IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

GABY OR GOLDHAR,
33 Feierberg Street, Apt. 10,
Tel Aviv 63827 30,
ISRAEL,

Plaintiff,

v.

UNITED STATES CUSTOMS AND BORDER PROTECTION, c/o Office of Chief Counsel, 1300 Pennsylvania Avenue, Ste. 4.4-B, Washington, DC 20229,

TROY A. MILLER, Acting Commissioner of U.S. Customs and Border Protection, in his official capacity, c/o Office of Chief Counsel, 1300 Pennsylvania Avenue, Ste. 4.4-B, Washington, DC 20229,

and

VERNON FORET, Director, Field Operations, Miami/Tampa Field Offices of U.S. Customs and Border Protection, in his official capacity, c/o Office of Chief Counsel, 1300 Pennsylvania Avenue, Ste. 4.4-B, Washington, DC 20229,

Defendants.

Civil Action No. 1:21-cv-23197

COMPLAINT

Introduction

1. Plaintiff Gaby Or Goldhar challenges the decision of Defendant U.S. Customs and Border Protection ("CBP") to physically cancel her valid B-1/B-2 visitor visa ("B-2 visa"), which the agency admitted was wrong and which leaves her without the travel document she desperately needs to attend her grandson's Bar Mitzvah that will take place in Florida on January 27, 2022.

2. When entering the U.S. through the Miami International Airport on July 15, 2019, a CBP officer decided to physically cancel Mrs. Goldhar's B-2 visa (No. H0907803) based on a legally-erroneous determination that she had overstayed and accrued unlawful presence during prior visits to the U.S. and was thus inadmissible. *See* Ex. 1 (copy of the physically-cancelled visa).

3. CBP conceded that its inadmissibility determination was incorrect and ultimately admitted Mrs. Goldhar as a B-2 visitor. *See* Ex. 2 (email from CBP). But the damage had already been done—Mrs. Goldhar's visa was physically invalidated.

4. While Mrs. Goldhar was invited to apply for a replacement visa, that has effectively become impossible as consular posts have throttled operations in response to the COVID-19 pandemic. The wait time for a visitor-visa appointment at the only two consular posts in Israel is presently 353 days in Tel Aviv and 224 days in Jerusalem. *See* Ex. 3 (U.S. Department of State Visa Appointment Wait Times). The Bar Mitzvah will be long over by then.

5. Had CBP not cancelled Mrs. Goldhar's visa, her visa would have remained valid and she would have no impediment to boarding a flight and presenting herself for admission in January for a precious, once-in-a-lifetime moment with her grandson.

6. CBP's physical cancellation of Mrs. Goldhar's B-2 visa constitutes a violation of the Administrative Procedure Act as an agency action that was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A). As such, the Court should order Defendants to recognize her B-2 visa as a valid entry document, permitting Mrs. Goldhar to be able to continue to use her B-2 visa through its stated expiration date.

Jurisdiction and Venue

7. This case arises under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.* and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.* This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as a civil action arising under the laws of the United States. The United States has waived sovereign immunity under 5 U.S.C. § 702.

8. This Court is not deprived of jurisdiction by the doctrine of consular non-reviewability because Mrs. Goldhar is not challenging a discretionary determination by a consular officer at a consular post but rather the legality of a decision made by a CBP officer to physically cancel her visa. *See Gill v. Mayorkas*, No. C20-939 MJP, U.S. Dist. LEXIS 145283, at *23-24 (W.D. Wash. Aug. 3, 2021) (finding that physical cancellations of visas by CBP officers are not shielded from review by consular nonreviewability because they are "administrative and law-enforcement functions, not signs of discretionary authority to which courts must defer"); *see also Atanackovic v. Duke*, 399 F. Supp. 3d 79, 88 (W.D.N.Y. 2019) (holding that "[t]he doctrine of consular nonreviewability does not apply" to challenges to CBP decisions at the border because the relevant statutes and regulations "distinguish[ ] between the absolute discretion of consular officers and the legal authority of CBP officers").

9. Likewise, this Court is not deprived of jurisdiction under 8 U.S.C. § 1252, which provides that no court shall have jurisdiction to review either (i) "any judgment regarding the granting of" various forms of relief from removal, or (ii) "any other decision or action . . . the authority for which is specified . . . to be in the discretion of the Attorney General or the Secretary of Homeland Security." 8 U.S.C. § 1252(a)(2)(B). Mrs. Goldhar is not challenging anything related to removal.

10. Venue is proper in this judicial district under 28 U.S.C. § 1391(e)(1) because this is a civil action in which the Defendants are agencies of the United States and officers of the United States, acting in their official capacities, one of the Defendants resides in this district, and a substantial part of the events giving rise to this claim occurred within this district at the Miami International Airport.

Parties

11. Plaintiff Gaby Or Goldhar is a citizen and resident of Israel who is in possession of a B-2 visa that was physically cancelled by CBP.

12. Defendant United States Customs and Border Protection is an "agency" within the meaning of the APA, 5 U.S.C. § 551(1). CBP is responsible for determining the visa validity and admissibility of travelers into U.S. ports of entry, including with respect to Mrs. Goldhar's July 15, 2019, entry into the U.S. through the Miami International Airport.

13. Defendant Troy Miller is the Acting Commissioner of CBP. In this role, he oversees CBP operations nationwide and worldwide and establishes governing policies of the CBP. He has ultimate responsibility over the decisions of individual CBP officers at ports of entry and is sued in his official capacity.

14. Defendant Vernon Foret is the Director, Field Operations for CBP's Miami/Tampa Field Offices. In this role, he has ultimate authority over the CBP's processing of individual passengers at the Miami International Airport, where Mrs. Goldhar's B-2 visa was invalidated. He has direct responsibility over CBP officers at the Miami International Airport and is sued in his official capacity.

Legal Framework

15. With limited exceptions, a foreign national seeking temporary entry to the U.S. must be in possession of a valid visa. 8 U.S.C. § 1182(a)(7)(B)(i).

