UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. [redacted]

[redacted]

Plaintiff,

vs.

PAUL CANDEMERES,[1] *et al.*,

Respondents.
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ORDER

THIS CAUSE came before the Court on Plaintiff, [redacted]'s ([redacted]'s]") Verified Motion for Attorneys' Fees . . . ("Motion") [ECF No. 21], filed June 4, 2014. On June 23, 2014, Respondents filed their Opposition to Motion for Attorneys' Fees ("Response") [ECF No. 22]. [redacted] filed her Reply . . . [ECF No. 23] on June 30, 2014. The Court has carefully considered the parties' written submissions, the record, and any applicable law.

I. BACKGROUND

On July 1, 2013, [redacted] filed a Verified Petition for Writ of Habeas Corpus ("Petition") [ECF No. 1], challenging her continued detention by immigration authorities and seeking a bond hearing. (*See generally* Pet.). [redacted], a citizen of [redacted] and a lawful permanent resident of the United States, was detained for removal proceedings on July 11, 2012. (*See id.* ¶ 21). She was ordered removed on October 30, 2012. (*See id.* ¶ 23). The Board of Immigration Appeals ("BIA") dismissed her appeal on March 22, 2013, and [redacted] subsequently petitioned the Eleventh Circuit for review. (*See id.* ¶¶ 23–24). On May 16, 2013, the Eleventh Circuit granted

[1] As noted in the December 11, 2013 Order, the proper respondent is Candemeres, the Officer in Charge of the Krome Service Processing Center, where Petitioner was held. (*See* December 11, 2013 Order 1 n.1 [ECF No. 15]; Notice of Proper Custodian [ECF No. 12]).

her request for an emergency stay of removal pending appeal. (*See id.* ¶ 25). At the time of her Petition, [redacted] had been detailed for nearly one year without a bond hearing. (*See id.* ¶ 21).

Because the Eleventh Circuit stayed her removal, [redacted] argued her continued detention was governed by the pre-final order detention statute, 8 U.S.C. section 1226, and that she was entitled to a bond hearing under either section 1226(a) or 1226(c). (*See id.* 9–26). Respondents opposed [redacted]'s Petition, asserting [redacted]'s detention shifted to section 1231, the post-final order detention statute, once the BIA dismissed [redacted]'s appeal, and argued [redacted]'s Petition was premature under section 1231. (*See* Response to Petition and Motion to Dismiss 5–6 [ECF No. 8]).

On December 11, 2013, the Court granted [redacted]'s Petition, finding her detention was governed by section 1226(c) and had become unreasonably prolonged. (*See generally* December 11, 2013 Order). She received a bond hearing on December 19, 2013, and was released on her own recognizance the same day. (*See* Mot. 3). Respondents initially appealed the December 11 Order, but moved to dismiss the appeal on April 17, 2014. (*See id.*). The Eleventh Circuit granted the motion and dismissed the appeal on May 5, 2014. (*See id.*). [redacted] now seeks attorneys' fees for her counsel pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"). (*See generally id.*).

II. ANALYSIS

A. Entitlement to Fees

Under the EAJA, a prevailing party is entitled to attorneys' fees "unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). "To be 'substantially justified' under the EAJA, the government's position must be 'justified to a degree that could satisfy a reasonable

person.'" *Monroe v. Comm'r of Soc. Sec. Admin.*, -- F. App'x --, No. 13-13581, 2014 WL 2809139, at *1 (11th Cir. June 23, 2014) (quoting *Comm'r, I.N.S. v. Jean*, 496 U.S. 154, 158 n.6 (1990)). A position is substantially justified if it has a "reasonable basis both in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (internal quotation marks and citations omitted). The government bears the burden of establishing its position was substantially justified. *See Monroe*, 2014 WL 2809139, at *1 (citing *Stratton v. Bowen*, 827 F.2d 1447, 1450 (11th Cir. 1987)). "The outcome of the underlying litigation is not dispositive as to whether the government's position was substantially justified. . . . [A] position can be justified even if it is not correct." *Id.* (alterations added; citations omitted).

Respondents do not dispute [redacted] is a prevailing party who has timely filed the Motion (*see* Resp. 4 n.1), but they do maintain [redacted] is not entitled to attorneys' fees because Respondents' position was "substantially justified" under the EAJA (*id.* 1). Specifically, Respondents contend their position — that [redacted]'s continued detention was governed by section 1231 rather than section 1226 — had not been directly addressed by the Eleventh Circuit at the time of this litigation, and other district court opinions in this Circuit supported Respondents' position that section 1231 governs detention even where the detained individual has obtained a stay of removal from a court of appeals. (*See id.* 6–11).

