IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
Civil No.02-CV-502 RHK/JMM

VENANTIUS NKAFOR NGWANYIA, et al., Plaintiffs, v. JOHN ASHCROFT, Attorney General, et al., Defendants.	PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER **ORAL ARGUMENT IS REQUESTED**

I. INTRODUCTION

The U.S. District Court for the District of Minnesota should deny the Defendants' motion to transfer venue because venue is proper in Minnesota under 28 U.S.C. § 1391(e), and Defendants have failed to show that a transfer of venue is more convenient for the parties, more convenient for non-party witnesses, or in the interest of justice.

Both Plaintiffs and Defendants admit that venue is proper. Plaintiffs' Complaint for Declaratory, Mandamus and Injunctive Relief at ¶ 8, ("Plaintiffs' Complaint"); Defendants' Memorandum in Support of the Motion to Transfer Venue at 5, ("Defendants' Motion"). When venue is proper, 28 U.S.C. § 1404(a) allows a court to transfer a case to a court in which the case might have been brought. 28 U.S.C. § 1404(a) (1994). The Eighth Circuit and the Minnesota District Court evaluate three factors when deciding this motion: (1) the convenience of the parties, (2) the convenience of the witnesses, and (3) the interest of justice. See Terra Int'l, Inc. v. Mississippi Chemical Corp., 119 F.3d 688, 691 (8th Cir. 1997).

The Court should deny Defendants' motion to transfer venue to the U.S. District Court for the District of Columbia. Defendants have provided no evidence demonstrating the above contentions and have failed to meet their "heavy burden of proof." See, e.g., United Mortg. Corp. v. Plaza Mortg. Corp., 853 F. Supp. 311, 315 (D. Minn. 1994) (finding that the party requesting the transfer "bears a heavy burden of establishing that the balance of the § 1404(a) factors strongly favors a transfer") (citations omitted). This case involves federal law, which both courts are equally positioned to interpret and enforce. Because the case challenges the implementation of the asylee adjustment program rather than the policy itself, it is likely that more witnesses and documents will be located outside of the District of Columbia, including in Minnesota, than within that jurisdiction. Transferring the suit to the District of Columbia would not be more convenient for parties or witnesses and would not serve the interest of justice. Thus, Defendants have not demonstrated why Plaintiffs' choice of venue should be disturbed.

II. AN EVALUATION OF THE FACTORS USED BY THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND THE MINNESOTA DISTRICT COURT SHOW THAT THIS ACTION SHOULD NOT BE TRANSFERRED TO THE D.C. DISTRICT COURT.

The Minnesota District Court has found that evaluation of the factors must be done on a case-by-case basis and include all relevant circumstances. Terra, 119 F.3d at 691. An evaluation of the factors outlined above and circumstances shows that a transfer of venue to the D.C. District Court is not more convenient for both parties or in the interest of justice.

The Eight Circuit has found that a 1404(a) transfer should not be freely granted. In re Nine Mile Ltd., 692 F.2d 56, 61 (8th Cir. 1982). The transfer must be to a more convenient forum and not an equally convenient one and cannot solely shift the convenience from one party to another. Graff v. Qwest Communications Corp., 33 F. Supp. 2d 1117, 1121 (D. Minn. 1999) (citing Van Dusen v. Barrack, 376 U.S. 612, 646 (1964)). The Minnesota District Court denies a

transfer when factors are evenly balanced or weigh "only slightly" in favor of the transfer. Graff, 33 F. Supp. 2d at 1121 (citing Critikon, Inc. v. Becton Dickinson Vascular Access, Inc., 821 F. Supp. 962, 964 (D. Del. 1993)). "The party seeking transfer bears the burden of proof to show that the balance of factors 'strongly' favors the movant." Graff, 33 F. Supp. 2d at 1121 (quoting Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947)) ("Unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed").