16. Visas are issued by Department of State consular posts worldwide upon submission of an online application (Form DS-160) and following biometrics and an interview where eligibility is assessed. 8 U.S.C. § 1201(a)(1)(B); 22 C.F.R. §§ 41.102(a), 103(a)(1).

17. The visa itself does not grant a right of entry, but rather the ability for visa holders to board planes and present themselves for admission at U.S. ports of entry administered by CBP. 8 U.S.C. § 1201(h).

18. CBP officers, in turn, are responsible for determining whether a traveler is "admissible" and therefore able to enter the United States in a particular immigration status. *Id*. § 1225(a)(3).

19. Grounds of inadmissibility are contained at 8 U.S.C. § 1182(a), and include travelers without proper entry documents (§ 1182(a)(7)) and those who had previously been unlawfully present in the U.S. for more than 180 days (§ 1182(a)(9)(B)(i)).

20. CBP officers are given limited authority to revoke valid visas if they determine that a particular foreign national "appears to be inadmissible" as long as they allow the traveler to withdraw his or her "application for admission" to the United States. 22 C.F.R. § 41.122(e)(3). The officer will physically stamp or write on the visa to note the cancellation, thus purportedly depriving the traveler of a required document to travel to the United States. *See id*. § 41.122(d); *see also* 8 U.S.C. § 1323(a)(1) (imposing fines on airline companies who bring travelers without valid entry documentation, making it all but impossible for these travelers to board).

21. A traveler's ordinary recourse in these situations would be to re-apply for a new visa from a consular post.

Factual Allegations

Mrs. Goldhar's lawful use of B-2 nonimmigrant status

22. Mrs. Goldhar is a 67-year-old grandmother who was a former member of her daughter's household in the United States.

23. Her daughter resided in the U.S. in long-term L-2 nonimmigrant status as the spouse of an L-1A multinational executive transferee. Mrs. Goldhar's four grandchildren resided with them, and Mrs. Goldhar was a key source of love and support to the family.

24. Although Mrs. Goldhar was a member of the household, she was ineligible for an L-2 visa because such classification does not extend to parents, in-laws, or grandparents. *See* 8 C.F.R. § 214.1(a)(1)(vi).

25. According to the Department of State's Foreign Affairs Manual ("FAM"), "[t]he B-2 classification is appropriate for aliens who are members of the household of another alien in long-term nonimmigrant status, but who are not eligible for derivative status under that alien's visa classification." 9 FAM 402.2-4(B)(5). This includes "elderly parents of temporary workers." *Id.* Mrs. Goldhar qualified for B-2 status under this provision since she was not eligible for an L-2 visa.

26. Mrs. Goldhar therefore applied for and received a B-2 visa (No. H0907803) from the U.S. Embassy in Tel Aviv, Israel on May 2, 2013, that was valid until April 29, 2023. *See* Ex. 1.

27. Mrs. Goldhar used this B-2 visa to present herself for entry many times over the coming years so that she could appropriately hold B-2 status as a member of her daughter's

household. *See* Ex. 1 (various CBP entry stamps in the page opposite the B-2 visa).

28. B-2 visa holders are almost always admitted for six months at a time. As a long-term member of her daughter's household, Mrs. Goldhar often needed to submit applications to extend her B-2 stay beyond the six-month admission so she could remain with the family.

29. These extension applications were made on Form I-539 filed with U.S. Citizenship and Immigration Services, another agency component of the Department of Homeland Security. *See* 8 C.F.R. § 214.1(c)(2).

30. Under official Department of Homeland Security policy, a timely-filed, non-frivolous I-539 tolls accrual of any unlawful presence ("ULP") for as long as the application is pending. *See* Memorandum from Donald Neufeld et al., U.S. Dep't of Homeland Sec., U.S. Citizenship & Immigration Servs., *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the [Immigration and Nationality] Act* 35 (May 6, 2009) [hereinafter "Neufeld Memo"] (Ex. 4).

31. Mrs. Goldhar always timely filed her I-539s before her six-month B-2 admissions had expired.

32. Mrs. Goldhar's I-539s were non-frivolous as they were based on her continued membership in the household of her daughter, a long-term nonimmigrant.

33. Due to lengthy I-539 processing times, however, Mrs. Goldhar would often depart the U.S. prior to receiving a decision on her applications.

34. The Neufeld memo specifies that departure while a timely-filed, non-frivolous I-539 was pending will not trigger an inadmissibility finding for having accrued ULP. *Id*. at 35-36.

35. Once outside the U.S., Mrs. Goldhar would withdraw these extension applications as moot because she would be presenting herself for an entirely new admission the next time she

traveled to the U.S.

36. USCIS would acknowledge these withdrawals, but none of the applications were ever "denied" on the merits or otherwise.

37. Mrs. Goldhar would routinely then be re-admitted in B-2 status.

The July 15, 2019, encounter at the Miami International Airport

38. On July 15, 2019, Mrs. Goldhar sought entry to the U.S. at the Miami International Airport with her B-2 visa as she had many times before.

39. In front of her daughter and young grandchildren, Mrs. Goldhar was taken aside and interrogated as to the status of her prior I-539s.

40. Based on an incorrect understanding of the law, CBP officers believed that Mrs. Goldhar had repeatedly accrued ULP during her prior visits when in reality her timely-filed, non-frivolous, later-withdrawn I-539s protected her from accruing one single day of ULP under the clear terms of the Neufeld Memo.

41. This erroneous legal determination caused the CBP officers to cancel her valid B-2 visa and begin processing a withdrawal of her application for admission to the U.S.

42. After counsel intervened, CBP senior management reviewed the facts and admitted that this legal determination was in error. *See* Ex. 2 (email correspondence from the CBP Branch Chief at Miami International Airport).

43. CBP further found, correctly, that Mrs. Goldhar had not accrued even one day of ULP. *Id*.

44. She was accordingly admitted to the U.S. in lawful B-2 status. *See* Ex. 5 (I-94 admission record showing the correction of CBP's error).

