State Bill Expedites Law Enforcement's Cooperation in U Visa Applications

With the passage of a new bill, U visas must be handled quickly and to the minimal requirements of the federal framework

AVERY MARTINEZ LAW WEEK COLORADO

With the passage of a state bill, immigrants in Colorado gain another mechanism to help ensure their stay in the country.

House Bill 1060, which passed April 21, sets strict guidelines for processing U visas, the document that rewards crime victims who volunteer information to law enforcement with the ability to stay in the country. While the visa itself does not guarantee citizenship, it is a doorway for thousands each year to obtaining lawful permanent residency. While the requirements of the visa as given by Congress are broad, it has one main sticking

point: the law enforcement agency aided by the noncitizen must certify the individual qualifies for application under this specific U visa.

The law enforcement agencies themselves, however, have thousands of applications and set their own requirements for processing them - if they respond to requests for certification at all.

According to Ashley Harrington, managing attorney of the Children's Program at the Rocky Mountain Immigrant Advocacy Network, the process set up by Congress can make it difficult for applicants since they must depend on the law enforcement agencies' assistance for the first step in applying for the visa.

HB21-1060 is intended to make that



Lawmakers have passed a bill that would add Colorado to a list of states that sets deadlines for law enforcement agencies to sign and certify U visa applications./ LAW WEEK FILE

process easier - within Colorado at least - by setting a timeframe for Colorado law enforcement agencies to respond to requests from potential U visa applicants. However, if an individual is unable to obtain that signature and prove they are awaiting U visa approval or denial, they may still face detention or deportation. The bill also requires agencies to send an annual report on how many certification requests are received and how they responded, forbids agencies from providing personal identifying information to ICE and requires law enforcement to provide crime victims who might qualify for U visas with information on the program.

Colorado's bill gives agencies about four months to decide on certification and about three months if the applicant is in active deportation proceedings or if their eligibility is close to expiring. Seven states have passed similar types of legislation, which give more stringent timelines, the strictest of which is California.

Harrington said Colorado's new requirement is "extremely generous" in

In many cases, U visa approval can decide a life-or-death situation, Harrington said. Individuals might face deportation back to dangerous situations and extreme harm and hardship. The ability to get on a pathway to lawful permanent residency is important for these individuals, Harrington said. It is very much an uncertain limbo in waiting for law enforcement to sign the certification, or whether you'll even be allowed to send an application.

Harrington said that hearing back on a U visa application often takes around four to five years while waiting for one of the limited 10,000 visas awarded each year.

During that time, the applicant-hopeful might receive deferred action status, meaning some protection from deportation or detention, but the limbo of waiting for the first step of certification to be completed can be difficult.

A key part of waiting for a U Visa is that the immigrant has no legal status. During that time, Immigration and Customs Enforcement agents can place an individual in removal or detention proceedings, which then requires getting a stay of removal to stop deportation. The Center for Immigration Studies, a nonpartisan nonprofit research organization, reports the U visa program has grown significantly in recent years. While the number of visas issued each year has been below 20,000 through the life of the program, the number of petitions filed each year has quintupled since the first year they were awarded.

Colorado Division of Insurance SYNOPSIS OF ANNUAL STATEMENT FOR THE YEAR 2020

Colorado Division of Insurance Synopsis of Annual Statement for Year 2020

BITCO GENERAL INSURANCE CORPORATION 3700 Market Square Circle Davenport, IA 52807 NAIC Number: 20095 \$1,078,387,213 \$750,041,147 Liabilities Capital and Surplus/ Policyholder Surplus. . . . \$328,346,066

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Colorado Division of Insurance Synopsis of Annual Statement for Year 2020

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TRITON INSURANCE COMPANY I Meacham Blvd., Suite Fort Worth, TX 76137 NAIC Number: 41211 \$664,579,275 iabilities \$527,119,935 Capital and Surplus/ Policyholder Surplus. . \$137.459.340

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Colorado Division of Insurance Synopsis of Annual Statement for Year 2020 SURETY LIFE INSURANCE COMPANY 310 NE Mulberry Lee's Summit, MO 64086 NAIC Number: 69310

Davenport, IA 52807 NAIC Number: 20109 \$258,816,020 Assets \$155,137,060 Liabilities Capital and Surplus/ Policyholder Surplus. . . . \$103,678,960

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. \$1,995,426 Liabilities Capital and Surplus/ Policyholder Surplus. . . . \$24,725,545

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comparison to other states' requirements. "You're talking about agencies like the Los Angeles Police Department, who get thousands of requests a year, as opposed to our police departments and DA offices that might get a couple hundred per year - and they're able to comply with those timelines," Harrington said. "This is really about victim safety and about their lives and being able to access protection that Congress intended for them to be able to stay in the U.S. We feel good about asking law enforcement to make these decisions more quickly."

HB21-1060 passed in both legislative chambers but has not yet been sent to the governor's desk, as of press time.

-Avery Martinez, AMartinez@CircuitMedia.com

IN THE COURTS

10th Circuit Set to Hear Constitutional TABOR Challenge

Hearings scheduled for May range from TABOR to excessive force

AVERY MARTINEZ LAW WEEK COLORADO

The 10th Circuit Court of Appeals is preparing to hear oral arguments in May for cases ranging from constitutional challenges on Colorado's Taxpayer Bill of Rights and a jury's conclusion in a case dealing with qualified immunity.