Nevertheless, as noted by [redacted] in her Motion, Respondents' position relied on a misinterpretation of *De La Teja v. United States*, 321 F.3d 1357 (11th Cir. 2003), and ignored the unanimous findings of the four circuits that had addressed this particular factual scenario. (*See* Mot. 7; *see also* December 11, 2013 Order 5–7). At the time [redacted] filed her Petition, every circuit that had addressed this issue had uniformly held section 1226 governs an alien's detention where a stay of removal has been entered. (*See* Mot. 7 (citing *Leslie v. Att'y Gen. of the United*

States, 678 F.3d 266, 270 (3d Cir. 2012); *Wang v. Ashcroft*, 320 F.3d 130, 147 (2d Cir. 2003); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1061 (9th Cir. 2008); *Bejjani v. I.N.S.*, 271 F.3d 670, 689 (6th Cir. 2001))). Although Respondents assert their position was reasonable because "this litigation broke new ground" (Resp. 10), there were no conflicts among the circuits that had expressly addressed this issue. In light of views expressed by other courts and the "clarity of the governing law" on this issue, *Jean v. Nelson*, 863 F.2d 759, 767 (11th Cir. 1988), Respondents have not demonstrated their position in this litigation was substantially justified.

Respondents have also failed to identify any authority to support the position [redacted]'s prolonged detention without a bond hearing was appropriate under section 1226(c). (*See generally* Resp.). As the Court noted in its December 11 Order, [redacted] had been detained for seventeen months without a bond hearing at the time of the Order — a length of time the Court found "unreasonably prolonged and a due process violation" under guidelines prescribed by three different circuit courts. (December 11, 2013 Order 12). Because Respondents have not demonstrated they were substantially justified in arguing section 1231 applied to [redacted]'s detention, or that [redacted]'s detention was not unreasonably prolonged, [redacted] is entitled to attorneys' fees under the EAJA.

B. Amount of Fees

The EAJA provides for "reasonable attorney fees." 28 U.S.C. § 2412(d)(2)(A). "[O]nce a private litigant has met the multiple conditions for eligibility for EAJA fees, the district court's task of determining what fee is reasonable is essentially the same as that described in *Hensley*." *Jean*, 496 U.S. at 161 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433–37 (1983)) (alteration added).

Under *Hensley*, the determination of any fee award begins with the determination of the "lodestar" — the hours reasonably expended times a reasonable hourly rate. *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988) (citing *Hensley*, 461 U.S. at 433). The burden of establishing the fee request is reasonable rests with the fee applicant, who must supply the court with "specific and detailed evidence" in an organized fashion. *Id.* at 1303. Where the documentation is inadequate, the court may reduce the award accordingly. *See id.* (citations omitted); *Hensley*, 461 U.S. at 433. Thus, the Plaintiff bears the burden of establishing the requested hourly rate is a reasonable one, *cf. Loranger v. Stierheim*, 10 F.3d 776, 781 (11th Cir. 1994), and that the fees do not arise from "hours that are excessive, redundant, or otherwise unnecessary," *Hensley*, 461 U.S. at 434; *see also ACLU of Ga. v. Barnes*, 168 F.3d 423, 428 (11th Cir. 1999).

Because the Court is considered an expert on the reasonableness of attorney's fees, it "may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of testimony of witnesses as to value." *Campbell v. Green*, 112 F.2d 143, 144 (5th Cir. 1940) (citations omitted). When awarding fees, the Court must allow meaningful review of its decision by "articulat[ing] the decisions it made, giv[ing] principled reasons for those decisions, and show[ing] its calculation." *Norman*, 836 F.2d at 1304 (citation omitted; alterations added).

[redacted] seeks \$21,855.88[2] in attorneys' fees for work performed by attorneys Rebecca Sharpless, [redacted], and [redacted]; and law students [redacted], [redacted]. (*See* Mot. 10–17). [redacted] has requested an

[2] This number reflects an error in [redacted]'s billing entry for June 3, 2014. (*See* Ex. 5 – Billing Statements). The accurate total requested is \$21,668.42.

hourly rate of $187.46 for the licensed attorneys, and an hourly rate of $75 for the work performed by law students. (*See id.* 13–15).

