Matter of Dela Cruz, 14 I&N Dec. 686 (BIA 1974); 8 U.S.C. § 1154(c).

14. Lawful permanent residency is essential if a person wishes to remain indefinitely in the United States. It allows a foreign national to reside here, to work here, and to travel in and out of the country. 8 U.S.C. § 1101(a)(20); 8 C.F.R. § 274a.12(a)(1). As the name implies, that status is permanent – a lawful permanent resident may remain in the United States indefinitely, so long as the person abides by the nation’s laws. 8 U.S.C. § 1101(a)(20). The status is also a prerequisite for eventually obtaining U.S. citizenship. 8 U.S.C. § 1429.

Facts

15. Plaintiff Demos Revelis was born in Illinois and has lived his entire life here. In 2002, he and Plaintiff Marcel Maas began a relationship.
16. Plaintiff Marcel Maas was born in the Netherlands. He visited the United States briefly on two previous occasions, to see the country and visit with friends. He last entered the country in 1999, through the Visa Waiver Program.
17. The two began dating, and moved in together in 2002. They married on December 24, 2010, in Davenport, Iowa. Plaintiff Maas’s mother and father traveled from the Netherlands to participate in the celebration.
18. Because Plaintiff Demos Revelis and Marcel Maas desire to make the United States their permanent home, Marcel must obtain lawful permanent residency in the United States in order to lawfully remain in this country with his spouse.

19. In compliance with the procedure set out by the Immigration and Nationality Act and its accompanying regulations, Plaintiff Demos Revelis filed a visa petition (Form I-130) on behalf of his spouse, Marcel Maas.
20. On March 10, 2011, Plaintiffs Revelis and Maas attended an interview on the visa petition and application for adjustment of status to permanent residency at the Chicago Field Office of U.S. Citizenship and Immigration Services, an agency of the Department of Homeland Security. One purpose of the interview was to allow U.S. Citizenship and Immigration Services the opportunity to determine whether the marriage was entered into in good faith.
21. There has been no allegation that the marriage was not entered into in good faith. Further, the marriage of Plaintiffs Revelis and Maas is legally valid in the place where it was celebrated, namely, Iowa. However, approval of the visa petition is prohibited solely because the Defense of Marriage Act does not recognize homosexual marriage. Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (Sept. 21, 1996) (“DOMA”).
22. As a result of the prohibition on approval of the I-130 visa petition, Plaintiff Maas is left without a basis to apply for permanent residency in the United States. He must therefore depart the United States on order of U.S. Immigration and Customs Enforcement.
23. Plaintiff Revelis, a U.S. citizen, is therefore not permitted to live in the United States with his foreign national spouse.

The Defense of Marriage Act

24. Although the petitioning procedure for spouses of U.S. citizens applies on its face to all lawfully married couples who married in good faith, same-sex couples are denied its benefits by operation of the Defense of Marriage Act.

25. The Immigration and Nationality Act defines “spouse”, “wife”, and “husband” only by disqualifying those who were not physically present together at the time of marriage, unless the marriage was consummated. 8 U.S.C. § 1101(a)(35). There is no other definition of “spouse” or “marriage” in the Immigration and Nationality Act.
26. However, DOMA defines marriage as “only a legal union between one man and one woman as husband and wife.” 1 U.S.C. § 7. It defines spouse as “only ... a person of the opposite sex who is a husband or a wife.” *Id.*
27. By the terms of DOMA, these two definitions must be applied in determining the meaning of any Act of Congress, or of any regulation or interpretation of the administrative agencies of the United States. *Id.* Therefore, USCIS must follow the definitions of “marriage” and “spouse” as set out in DOMA.
28. Solely because of DOMA, the U.S. Citizenship & Immigration Service determined that a U.S. citizen cannot petition for his foreign national spouse if that relationship is a same-sex marriage.
29. As a direct result of DOMA, the visa petition that Plaintiff Revelis filed for his spouse cannot be approved. Solely by operation of DOMA, Plaintiff Revelis is denied a benefit which is available to all other U.S. citizens who are legally married and have entered their marriage in good faith. Solely by operation of DOMA, Plaintiff Revelis, a U.S. citizen, has been denied the opportunity to reside in the United States together with his lawful spouse.
30. Despite the severity of the impact of DOMA, the federal government does not have a rational basis for, much less a compelling interest in, enforcing the law.

31. Homosexuals have suffered a history of discrimination, are a minority with little political power in this country, share sexual orientation as an immutable characteristic, and share a characteristic that bears no relation to their ability to perform and contribute to society.
32. According to the House Report, there were four rationales for enacting DOMA. The first was to “defend[] and nurtur[e] the institution of traditional, heterosexual marriage.” H.R. Rep. No. 104-644, pp. 12-14. This is not a rationale, but rather simply a re-stating of the government’s intent to discriminate against a class of people.
33. The second rationale was to defend “traditional notions of morality.” H.R. Rep. No. 104-644, pp. 15-16. Similar to the first reason, this is simply a re-stating of the intent to discriminate again one group.
34. The third rationale was to “protect state sovereignty and democratic self-governance.” H.R. Rep. No. 104-644, pp. 16-18. Rather than protect state sovereignty, DOMA diminishes it. By operation of DOMA, the federal government refuses to recognize marriages which were determined to be legally valid by a state. DOMA defeats the principles of federalism.
35. The fourth and final rationale was to “preserv[e] scarce government resources.” H.R. Rep. No. 104-644, p. 18. However, in 2004, the Congressional Budget Office analyzed the effect that the recognition of same-sex couples would have on federal revenue and spending, and determined that it would result in an annual net increase in revenue. Cong. Budget Office, U.S. Congress, *The Potential Budgetary Impact of Recognizing Same-Sex Marriages* (June 21, 2004).

Procedural History

36. Plaintiff Revelis filed a visa petition (Form I-130) on January 9, 2011.
37. On March 10, 2011, U.S. Citizenship and Immigration Services, Department of Homeland Security, interviewed Plaintiffs on the visa petition to determine, inter alia, whether the marriage was entered into in good faith.
38. The Department of Homeland Security is prohibited from approving the visa petition.
39. The denial of an I-130 visa petition may be appealed to the Board of Immigration Appeals. 8 C.F.R. § 1003.1(b)(5). However, when the claim is a constitutional challenge, which an administrative agency has no power to decide, exhaustion of remedies before the administrative agency is not required. *Bosede v. Mukasey*, 512 F.3d 946, 950-51 (7th Cir. 2008); *Johnson v. Robison*, 415 U.S. 361, 368 (1974).

Cause of Action

40. Plaintiffs reallege and incorporate by reference every allegation contained in the preceding paragraphs as if set forth fully herein.
41. As a direct result of DOMA, the federal government treats married same-sex couples differently than heterosexual married couples.
42. As a direct result of DOMA, as applied to the Immigration and Nationality Act, a U.S. citizen spouse is denied the opportunity to petition for his foreign national spouse, only because that spouse is of the same sex.
43. DOMA creates a classification that treats similarly situated individuals differently without justification in violation of the right of equal protection secured by the Fifth Amendment of the Constitution of the United States.

WHEREFORE, Plaintiffs Demos Revelis and Marcel Maas respectfully request that this Honorable Court:

- A. Declare the Defense of Marriage Act unconstitutional as applied to the plaintiffs,
- B. Enjoin the defendants from continuing to discriminate against the plaintiffs by treating them differently from similarly situated individuals,
- C. Grant such other relief as is equitable and just.

Respectfully Submitted,
Demos Revelis, Marcel Maas

By: s/ Justin R. Burton
One of their attorneys

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