A. Defendants Have Not Shown that the District of Columbia is a More Convenient Forum.

Defendants' one page description of why the District of Columbia is a more convenient forum and attached exhibits are insufficient to meet the burden of proof necessary to justify a transfer of venue.[1] See, e.g., Schmidt Printing, Inc. v. Impact Publ'g, Inc., Civil No. 02-48 (JRT/FLN), 2002 U.S. Dist. LEXIS 10178 at *4 (D. Minn. June 5, 2002) (concluding defendant had not met burden of proof to warrant transfer of venue because it did not offer affidavit testimony or similar evidence to support assertion of financial difficulties); Plum Tree, Inc v. Stockment, 488 F.2d 754, 756-57 (3d Cir. 1973) (vacating a decision to transfer venue based only on the movant's motion).

Defendants argue that the relevant papers concerning the administration and oversight of the asylee adjustment process are in the District of Columbia, and therefore, they would be able to more easily access the proof necessary to litigate this action in that district. Defendants' Motion at 8. Defendants also allege that witnesses are located in the District of Columbia. Id. However, Defendants have not shown sufficient evidence that they will be unable to transport the necessary documents located in the District of Columbia to Minnesota or why their witnesses – their agents and employees – would be unable to travel to Minnesota to testify. Scheidt v.

[1] Defendants' exhibits establish only that there are policy directives from INS personnel in Washington, D.C. that will be at issue in the case. However, these exhibits do not sufficiently support Defendants' broader allegations.

Klein, 956 F.2d 963, 966 (10th Cir. 1992) (denying a transfer of venue because defendant failed to show why documents could not be shifted through and the relevant ones sent to the transferee forum at relatively minor cost).

Although the Eighth Circuit has not explicitly ruled on the necessity of supporting affidavits, other circuits and courts have found that conclusory evidence alone is insufficient proof of inconvenience. See, e.g., Plum Tree, 488 F.2d at 756-57 (vacating a decision to transfer venue because based only on movant's motion); Scheidt, 956 F.2d at 966 (finding conclusory assertion of inconvenience insufficient).

The Minnesota District Court has followed these other circuit courts in finding that specification of key witnesses and what their testimony will include, specifically through the inclusion of affidavits, is important proof and has rejected the idea that documentation located in a movant's headquarters is sufficient to justify a transfer. See, e.g., Brockman v. Sun Valley Resorts, 923 F. Supp. 1176, 1181 (D. Minn. 1996) (allowing a transfer because of the novelty of the issue, but finding that several circuit courts of appeals have found that a movant's motion must specify the key witnesses to be called and to make a general statement of what their testimony would have included) (citations omitted); Imation Corp. v. Sterling Diagnostic Imaging, Civil File No. 97-2475 (PAM/JGL), 1998 U.S. Dist. LEXIS 16859, at *11 (D. Minn. Apr. 21, 1998) (finding movant failed to meet its burden of proof by not including affidavits or declarations and rejecting the argument that the location of documents in movant's headquarters justifies transfer because documentation was located in various places).

Defendants also allege that this case "has no more connection with Minnesota than it does with Florida, Texas, New York or Nebraska." Defendants' Motion at 7. However, the connection of the case with Florida, Texas, New York, or Nebraska is irrelevant. Defendants are

not seeking to transfer the case to any of these states. Rather, the issue is whether the case is connected with Minnesota so as to make venue proper and whether the District of Columbia is sufficiently more convenient to overcome the presumption given by the court to the Plaintiffs' choice of forum. See 28 U.S.C. § 1404(a); Graff, 33 F. Supp. 2d at 1121 (quoting Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947)).

Defendants have admitted that venue is proper. Defendants' Motion at 5. Five Plaintiffs resided in Minnesota while the harm occurred.[2] Plaintiffs' Complaint at ¶¶ 52-74. Three of these Plaintiffs filed their adjustment of status application in Minnesota, and the local Minnesota INS offices failed to properly process the Plaintiffs' applications. Id.