45. As the visa had already been cancelled, CBP granted her a waiver of the visa

requirement on Form I-193 and made her pay a $585 fee in order to be admitted—even though CBP's legal error was the only reason she was not in possession of a valid visa. *See* Ex. 6 (Form I-193 and payment information).

46. While she was thankfully admitted to the United States, she remained without a valid visa for her next trip but had the assurance from CBP that the incident "will not have the effect of impeding her from being able to apply for and be issued a new non-immigrant visa." *See* Ex. 2.

Mrs. Goldhar's departure from the United States and subsequent need to travel

47. Mrs. Goldhar departed the U.S. and has continuously resided in Israel since September 2020.

48. She recently received an invitation to attend her grandson's Bar Mitzvah that will take place in Florida on January 27, 2022. *See* Ex. 7 (the "save the date" notice).

49. Becoming a Bar Mitzvah represents a sacred tradition in the Jewish religion—a once-in-a-lifetime right-of-passage which is cause for celebration.

50. Mrs. Goldhar has been part of her grandson's household since he was a baby, and desperately wants to attend his Bar Mitzvah.

51. Due to the CBP's admittedly erroneous cancellation of her visa, she does not have a travel document that would allow her to board a plane and present herself for admission into the United States.

52. Despite CBP's assurances that she can still "apply for and be issued a new non-immigrant visa" without ill effects from the July 15, 2019, encounter, the reality turned significantly more complicated due to the COVID-19 pandemic.

53. Consular operations have been mostly shuttered worldwide since March 2020, and

the wait times for visa interviews have ballooned.

54. At the only two consular posts in Israel, wait times for B-2 visa interviews are 353 days in Tel Aviv and 224 days in Jerusalem. *See* Ex. 3.

55. These extended wait times will make it impossible for Mrs. Goldhar to receive a replacement visa in time to travel for her grandson's Bar Mitzvah.

56. Had CBP not erroneously cancelled her B-2 visa, it would have remained a valid entry document she could use to board an international flight and present herself for admission to the United States to attend her grandson's Bar Mitzvah.

57. Without CBP's recognition of her prior visa as a valid entry document, Mrs. Goldhar and her family will be devastated by the absence of the family matriarch at one of the most important moments of her grandson's life.

Exhaustion

58. Defendants' July 15, 2019, physical cancellation of Mrs. Goldhar's B-2 visa constitutes a final agency action under the APA, 5 U.S.C. § 701, *et seq*. There are no requirements for an administrative appeal of this decision, and CBP has already conceded the cancellation was improper. Accordingly, Mrs. Goldhar has no administrative remedies to exhaust.

59. Under 5 U.S.C. §§ 702 and 704, Mrs. Goldhar has suffered a "legal wrong" and has been "adversely affected or aggrieved" by agency action for which there is no adequate remedy at law.

CAUSE OF ACTION

COUNT I

Administrative Procedure Act Violation (5 U.S.C. § 706)

60. Plaintiff incorporates the allegations of the preceding paragraphs as if fully set forth

herein.

61. The Administrative Procedure Act ("APA") provides in material part that:

> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—
> . . .
> (2) 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.

62. Defendants' physical cancellation of Mrs. Goldhar's B-2 visa constitutes a final agency action that is arbitrary and capricious, an abuse of discretion, and not in accordance with the law.

63. CBP conceded that the visa cancellation was not in accordance with the law because it was based on CBP officers' legal error in determining that Mrs. Goldhar had accrued prior unlawful presence when she never had.

64. As a result of Defendants' unlawful action, Mrs. Goldhar has suffered and will continue to suffer injury by being without a valid travel document needed to board a plane and present herself for admission to the United States to attend her grandson's Bar Mitzvah.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant the following relief:

1. Declare that Defendants' cancellation of Mrs. Goldhar's B-2 visa (No. H0907803) was not in accordance with the law;

2. Order Defendants to immediately take such corrective action as may be appropriate, including, but not limited to, reversing the cancellation of Mrs. Goldhar's B-2 visa (No. H0907803) and treating it as a valid entry document through its stated expiration date;

3. Order Defendants to instruct all airline carriers through CBP's Regional Carrier Liaison Group to recognize the continued validity of Mrs. Goldhar's B-2 visa (No. H0907803) for the purposes of boarding flights to the United States;

4. Award Mrs. Goldhar her attorneys' fees and costs, including but not limited to those recoverable under the Equal Access to Justice Act; and

5. Grant any other relief that this Court may deem just and proper.

Dated: September 3, 2021.

Respectfully submitted,

/s/ Tammy J. Fox-Isicoff
Tammy Fox-Isicoff
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/s/ David E. Gluckman
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MCCANDLISH HOLTON, PC
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Richmond, VA 23219
Telephone: (804) 775-3826
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dgluckman@lawmh.com

Attorneys for Plaintiff Gaby Goldhar

JS 44 (Rev. 10/20) FLSD Revised 02/12/2021

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)* **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

Gaby Goldhar

DEFENDANTS

United States Customs and Border Protection, et al.

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Tammy J. Fox-Isicoff, Rifkin & Fox-Isicoff, P.A.
1110 Brickell Ave., Suite 600, Miami, FL 33131 (305) 371-2777

Attorneys *(If Known)*

U.S. Attorney's Office, 99 N.E. 4th Street, Miami, FL 33132

(d) Check County Where Action Arose: ■ MIAMI- DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government Plaintiff
☐ 3 Federal Question *(U.S. Government Not a Party)*
■ 2 U.S. Government Defendant
☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff) (For Diversity Cases Only) and One Box for Defendant)*

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury - Med. Malpractice

PERSONAL INJURY
☐ 365 Personal Injury - Product Liability
☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 740 Railway Labor Act
☐ 751 Family and Medical Leave Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
☐ 462 Naturalization Application
☐ 465 Other Immigration Actions

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 835 Patent – Abbreviated New Drug Application
☐ 840 Trademark
☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
☐ 375 False Claims Act
☐ 376 Qui Tam (31 USC 3729 (a))
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit (15 USC 1681 or 1692)
☐ 485 Telephone Consumer Protection Act (TCPA)
☐ 490 Cable/Sat TV
☐ 850 Securities/Commodities/ Exchange
☐ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 893 Environmental Matters
☐ 895 Freedom of Information Act
☐ 896 Arbitration
■ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 950 Constitutionality of State Statutes

