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## Immigration Groups Move To Void Trump-Era Asylum Regs

By **Asher Stockler**

Law360 (April 21, 2021, 4:08 PM EDT) -- A coalition of immigration advocacy organizations asked a Maryland federal judge to void Trump-era rules that tightened restrictions on work permits for asylum-seekers, saying the rules were issued under the auspices of an unlawfully appointed official.

Casa de Maryland, the Asylum Seeker Advocacy Project, Centro Legal de la Raza, Oasis Legal Services and Pangea Legal Services, which had successfully blocked application of the restrictions against their clients, said Tuesday the rules should be scrapped entirely, despite the Biden administration's ongoing regulatory review, because former acting Secretary of Homeland Security Chad Wolf never lawfully assumed his position.

In September, District Judge Paula Xinis issued a limited scope preliminary injunction that was the subject of an appeal by the Trump administration. But the Biden administration agreed to dismiss the appeal while it conducted an ongoing review of regulations issued under the prior administration.

In an April 16 joint status report to Judge Xinis, the advocacy groups said they were still unable to reach an agreement with the Biden administration on how to proceed with the litigation. Tuesday's motion said the case should be resolved on the merits, fully vacating the work authorization restrictions in their entirety.

"As [this] court reasoned, Wolf's purported predecessor, Kevin McAleenan, never validly assumed the office of acting secretary of DHS under the governing order of succession when then-Secretary Kristjen Nielsen resigned," the groups said. "McAleenan thus 'lacked the authority to amend the order of succession to ensure Wolf's installation as acting secretary.'"

Among other changes, the Trump-era rules repealed the 30-day timeline for adjudicating work permit applications, imposed a yearlong waiting period and narrowed eligibility. Judge Xinis said the organizations had standing to challenge a large portion of the regulatory changes, but not the entire rulemaking.

The organizations said, however, that regardless of standing as to specific aspects of the challenged regulations, the entire body of contested rules cannot be winnowed apart and must be stricken altogether if the smaller subset is vacated.

"Plaintiffs have standing to challenge every provision of the rules, but even if they did not, vacatur of the rules in their entirety would nevertheless be warranted because the broader [work authorization] rule is not severable," they said. "Courts that have recently addressed the unlawful appointments issue have applied this principle in holding that Chad Wolf's unlawful appointment infects all aspects of the rules he purported to issue."

A spokesperson for the U.S. Department of Justice declined to comment on whether the department planned to oppose the advocacy groups' attempt to void the Trump-era rules.

The immigration advocacy groups are represented by Linda Evarts, Justin Cox, Geroline Castillo, Kathryn Austin and Mariko Hirose of the International Refugee Assistance Project, Conchita Cruz, Zachary Manfredi and Dennise Moreno of the Asylum Seekers Advocacy Project and Joseph Evall,

Richard Mark and Katie Marquart of Gibson Dunn & Crutcher LLP.

The government is represented by Jane E. Andersen of the U.S. Attorney's Office for the District of Maryland.

The case is Casa de Maryland Inc. et al. v. Wolf et al., case number 8:20-cv-02118, in the U.S. District Court for the District of Maryland.

--Editing by Stephen Berg.

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