One of the most noteworthy cases for Colorado is Kerr v. Polis, which has gone up and down through the state and federal courts for a decade. The crux of the case deals with the question of whether the creation of TABOR was in violation of state and federal constitutional requirements to provide a "republican form of government."

KERR V. POLIS

Originally Kerr v. Hickenlooper, the suit was filed in federal district court in 2011 by former Sen. Andy Kerr. The plaintiffs in the case, which now include eight boards of education, a set of county commissioners, a special district board, current and past state legislators, public officials and private citizens.

TABOR, a 1992 amendment to the state constitution, removed from all levels of Colorado state government the ability to enact tax legislation, instead requiring any new tax measures to go to a vote of the people. TABOR also requires refunds of tax revenues that exceed an annually adjusted cap on state spending unless voters approve keeping the excess. This in turn also limits or eliminates essential fiscal powers of the state general assembly and political subdivisions.

The plaintiffs claim that TABOR has "fundamentally undermined the ability of Colorado's representative democracy

to function. As a result, the state no longer has a 'republican form of government.'" But the U.S. Constitution guarantees all states a republican form of government, which is also required in the state constitution. "TABOR thus violates Article IV, section 4, and the requirements of the Statehood Act, and should be invalidated by the court," according to the plaintiffs.

Different aspects of the case have been discussed by the courts several times, but the 10th Circuit is now prepared to resolve questions about constitutional requirements.

After the case was first filed, then-Attorney General John Suthers said the plaintiffs didn't have standing before the court over TABOR, and the challenge to TABOR was a political question – not one for the courts.

A district court ruling in 2012 rejected the AG's position, finding that standing members of the state General Assembly had a right to bring the action, and allowed the case to move forward. In 2014, the state appealed to the 10th Circuit, which ruled that the case was indeed justiciable. However, the 10th Circuit denied a petition for rehearing en banc in July of that year and ruled the original plaintiffs in the case didn't have standing.

By 2016, the suit had gone through the Colorado Supreme Court and back to the 10th Circuit, where the appellate court sent it back down to district court to determine if the other plaintiffs in the case had standing. Other plaintiffs were added, including several school districts and county commissioners, according to Ballotpedia. The district court dismissed the case saying the additional plaintiffs lacked standing.

In 2019, the 10th Circuit ruled 2-1 to

reverse the district's dismissal of the suit saying the plaintiffs did have standing and remanded the case back to the district for further consideration. Then, in October of last year, the 10th Circuit agreed to review the legal challenge against TABOR.

NOSEWICZ V. JANOSKO

Qualified immunity, a topic of interest around the country in cases regarding law enforcement accountability, plays a small role in the case Nosewicz v. Janosko. Jeffrey Janosko, a deputy in the Adams County Detention Facility, and Edward Nosewicz got into a physical altercation in a jail pod, which led to Nosewicz sustaining injuries.

According to September 2020 order from Colorado district court, Nosewicz had been arrested the night before the 2014 incident and was held in an intake pod. He became "irate," and Janosko entered the cell to move him to a different location.

Janosko stated in court that as he attempted to move Nosewicz from the cell, Nosewicz began to pull his arm away and turn to Janosko. As a result, Janosko used "an arm-bar takedown to bring Nosewicz to the ground." Janosko consistently stated in court that Nosewicz didn't ball up his fists or take a step toward him before the takedown. However, a superior officer in the jail testified that Janosko had reported to his superior that before the altercation, Nosewicz was agitated, raised his voice, started yelling and screaming, balled up his fists and stepped toward the deputy.

Nosewicz filed a suit in 2016, claiming that Janosko used excessive force and deliberate indifference to his medical needs. In an incident report that became significant in discovery, nothing was mentioned about Nosewicz making actions such as balling up his fists or taking a step toward Janosko before the deputy forced him to the floor. Instead, the report stated, Nosewicz pulled his arms away and tried to turn and face the deputy before being forced to the floor. When he was deposed, Janosko testified consistently with the report.

The court granted summary judgment to Janosko on both claims against him on the basis of qualified immunity, but, on the case's prior trip to the 10th Circuit, the higher court reversed the district court's decision on the excessive force claim, concluding there was a disputed fact as to whether Nosewicz had "actively resisted" Janosko's use of force, according to the order. This was stated in an unpublished opinion of the court.

On remand, a jury unanimously found in favor of Janosko on the excessive force claim. But then, in November 2019, Nosewicz moved for a new trial, amending his motion several days later, based on the discrepancy between Janosko's testimony and his superior.

Nosewicz contends that at least some of the testimony was "false and/or perjured" and seeks a new trial on that basis.

However, the district court found that Nosewicz's motion failed all prongs of the test for a new trial. The order states that Nosewicz provided no additional evidence explaining why the contradictory testimony was proof of deliberately being false by either officer. The court was also unsure a jury would've given a different verdict based on a false testimony, and Nosewicz failed to show that the testimony was allegedly falsified.

-Avery Martinez, AMartinez@CircuitMedia.com

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