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

CIVIL RIGHTS
☐ 440 Other Civil Rights
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/ Accommodations
☐ 445 Amer. w/Disabilities - Employment
☐ 446 Amer. w/Disabilities - Other
☐ 448 Education

PRISONER PETITIONS
Habeas Corpus:
☐ 463 Alien Detainee
☐ 510 Motions to Vacate Sentence
Other:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition
☐ 560 Civil Detainee – Conditions of Confinement

V. ORIGIN *(Place an "X" in One Box Only)*

■ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed **(See VI below)** ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district *(specify)* ☐ 6 Multidistrict Litigation Transfer ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Multidistrict Litigation – Direct File ☐ 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case ☐YES ☐ NO b) Related Cases ☐YES ■ NO

JUDGE: **DOCKET NUMBER:**

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause ***(Do not cite jurisdictional statutes unless diversity)***:

5 U.S.C. § 706. Action to hold unlawful and set aside agency action.

LENGTH OF TRIAL via 0 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ■ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE: 09/03/2021

SIGNATURE OF ATTORNEY OF RECORD: /s/ Tammy J. Fox-Isicoff

FOR OFFICE USE ONLY : RECEIPT # **AMOUNT** IFP JUDGE MAG JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Gaby Goldhar

Plaintiff(s)

v.

United States Customs and Border Protection, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* United States Customs and Border Protection
Office of Chief Counsel
1300 Pennsylvania Avenue, Ste. 4.4-B
Washington, DC 20229

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Tammy Fox-Isicoff, Esq.
Rifkin & Fox-Isicoff, P.A.
1110 Brickell Avenue
Suite 600
Miami, FL 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Gaby Goldhar

Plaintiff(s)

v.

Troy A. Miller, Acting Commissioner of U.S. Customs and Border Protection, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Troy A. Miller
Acting Commissioner
U.S. Customs and Border Protection
Office of Chief Counsel
1300 Pennsylvania Avenue, Ste. 4.4-B
Washington, DC 20229

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Tammy Fox-Isicoff, Esq.
Rifkin & Fox-Isicoff, P.A.
1110 Brickell Avenue
Suite 600
Miami, FL 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Gaby Goldhar

Plaintiff(s)

v.

United States Customs and Border Protection, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Vernon Foret
Director, Field Operations, Miami/Tampa Field Offices
U.S. Customs and Border Protection
Office of Chief Counsel
1300 Pennsylvania Avenue, Ste. 4.4-B
Washington, DC 20229

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Tammy Fox-Isicoff, Esq.
Rifkin & Fox-Isicoff, P.A.
1110 Brickell Avenue
Suite 600
Miami, FL 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

APR 17 2013

B1/B2

ADMITTED

MAR 19 2015

B2

MAR 19 2015

B2

03MAY2013

VISA

UNITED STATES OF AMERICA

Issuing Post Name
TEL AVIV

Control Number
[illegible]016

Surname
GOLDHAR

Given Name
GABY OR

Visa Type /Class
B1/B2

Passport Number
20589305

Birth Date
MAY19

Nationality
ISRL

Entries
M

Issue Date
02MAY2013

Expiration Date
29APR2023

0100

H0907803

CANCELLED VOID

JULY 15 20

VNUSAGOLDHAR<<GABY<OR<<<<<<<<<<<<<<<<<<<<<<<<

20589305<0ISR 0F230496B3TLVOWCPD533901

Exhibit 1

Subject: RE: GOLDHAR MAKOV, Gaby Or / DOB
Date: 7/31/2019 12:28 PM
From: "PACHECO, MOISES" <MOISES.PACHECO@CBP.DHS.GOV>
To: "David Gluckman" <dgluckman@lawmh.com>

Mr. Gluckman:

After having carefully reviewed your request regarding Ms. Goldhar Makov's arrival and processing at Miami International Airport on July 15, 2019, the following was determined:

- Ms. Goldhar Makov arrived to Miami International Airport on July 15th, 2019, aboard El Al flight number 17 from Tel Aviv, Israel.
- Ms. Goldhar Makov presented herself for inspection at Primary Passport Control with her Israel passport # 20589305 and B1/B2 visa foil # H0907803 and was referred to secondary for further interview.
- In secondary and after being interviewed, it was believed that Ms. Goldhar Makov overstayed her previous admission to the United States as her previous Extension of Stay (EoS) application had been withdrawn after her departure; therefore, a Voluntary Withdrawal of Application was started.
- When Senior Management was presented with the facts for review, the decision to complete the Voluntary Withdrawal of Application was overridden and the determination to admit Ms. Goldhar Makov as a Visitor for Pleasure (B-2) was made.
- Subsequently, an I-193 was issued as the non-immigrant visa had been cancelled earlier in the process and before the final review.

Therefore, the findings indicate that Ms. Goldhar Makov was ultimately admitted as a visitor for pleasure (B-2). It was also determined that the reason for Senior Management's decision to admit was based on the fact that Ms. Goldhar Makov timely filed an EoS during her previous visit to the U.S. (as well as in all previous entries) and that she departed the United States before the EoS was withdrawn or decided on; thereby, never accruing unlawful presence in the U.S. In addition, the mere issuance of the I-193 and admission as a B-2 is not considered an adverse (erroneous) action against Ms. Goldhar Makov and will not have the effect of impeding her from being able to apply for and be issued a new non-immigrant visa; therefore, there is no need to reverse any erroneous action as she was ultimately properly admitted. Additionally and even though the review of the case indicated that a Voluntary Withdrawal of Application for Admission had been originally started, the issuance of the I-193 and admission as a B-2 totally overrode such action; therefore, eliminating the potential of such an action being in any system.

