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Dept. of Education’s Fulbright-Hays Application Includes Discriminatory “Native Language Penalty”

Edgar Ulloa Lujan, Samar Ahmad, and Veronica Gonzalez v. U.S. Department of Education, et al.

Washington, DC (January 4, 2023) – Undermining the spirit of international openness and exchange, the U.S. Department of Education’s application process for the Fulbright-Hays Fellowship significantly disadvantages immigrants from non-English-speaking countries and children of such immigrants. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed a [Motion for Preliminary Injunction](#) in the lawsuit, *Edgar Ulloa Lujan, Samar Ahmad, and Veronica Gonzalez v. U.S. Department of Education, et al.* NCLA is asking the U.S. District Court for the Western District of Texas to require the Department of Education to reevaluate Plaintiff Veronica Gonzalez’s 2022 application for the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship without applying a “native language penalty.”

The Department of Education rejected Ms. Gonzalez’s 2022 application to conduct research in Mexico under the Fulbright-Hays Fellowship on the basis of her national heritage. Specifically, the Department of Education made her ineligible for any of the 15 points—out of 105 possible points—under the language-proficiency portion of the application solely because Spanish is the language of her national heritage. There is no dispute that Ms. Gonzalez would have scored within the range of being awarded the fellowship but for the decisive 15-point penalty.

The 15-point penalty essentially disqualifies immigrants and children of immigrants —like Ms. Gonzalez—from being awarded the Fulbright-Hays Fellowship to conduct dissertation research in any country that speaks the language of their national heritage. The native-language penalty is unconstitutional because it treats applicants’ national origin as a decisive factor in access to federal education assistance.

The penalty also violates the Fulbright-Hays Fellowship’s authorizing statute, which instructs the Department of Education to “promot[e] modern foreign language training and area studies in United States schools, colleges, and universities” without any mention of prioritizing applicants based on their national heritage. Nothing in the Fulbright-Hays Act authorizes the Department of Education to penalize U.S. students who speak a foreign language as part of their national heritage for the purpose of awarding financial scholarships.

NCLA released the following statement:

“The Department of Education rejected Ms. Gonzalez’s 2022 Fulbright application solely because of her immigrant heritage. The Department does not even defend its practice on the merits and has agreed to change its discriminatory regulation. But it is moving so slowly that Ms. Gonzalez will be denied meaningful relief unless the court forces the Department to act. At the very least, the court must require the Department to end its discriminatory practice before the 2023 application cycle begins.”

— **Sheng Li, Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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