B. The District of Columbia is Not a More Convenient Forum

The Minnesota District Court has recognized a presumption in favor of the plaintiff's choice of forum and found that it weighs heavily in support of denying a motion to transfer. See, e.g., K-Tel Int'l, Inc. v. Tristar Products, Inc., 169 F. Supp. 2d 1033 (D. Minn. 2001) (citing Christensen Hatch Farms, Inc. v. Peavey Co., 505 F. Supp. 903, 911 (D. Minn. 1981)). This presumption is particularly relevant when the plaintiff resides in the district in which the lawsuit was filed. Imation Corp., Civil File No. 97-2475 (PAM/JGL), 1998 U.S. Dist. LEXIS 16859, at *10 (quoting Terra Int'l, Inc. v. Mississippi Chemical Corp., 119 F.3d 688 (8th Cir. 1997) ("In any determination of a motion to transfer under § 1404(a), the plaintiff's choice of a proper forum is entitled to great weight, and will not be lightly disturbed, especially where the plaintiff is a resident of the judicial district in which the suit is brought.") Sec. Life Ins. Co. of Am. v. Stewart, Civil No. 01-1677 (RHK/JMM), 2001 U.S. Dist. LEXIS 19847, at * 8 (D. Minn. Nov. 28, 2001) (citing Sky Valley Ltd. Partnership v. ATX Sky Valley, Ltd., 776 F. Supp. 1271, 1276

[2] There were five named Minnesota Plaintiffs as of the time of filing the complaint. Since that date, at least two more potential Plaintiffs located in Minnesota have asked to join the lawsuit.

(N.D. Ill. 1991)). In this action, five Plaintiffs reside in the District of Minnesota. Plaintiffs' Complaint at ¶¶ 52-74.

Defendants have not shown that a transfer of venue would be more convenient for non-party witnesses or that their witnesses would be unwilling to appear. The relevant considerations concerning the convenience of the witnesses includes the number of *non-party witnesses***,** their locations, and the preference of courts for live testimony over depositions. Graff at 33 F. Supp. 2d at 1121 (citing Gulf Oil Corp. v. Gilbert, 330 U.S. at 508).

The court has found that consideration of witness convenience is "more than the number of witnesses who might be inconvenienced by one forum or the other." Imation Corp., Civil File No. 97-2475 (PAM/JGL), 1998 U.S. Dist. LEXIS 16859, at *11 (citing Terra Int'l, Inc. v. Mississippi Chemical Corp., 119 F.3d 688 (8th Cir. 1997). The Court must also weigh considerations including the willingness of the witnesses to appear and whether compulsory process would be necessary or possible. Imation Corp., Civil File No. 97-2475 (PAM/JGL), 1998 U.S. Dist. LEXIS 16859, at *11.

There likely will not be any non-party witnesses. See Defendants' Motion at 8. Defendants state that they anticipate that their "officers, agents, and employees will be called upon to provide testimony about the implementation of Section 209 of the INA." Id. As the witnesses are Defendants' officers, agents, and employees, the Defendants should have no difficulty ensuring the appearance of these witnesses.

Because the case concerns problems with the implementation of the asylee adjustment program rather than simply the directions given by the Washington, D.C. INS, key witnesses and information will come from field offices around the country, including the field office located in Minnesota, and the Nebraska Service Center rather than only the national headquarters located in

Washington, D.C. See Plaintiffs' Complaint at ¶¶ 28-51; Defendants' Exhibits in Support of the Motion to Transfer Venue at 5, ("Defendants' Exhibits"). The documents located around the country are as easily transferred to Minnesota as to anywhere else and witnesses outside of both forums can just as easily travel to Minnesota as to the District of Columbia.

C. The D.C. District Court is Not More Apt to Handle this Case than the Minnesota District Court.

The Minnesota District Court is as familiar with the law to be applied as the D.C. District Court. This case involves federal law, which both courts are equally positioned to interpret and enforce. Defendants allege that the D.C. District Court "has a greater degree of interest in ensuring that government officials within its district are complying with the Constitution and the laws of the United States" than does the Minnesota District Court. Defendants' Motion at 8. All federal courts have an equal interest in ensuring that government officials are complying with the Constitution and federal laws. See U.S. Const. art. VI, cl. 2.

Additionally, the Minnesota District Court has more expertise adjudicating immigration-related cases than does the D.C. District Court. Both the Minnesota District Court and the Court of Appeals for the District of Minnesota frequently review decisions made in the immigration court in Minnesota. See, e.g., Badio v. United States, 172 F. Supp. 2d 1200 (D. Minn. 2001); Chan Jago John v. Aljets, 162 F. Supp. 2d 1086 (D. Minn. 2001); Gavilian-Cuate v. Yetter, 94 F. Supp. 2d 1039 (D. Minn. 2000). There is no immigration court within the District of Columbia, and therefore, litigants do not appeal cases in the D.C. District or Circuit Courts. Hence the D.C. District and Circuit Courts have no special expertise on immigration issues.