As requested, hereto attached you will find copies of the I-94 record indicating that Ms. Goldhar Makov was admitted as a B-2 until January 14, 2020, a copy of the I-193 issued and a copy of the Individual Fee Register Receipt for the $585.00 that were collected. Note that by accessing the I-94 Web Application at www.CBP.gov/I94, Ms. Goldhar Makov can also obtain her arrival information (I-94).

Please allow me to express regret for what Ms. Goldhar Makov may have perceived during her processing at MIA. Let me assure you it is not the intent of CBP to subject travelers to humiliation, intimidation and unwarranted scrutiny. If you have any questions or concerns, please do not hesitate to reach out to me.

Sincerely,

Exhibit 2

Moises Pacheco
Branch Chief
U.S. Customs and Border Protection
Passenger Operations (Primary Processing, Passport Control Secondary, Defer Inspections, and Criminal Enforcement Unit)
Miami Int'l Airport
Miami, FL
(C) 954-553-0496
Moises.Pacheco@cbp.dhs.gov

WARNING: This document is FOR OFFICIAL USE ONLY (FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to Sensitive But Unclassified (SBU) information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval from the originator. If you are not the intended recipient, please contact the originator for disposition instructions.

Visa Appointment Wait Times

Advance travel planning and early visa application are important. If you plan to apply for a nonimmigrant visa to come to the United States as a temporary visitor, please review the current wait time for an interview using the tool below. *Not all visa applications can be completed on the day of the interview; please read the information below for more details.*

A wait time listed as "999 calendar days" indicates that the Consular Section is only providing that service to emergency cases. Please check the Embassy or Consulate website for further information.

Select a U.S. Embassy or Consulate:

Tel Aviv

Nonimmigrant Visa Type	Appointment Wait Time
Visitor Visa	353 Calendar Days
Student/Exchange Visitor Visas	1 Calendar Day
All Other Nonimmigrant Visas	1 Calendar Day

See details on appointment availability and processing times

Wait Time for Interview

The estimated wait time to receive an interview appointment at a U.S. Embassy or Consulate can change weekly and is based on actual incoming workload and staffing. These are estimates only and do not guarantee

Exhibit 3

such as a funeral, medical emergency, or school start date. The process to request an expedited nonimmigrant visa interview varies by location. You should refer to the instructions on the website of the Embassy or Consulate Visa Section where you will interview, or on their online appointment scheduling site. You will need to provide proof of the need for an earlier appointment.

In all cases: You must first submit the online visa application form (DS-160), pay the application fee, and schedule the first available interview appointment. Only at this point will a consular section consider your request for an expedited appointment.

Note: Travel for the purpose of attending weddings and graduation ceremonies, assisting pregnant relatives, participating in an annual business/academic /professional conference, or enjoying last-minute tourism does not qualify for expedited appointments. For such travel, please schedule a regular visa appointment well in advance.

Administrative Processing

These estimates do not include time required for administrative processing, which may affect some applications. When administrative processing is required, the timing will vary based on individual circumstances of each case.

Administrative Processing Information

There are only two possible outcomes for U.S. visa applications. The consular officer will either issue or refuse the visa. If a visa applicant has not established that he or she is eligible for a visa, the consular officer must refuse that application. However, some refused visa applications may require further administrative processing. When administrative processing is required, the consular officer will inform the applicant at the end of the interview. The duration of the administrative

immediate family), before making inquiries about status of administrative processing, applicants should wait at least 180 days from the date of interview or submission of supplemental documents, whichever is later.

About Visa Processing Wait Times – Nonimmigrant Visa Applicants

Information about nonimmigrant visa wait times for interviews and visa processing time frames are shown on this website, as well as on U.S. Embassy and Consulate websites worldwide. It should be noted that the "Wait Times for a Nonimmigrant Visa to be Processed" information by country does not include time required for administrative processing. Processing wait time also does not include the time required to return the passport to applicants, by either courier services or the local mail system.

In addition, it is important to thoroughly review all information on the specific Embassy or Consulate Visa Section website for local procedures and instructions, such as how to make an interview appointment. Embassy and Consulate websites will also explain any additional procedures for students, exchange visitors and those persons who need an earlier visa interview appointment.

Visa Appointment Wait Times

Advance travel planning and early visa application are important. If you plan to apply for a nonimmigrant visa to come to the United States as a temporary visitor, please review the current wait time for an interview using the tool below. *Not all visa applications can be completed on the day of the interview; please read the information below for more details.*

A wait time listed as "999 calendar days" indicates that the Consular Section is only providing that service to emergency cases. Please check the Embassy or Consulate website for further information.

Select a U.S. Embassy or Consulate:

Jerusalem

Nonimmigrant Visa Type	Appointment Wait Time
Visitor Visa	224 Calendar Days
Student/Exchange Visitor Visas	21 Calendar Days
All Other Nonimmigrant Visas	21 Calendar Days

See details on appointment availability and processing times

Wait Time for Interview

The estimated wait time to receive an interview appointment at a U.S. Embassy or Consulate can change weekly and is based on actual incoming workload and staffing. These are estimates only and do not guarantee

such as a funeral, medical emergency, or school start date. The process to request an expedited nonimmigrant visa interview varies by location. You should refer to the instructions on the website of the Embassy or Consulate Visa Section where you will interview, or on their online appointment scheduling site. You will need to provide proof of the need for an earlier appointment.

In all cases: You must first submit the online visa application form (DS-160), pay the application fee, and schedule the first available interview appointment. Only at this point will a consular section consider your request for an expedited appointment.

Note: Travel for the purpose of attending weddings and graduation ceremonies, assisting pregnant relatives, participating in an annual business/academic /professional conference, or enjoying last-minute tourism does not qualify for expedited appointments. For such travel, please schedule a regular visa appointment well in advance.

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immediate family), before making inquiries about status of administrative processing, applicants should wait at least 180 days from the date of interview or submission of supplemental documents, whichever is later.

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In addition, it is important to thoroughly review all information on the specific Embassy or Consulate Visa Section website for local procedures and instructions, such as how to make an interview appointment. Embassy and Consulate websites will also explain any additional procedures for students, exchange visitors and those persons who need an earlier visa interview appointment.