Under the EAJA, "attorney fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or a special factor . . . justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A) (alteration added). "The Supreme Court has implied that applying a cost-of-living adjustment under the EAJA is next to automatic." *Meyer v. Sullivan*, 958 F.2d 1029, 1035 n.9 (11th Cir. 1992) (citing *Pierce*, 487 U.S. at 571) (holding a district court may decline to make an upward departure for cost of living, but must articulate its reasons for doing so). [redacted] has requested only cost-of-living adjustments for the attorneys' rates (*see* Mot. 13–15), and Respondents have not challenged the hourly rates requested for either the attorneys or the law students (*see generally* Resp.). Therefore, the Court finds the requested hourly rates are reasonable.

Respondents do challenge the hours claimed by [redacted], arguing they are "excessive, redundant, or lack proper documentation." (*Id.* 1). Respondents assert the hours claimed by attorney [redacted] are inadequately documented and "should be rejected" entirely, and the hours claimed "for the redundant work of several law students and instructors" as well as "excessive" work on this Motion for fees should be reduced. (*Id.* 12, 14–15). Respondents also assert various time entries are not adequately specific. (*See id.* 13). Finally, Respondents argue the award should be reduced for limited success. (*See id.* 16–17).

The Court agrees the hours claimed by [redacted] are not adequately documented. Therefore, a reduction of 30 percent of [redacted]'s hours is appropriate. *See Hensley*, 461 U.S. at 433 (noting a court may reduce an award where documentation is inadequate); *Norman*, 836 F.2d at 1303 (same). The Court does not, however, agree with Respondents' position that

the hours spent by the law students on the underlying litigation are excessive or inadequately described. As Respondents themselves concede, this case "broke new ground" in the Eleventh Circuit (Resp. 10), and [redacted]'s counsel reasonably spent a significant amount of time researching and drafting her papers. All three licensed attorneys also submitted declarations stating the hours requested for the law students are less than the hours the students actually spent on the case. (*See* Ex. 2 – Declaration of [redacted] ¶ 9; Ex. 3 – Declaration of Rebecca Sharpless ¶ 8; Ex. 4 – Declaration of [redacted] ¶ 7). The Court also finds the time entries are described with reasonable specificity, and there is no need to reduce the award based on the success of the litigation — [redacted] asserted multiple bases for a bond hearing, and her Petition was successful. *See Norman*, 836 F.2d at 1302 (directing courts to compensate for all hours reasonably expended where a fully successful result is achieved).

Unlike the hours claimed for work on the Petition, the hours claimed in connection with the Motion — 46.5 in total — are excessive. "A request for attorney's fees should not result in a second major litigation." *Hensley*, 461 U.S. at 437. A review of the billing statements submitted with the Motion reveals attorney [redacted] and law students [redacted] and [redacted] [redacted] were responsible for this Motion for EAJA fees. (*See* Ex. 5 – Billing Statements). A 60 percent reduction in the hours spent on the Motion results in 18.6 reimbursable hours, a far more reasonable number.

In light of the two reductions above, [redacted] is entitled to receive $16,584.16 in attorneys' fees, calculated as follows:

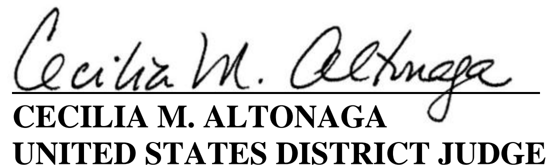
Name	Position	Hourly Rate	Hours Requested	Hours Awarded	Lodestar Awarded
[REDACTED]	Attorney	$187.46	40	28	**$5,248.88**
Rebecca Sharpless	Attorney	$187.46	19.7	19.7	**$3,692.96**
[REDACTED]	Attorney	$187.46	11	4.4	**$824.82**
[REDACTED]	Law Student	$75	35	35	**$2,625.00**
[REDACTED]	Law Student	$75	19.7	19.7	**$1,477.50**
[REDACTED]	Law Student	$75	22	22	**$1,650.00**
[REDACTED]	Law Student	$75	19	7.6	**$570.00**
[REDACTED]	Law Student	$75	16.5	6.6	**$495.00**
Requested Lodestar Amount					$21,668.42
Awarded Lodestar Amount					**$16,584.16**

III. CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Plaintiff's Motion **[ECF No. 21]** is **GRANTED in part**. The Court finds, based on the evidence presented, that the amount of [REDACTED]'s reasonable and recoverable attorneys' fees is **$16,584.16**.

DONE AND ORDERED in Chambers at Miami, Florida, this 9th day of July, 2014.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record