Granting a transfer of venue also is not in the interest of judicial economy because the the District of Columbia courts are not less busy than the Minnesota courts. For a twelve-month period that ended on March 31, 2001, 4,696 civil cases were commenced in the U.S. District

Court for the District of Columbia and 4,448 civil cases were commenced in the U.S. District Court for the District of Minnesota. U.S. District Courts – Civil Cases Commenced by Nature of Suit and District, During the 12-Month Period Ending March 31, 2001, available at http://www.uscourts.gov/caseload2001/tables/c03mar01.pdf.

The Minnesota District Court is just as capable as the D.C. District Court of enforcing a judgment against Defendants. Defendants allege that any relief granted to Plaintiffs should be administered and monitored by the judicial district in which the INS headquarters is situated. Courts around the country have monitored the implementation of nationwide class relief against the INS. See generally, Walters v. Reno, 145 F.3d 1032 (9th Cir. 1998); Silva v. Bell, No. 76-C-4268, 1979 U.S. App. LEXIS 11098, (7th Cir. Oct. 18, 1979).

D. The Courts Have Not Found the Existence of a "Political Issue" to Be a Dispositive Factor in Determining the Appropriate Venue.

Defendants allege that this case should be transferred to the U.S. District Court for the District of Columbia because it involves national policy issues developed by and promulgated from INS headquarters in the District of Columbia. Defendants' Motion at 7 (citing Starnes v. McGuire, 512 F.2d 918, 929 (D.C. Cir. 1974)).

The existence of a national policy issue does not require a case to be resolved by the D.C. District Court and the D.C. District Court has so ruled. See Starnes, 512 F.2d at 929 (finding only that the "existence of a national policy issue that may involve testimony by the policymakers is a factor to be considered by the district judge in determining whether transfer is appropriate under Section 1404(a)"); Adams v. Bell, No. 81-1715, 1982 U.S. App. LEXIS 16397 at *9 n9 (D.D.C. Aug. 24, 2982) (stating that the D.C. District Court has rejected the notion that it is alone suited to review issues of national importance) (citing Starnes, 512 F.2d. at 928). The Starnes court also noted that:

> Petitioner also suggests that, to the extent his case can be taken to be concerned with national policy, the policy is that of an agency headquartered in Washington, D.C., and that therefore, venue is most appropriate here. This argument is essentially based on the concept that somehow issues involving national policy are peculiarly appropriate for resolution by this forum. . . . An examination of those cases, however, reveals that far from creating a blanket rule that "national policy" cases should be brought here, the decisions require the case-by-case determination.

Starnes, 512 F.2d at 928.

Plaintiffs do not dispute that some directions outlining how to implement the asylee adjustment program have come from the national headquarters of the INS. See Defendants' Exhibits 1 and 2. However, some directions also have come from the Nebraska Service Center. The Defendants' exhibits demonstrate that the actual implementation, pursuant to these directions, is carried out in field offices throughout the country, including the Minnesota office. Id. The problems with the actual implementation, and not the directions given, largely motivated this suit.

III. CONCLUSION

Plaintiffs respectfully urge the Court to deny the Defendants' motion for a transfer of venue.

Respectfully submitted: July 3, 2002.

ATTORNEYS FOR PLAINTIFFS

By_____

NADINE K. WETTSTEIN
MARY KENNEY
J. TRACI HONG
American Immigration
Law Foundation[3]
918 F Street, N.W.
Washington, D.C. 20004
Telephone: (202) 742-5600

[3] With assistance from Law Student Anne Seymour.

Fax: (202) 783-7857

JAMES K. LANGDON II
Dorsey and Whitfield
Attorney Registration # 171931
Suite 1500
50 South Sixth Street
Minneapolis, MN 55402
Telephone: (612) 340-8759
Fax: (612) 340-2868

IRIS GOMEZ
Massachusetts Law Reform Institute
99 Chauncy Street, Suite 500
Boston, MA 02111
Telephone: (617) 357-0700
Fax: (617) 357-0777