U.S. Department of Homeland Security
20 Massachusetts Ave., NW
Washington, DC 20529

U.S. Citizenship and Immigration Services

Interoffice Memorandum

To: Field Leadership

From: Donald Neufeld /s/
Acting Associate Director
Domestic Operations Directorate

From: Lori Scialabba /s/
Associate Director
Refugee, Asylum and International Operations Directorate

From: Pearl Chang /s/
Acting Chief
Office of Policy and Strategy

Date: May 6, 2009

Re: Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act

Revision to and Re-designation of *Adjudicator's Field Manual* (*AFM*) Chapter 30.1(d) as Chapter 40.9 (*AFM* Update AD 08-03)

1. Purpose

Chapter 30.1(d) of the *Adjudicator's Field Manual* consolidates USCIS guidance to adjudicators for determining when an alien accrues unlawful presence, for purposes of inadmissibility under section 212(a)(9)(B) or (C) of the Immigration and Nationality Act. This memorandum re-designates Chapter 30.1(d) of the *AFM* as chapter 40.9 of the *AFM*. This memorandum also revises newly re-designated Chapter 40.9 to clarify the available guidance, and to incorporate into Chapter 40.9 prior guidance that was issued after adoption of former Chapter 30.1(d) but not incorporated into former Chapter 30.1(d).

USCIS intends *AFM* Chapter 40.9 to provide comprehensive guidance to adjudicators concerning the accrual of unlawful presence and the resulting inadmissibility. Since Chapter 40.9 provides comprehensive guidance, the following prior memoranda are rescinded in their entirety:

Exhibit 4

(B) **Nonimmigrants with Pending Requests for Extension of Status (EOS) or Change of Status (COS)("Tolling")**. As noted in 40.9.2(b)(2)(G) of this AFM chapter, by statute, an alien does not accrue unlawful presence for up to 120 days while a non-frivolous EOS or COS application is pending, provided that the alien does not work and/or has not worked unlawfully. This is referred to as "tolling:" while the application is pending after having been properly filed, the alien will not accrue unlawful presence. The above described statutory exception applies to section 212(a)(9)(B)(i)(I) of the Act; it does not apply to section 212(a)(9)(B)(i)(II) or (C)(i)(I) of the Act.

However, according to USCIS policy, an alien does not accrue unlawful presence (the accrual of unlawful presence is tolled), and is considered in a period of stay authorized for purposes of sections 212(a)(9)(B)(i)(I), (B)(i)(II), and (C)(i)(I) of the Act during the entire period a properly filed EOS or COS application is pending, if the EOS or COS application meets the following requirements:

- the non-frivolous request for EOS or COS was filed timely. To be considered timely, the application must have been filed with USCIS, i.e. be physically received (unless specified otherwise, such as mailing or posting date) before the previously authorized stay expired. *See* 8 CFR 103.2(a)(7); 8 CFR 214.1(c)(4); 8 CFR 248.1(b). An untimely request may be excused in USCIS' discretion pursuant to 8 CFR 214.1(c)(4) and 8 CFR 248.1(b); and
- the alien did not work without authorization before the application for EOS or COS was filed or while the application is pending; and
- the alien has not failed to maintain his or her status prior to the filing of the request for EOS or COS.

If these requirements are met, the period of authorized stay covers the 120-day tolling period described in section 212(a)(9)(B)(iv) of the Act and extends to the date a decision is issued on the request for EOS or COS.

A request for EOS or COS may be filed on Form I-539, Application to Extend/Change Nonimmigrant Status, or may be included in the filing of Form I-129, Petition for a Nonimmigrant Worker.

Please *see* Section 40.9.2(b)(2)(G) of this *AFM* chapter for a detailed description of the statutory tolling provision under section 212(a)(9)(B)(iv) of the Act, covering *only* inadmissibility under section 212(a)(9)(B)(i)(I) of the Act.

(C) **Nonimmigrants with Pending Requests for Extension of Status (EOS) or Change of Status (COS) Who Depart the United States During the Pendency**. Departure from the United States while a request for EOS or COS is pending, does not subject an alien to the 3-year, 10-year, or permanent bar, if he or she departs after the expiration of Form I-94, Arrival/Departure Record unless the application was frivolous,

untimely, or the individual had worked without authorization. D/S nonimmigrants, who depart the United States while an application for COS or EOS is pending, generally do not trigger the 3-year, 10-year, or permanent bar under sections 212(a)(9)(B)(i) or 212(a)(9)(C)(i)(I) of the Act.

- Evidentiary Considerations: If the applicant subsequently applies for a nonimmigrant visa abroad, the individual has to establish to the satisfaction of the consular officer that the application was timely filed and not frivolous. The requirement that the application was timely may be established through the submission of evidence of the date the previously authorized stay expired, together with a copy of a dated filing receipt, a canceled check payable to USCIS for the EOS or COS application, or other credible evidence of a timely filing.

- Determination by a Consular Officer that the Application Was Non-Frivolous: To be considered non-frivolous, the application must have an arguable basis in law and fact, and must not have been filed for an improper purpose (such as to prolong one's stay to pursue activities inconsistent with one's status). In determining whether an EOS or COS application was non-frivolous, DOS has instructed consular posts that it is not necessary to make a determination that USCIS would have ultimately ruled in favor of the alien. *See* 9 Foreign Affairs Manual (*FAM*) 40.92 Notes, Note 5c.

(D) **Nonimmigrants - Effect of a Decision on the Request for Extension of Status (EOS) or Change of Status (COS) on Unlawful Presence**. The following information pertains to applications requesting EOS or COS, or petitions that include requests for EOS or COS.

(i) Approved Requests. If a request for EOS or COS is approved, the alien will be granted a new period of authorized stay, retroactive to the date the previous period of authorized stay expired. This applies to aliens admitted until a specific date and aliens admitted for D/S.

(ii) Denials Based on Frivolous Filings or Unauthorized Employment. If a request for EOS or COS is denied because it was frivolous or because the alien engaged in unauthorized employment, any and all time after the expiration date marked on Form I-94, Arrival/Departure Record, will be considered unlawful presence time, if the alien was admitted until a specific date. However, if the alien was admitted for D/S, unlawful presence begins to accrue on the date the request is denied.

(iii) Denials of Untimely Applications. If a request for EOS or COS is denied because it was not timely filed, unlawful presence begins to accrue on the date Form I-94 expired. If, however, the alien was admitted for D/S, unlawful presence begins to accrue the day after the request is denied.

(iv) Denials for Cause of Timely Filed, Non-Frivolous Applications for EOS or COS. If a timely filed, non-frivolous request for EOS or COS is denied for cause, unlawful presence begins to accrue the day after the request is denied.

(v) Motion to Reopen/Reconsider. The filing of a motion to reopen or reconsider does not stop the accrual of unlawful presence. *See* 8 CFR 103.5(a)(iv) (Effect of motion or subsequent application or petition). However, if the motion is successful and the benefit granted, the grant is effective retroactively. The alien will be deemed to not have accrued unlawful presence. If DHS reopens proceedings, but ultimately denies the petition or application again, the petition or application will be considered to have been pending since the initial filing date. Thus, unlawful presence will accrue as specified in paragraphs (ii), (iii) or (iv). In the case of a timely, non-frivolous application, unlawful presence will accrue from the date of the last denial of the petition or application, not from the earlier, reopened decision.

(vi) Appeal to the Administrative Appeals Office (AAO) of the Underlying Petition Upon Which an EOS or COS Is Based. If an individual applies for an EOS or COS as part of an I-129, Petition for Nonimmigrant Worker, the adjudicator has to adjudicate two requests: The petition seeking a particular classification, and the request for an EOS or COS.

The denial of an EOS or COS cannot be appealed. *See* 8 CFR 214.1(c)(5) and 248.3(g). However, the denial of the underlying petition for the status classification can, in general, be appealed. The filing of an appeal to the AAO for the denial of the underlying petition, however, has no influence on the accrual of unlawful presence. Unlawful presence starts to accrue on the day of the denial of the request for EOS or COS regardless of whether the applicant or the petitioner appeals the denial of the petition to the AAO. However, if the denial of the underlying petition is reversed on appeal, and the EOS or COS subsequently granted, the individual is not deemed to have accrued any unlawful presence between the denial of the petition and request for EOS or COS, and the subsequent grant of the EOS or COS.

(vii) Nonimmigrants - Multiple Requests for EOS Or COS ("Bridge Filings") and Its Effect on Unlawful Presence. The terms "authorized status" (authorized period of admission or lawful status) and "period of stay authorized by the Secretary of Homeland Security" are not interchangeable. They do not carry the same legal implications. *See* Section (a)(2) of this *AFM* chapter. An alien may be in a period of stay authorized by the Secretary of Homeland Security but not in an authorized status.

An alien whose authorized status expires while a timely filed request for EOS or COS is pending, is in a period of stay authorized by the Secretary of Homeland Security. The alien does not accrue unlawful presence as long as the timely filed request is pending. However, the filing of a request for EOS or COS does not put an individual into valid

and authorized nonimmigrant status, i.e. he or she is not in authorized status. Therefore, if an individual has filed an initial application for EOS or COS and subsequently files additional (untimely) requests for EOS or COS, the subsequently filed request will not stop the individual from accruing unlawful presence, if the initial request is denied.

(E) **Aliens with Pending Legalization Applications, Special Agricultural Worker (SAW) Applications, and LIFE Legalization Applications**. An alien who properly filed an application under section 245A of the Act (including an applicant for Legalization under any Legalization-related Class Settlement Agreements), section 210 of the Act, or section 1104 of the LIFE Act, is in a period of authorized stay as long as the application remains pending. Accrual of unlawful presence stops on the date the application is filed and resumes the day after the application is denied. However, if the denial is appealed, the period of authorized stay continues through the administrative appeals process. Denied applications cannot be renewed before an immigration judge. Therefore, the period of authorized stay does not continue through removal proceedings or while a petition for review is pending in Federal court.

(F) **Aliens granted Family Unity Program Benefits under section 1504 of the LIFE Act Amendments of 2000**

Section 212(a)(9)(B)(III)(iii) of the Act, by its terms, applies only to Family Unity Program (FUP) benefits under section 301 of the Immigration Act of 1990. Congress provided similar benefits under section 1504 of the LIFE Act Amendments of 2000. As a matter of policy, USCIS treats section 1504 FUP cases the same as section 301 FUP cases, for purposes of the accrual of unlawful presence.

As with section 301 FUP cases, if the Form I-817 is approved, then the alien will be deemed not to accrue unlawful presence from the Form I-817 filing date throughout the period of the FUP grant.

A grant of FUP benefits under section 1504 does not, however, erase any unlawful presence accrued before the grant of FUP benefits under section 1504 of the LIFE Act Amendments of 2000.

Also, as with section 301 FUP cases, the filing of Form I-817, by itself, does not stop the accrual of unlawful presence. If the Form I-817 is denied, the individual will continue to accrue unlawful presence as if no Form I-817 had been filed.

(G) **Aliens with Pending Applications for Temporary Protected Status (TPS) pursuant to Section 244 of the Act**. The period of authorized stay begins on the date a prima facie application for TPS is filed, provided the application is ultimately approved. If the application is approved, the period of authorized stay continues until TPS status is terminated. If the application is denied, or if prima facie eligibility is not established, unlawful presence accrues as of the date the alien's previous period of authorized stay

U.S. Customs and Border Protection
U.S. Department of Homeland Security
TECS - I94 Document Detail

07/31/2019 10:51 EDT | Generated By: JOSE MARTINEZ | Page 1 of 1

I-94 Details

Admission/Departure #	Name(Surname, Given Names	Class of Admission	Valid To	Citizenship	DOB	Gender	Document Type	Document #	Country of Residence
115166471A2	GOLDHAR MAKOV, GABY OR	B2 - TEMPORARY VISITOR FOR PLEASURE/TOURISM	01/14/2020	ISR - ISRAEL		F	P	20589305	ISR - ISRAEL

Arrival/Departure Information

Status Code	Travel Mode	Airline	Flight #	Arrival Date	Port Of Entry	Visa Issue City	Visa Issue Date
U - REUSED I-94/I-94W CREATED BY CSIS	01 - AIR	LY - EL AL, ISREAL AIRLINES LTD	17	07/15/2019	MIA - MIAMI INTL, FL		

US Address-Street	City	State	Zip Code	Inspector Name	Comments	Status	Port	Departure Date	Carrier	Flight/Ship Name
TRANSIT	MIAMI	FL	99999	161789						

Adjustment of Status

Classification Date	Extended Admit Until Date	Extended Class of Admission	Adjust to Perm Resident	Bond Flag	Itinerary	Control Office	Notations
07/30/2019					CBPMIAI94/CORRECT ADMISSION CLASS TO RFLCT B2 ADMISSION/SUBJ WAS CHANGE FROM WD TO B2		

Work/Occupation

Alien #	Petition #	Prior Address	Job Description

Exhibit 5

OMB No. 1651-0107
Expires 11/30/2017

DEPARTMENT OF HOMELAND SECURITY

APPLICATION FOR WAIVER OF PASSPORT AND/OR VISA

FEE STAMP

JUL 15 2019

Jan 14, 2020

FILE NUMBER A201 997 220

Case No: MIA1907000608 SIGMA Event: 29044797

1. MY NAME IS: (LAST) (FIRST) (MIDDLE)
GOLDHAR MAKOV GABY OR

2. MY UNITED STATES DESTINATION IS: (NUMBER AND STREET, APT. NO., CITY, STATE, ZIP CODE)
508 N DRIVE GOLDEN BEACH FLORIDA

3. MY PERMANENT ADDRESS ABROAD IS:
107 KING SLOMO TEL AVIV ISRAEL

4. THE COUNTRY OF WHICH I AM A CITIZEN, SUBJECT OR NATIONAL IS:
ISRAEL

5. PLACE OF BIRTH
ISRAEL

DATE OF BIRTH (MM/DD/YYYY):

6. DATE OF ARRIVAL:
15-JUL-19

PORT OF ARRIVAL:
MIAMI, FL

7. MANNER OF ARRIVAL (NAME OF VESSEL, AIRLINE, ETC.)
Commercial Flights - All - El Al Israel Airlines Ltd. - 17 -

8. PLACE VISA PREVIOUSLY ISSUED:	DATE:	NUMBER:	CLASSIFICATION:	VALID TO:
TEL AVIV, ISRAEL	05/02/2013	H0907803	B1	04/29/2023

9. PLACE PASSPORT ISSUED:	DATE:	NUMBER:	VALID TO:
ISRAEL		20589305	

10. THE REASON I AM NOT IN POSSESSION OF ☐ PASSPORT ☒ VISA IS AS FOLLOWS: (CONTINUE ON REVERSE, IF NECESSARY)
I am not in possession of a valid visa.
Under section 212(d)(4) by authority of: Tel Aviv, Israel

DATE OF THIS APPLICATION: 07/15/2019

CITY AND STATE:
MIAMI, FL

I CERTIFY THAT THE ABOVE IS TRUE AND CORRECT.

SIGNATURE OF APPLICANT

SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN APPLICANT.

I DECLARE THAT THIS DOCUMENT WAS PREPARED BY ME AT THE REQUEST OF THE APPLICANT AND IS BASED ON ALL INFORMATION OF WHICH I HAVE ANY KNOWLEDGE.

SIGNATURE ADDRESS Miami DATE July 15, 2019

APPLICANT - DO NOT WRITE BELOW THIS LINE

☒ APPLICATION APPROVED. WAIVER GRANTED

☐ UNDER SECTION 211(b)
BY AUTHORITY OF _____ (DHS)

☒ UNDER SECTION 212(d)(4)
BY AUTHORITY OF CHRIS MASTON - (DHS)

ADMITTED AS Visitor For Business (NONIMMIGRANT CLASS) UNTIL 01/14/2020

☐ APPLICATION DISAPPROVED.

DATE OF ACTION

DFO OR PD OFFICE

DHS Form I-193 (12/14)

Exhibit 6

FORM G-711
(7-1-77)

FILE COPY

Individual Fee Register Receipt

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
Bureau of Customs and Border Protection

FEE PAID NUMBER	MIA1907000608	**$585.00**
APPLICANT	**GOLDHAR, GABY**	DATE July 15, 2019
REMITTER - IF OTHER THAN APPLICANT		

APPLICATION FORM NUMBER
(Circle)

G-639	I-129 B	I-192	I-290 A	I-600	N-577
G-641	I-129 F	I-193	I-290 B	I-601	N-580
G-657	I-130	I-196	I-485	I-612	N-600
I-17	I-131	I-212	I-506	N-455	
I-90	I-140	I-246	I-539	N-470	
I-102	I-191	I-256 A	I-570	N-565	

BANK TRANSIT NO. OTHER

TYPE REMITTANCE (Circle)	PC	BC	MO	ICO	C
ISSUING SECTION (Circle)	INF	TC	M F		OTHER (ABBR.) C

REC'D BY (INITIALS)		AMOUNT **$585.00**

AceSystems STAPLE TO TOP RIGHT EDGE OF APPLICATION

* U.S. GOVERNMENT PRINTING OFFICE: 2001-476-596

TOTAL $585.00

U.S. Customs and Border Protection
Miami, FL
Port# 45206

** Contact Number **
** 305-526-2862 **
****

559- I-193 PssWv $585.00

TOTAL $585.00
CASH $600.00
CHNG-AMT $15.00

CLS CNT: 1

USER 00000611
6270

1:11PM 07/15/19 EHDFEJ7-EG
0001-002


IS CALLED TO THE TORAH AS A BAR MITZVAH
SAVE THE DATE
BETH TORAH AVENTURA FLORIDA

Exhibit 7