

merits and that the defendants were likely to “have to write a large check to the plaintiff,” Judge Schiltz denied the plaintiff’s motion for a preliminary injunction in a non-compete and trade secrets case, finding that any injunction was likely to harm one defendant more than it would help the plaintiff. **Wells Fargo Ins. Servs. USA, Inc. v. King**, 2016 WL 299013 (D. Minn. 1/25/2016).

Judge Frank denied the plaintiff’s second request for a temporary restraining order in a trademark action, finding that it had “failed to identify any facts that [were] materially different than the facts before the Court at the time of its first motion.” **Joy Group Oy v. Supreme Brands L.L.C.**, 2016 WL 410272 (D. Minn. 2/2/2016).

■ **ADA; lack of standing.** Judge Ericksen dismissed the plaintiffs’ ADA claim and related request for injunctive relief premised on allegedly inadequate handicapped parking spaces at a shopping center, where the parking lot deficiencies alleged in the complaint had been cured prior to the commencement of the action. **Disability Support Alliance v. Geller Family L.P. III**, 2016 WL 424970 (D. Minn. 2/3/2016).

■ **Motion to compel deposition of former counsel granted.** Magistrate Judge Noel granted the defendant’s motion to compel the deposition of counsel for the plaintiff in a previous related action, finding “[t]he fact that certain areas of inquiry of the deposition may implicate the attorney-client or work product privileges, [did] not shield [the attorney] from deposition altogether.” **Moldex Metric, Inc. v. 3M Co.**, 2015 WL 9859754 (D. Minn. 10/28/2015).

■ **Motion to compel production of documents shown to expert denied.** Judge Montgomery overruled objections to an order by Magistrate Judge Brisbois that had denied the plaintiff’s motion to compel the production of documents disclosed to the defendants’ expert witness, agreeing with Magistrate Judge Brisbois that the documents were subject to protection as work product and that privilege had not been waived under the 2010 amendments to Fed. R. Civ. P. 26. Judge Montgomery also rejected the plaintiff’s argument that Magistrate Judge Brisbois had erred in permitting the defendants to produce a redacted version of one document *in camera*. **James River Ins. Co. v. Interlachen Propertyowners Ass’n**, 2015

WL 9946407 (D. Minn. 12/21/2015), *aff’d*, 2016 WL 386032 (D. Minn. 2/1/2016).

— JOSH JACOBSON
Law Office of Josh Jacobson

IMMIGRATION LAW

JUDICIAL LAW

■ **No procedural error for failure to inform petitioner about political asylum or other forms of relief.** The 8th Circuit Court of Appeals found that, under the circumstances presented, the immigration judge did not commit a fundamental procedural error by failing to inform the petitioner about political asylum or other possible avenues of relief. There was, as a result, no due process violation. **Alva-Arellano v. Lynch**, No. 14-2957, *slip op.* (8th Cir. 2/2/2016). <http://media.ca8.uscourts.gov/opndir/16/02/142957P.pdf>

■ **Solicitation of prostitution in Minnesota is a crime of moral turpitude.** The 8th Circuit Court of Appeals held that the petitioner’s conviction for soliciting prostitution in violation of Minn. Stat. §609.324, subd. 2 (2006), was a “crime involving moral turpitude” and therefore found the Board of Immigration Appeals did not abuse its discretion when denying the petitioner’s motion to reopen. **Gomez-Gutierrez v. Lynch**, No. 14-3374, *slip op.* (8th Cir. 1/29/2016). <http://media.ca8.uscourts.gov/opndir/16/01/143374P.pdf>

■ **Dismissal of challenge to USCIS revocation of I-140 for lack of jurisdiction is proper.** The 8th Circuit Court of Appeals held that the U.S. District Court (District of Nebraska) did not commit error when finding it lacked jurisdiction to consider whether USCIS failed to comply with disclosure requirements under 8 CFR §103.2(b)(16) at the time it revoked the plaintiff-beneficiary’s I-140 immigrant petition for foreign national worker; that the plaintiff could not, as a result, port his I-140; and, therefore, plaintiff was ineligible to adjust his status to permanent residence. **Rajasekaran v. Hazuda**, No. 14-3623, *slip op.* (8th Cir. 1/29/2016). <http://media.ca8.uscourts.gov/opndir/16/01/143623P.pdf>

■ **No jurisdiction to review discretionary denial of VAWA petitioner’s applications for permanent residence and waiver of removal.** The 8th Circuit Court of Appeals held it lacked jurisdiction under *Hailemichael v. Gonzales*, 454 F.3d 878 (8th Cir. 2006) to review the Board of Immigration Appeal’s discretionary denial of the self-petitioner’s applications

for permanent residence and waiver of removal (fraud waiver) under the Violence Against Women Act (VAWA) while noting at the same time problems with the petitioner’s credibility. **Mutie-Timothy v. Lynch**, No. 14-3671, *slip op.* (8th Cir. 1/28/2016). <http://media.ca8.uscourts.gov/opndir/16/01/143671P.pdf>

■ **False claim to U.S. citizenship is a non-waivable violation.** The 8th Circuit Court of Appeals held the Board of Immigration Appeals’ finding that the petitioner falsely represented himself on a Form I-9 as a U.S. citizen, and not a national, was supported by substantial evidence. “Based on Godfrey’s testimony, his prior false claims of citizenship, and the false claim of citizenship he made after removal proceedings commenced, the BIA’s and IJ’s finding that Godfrey falsely represented himself to be a ‘citizen’ is supported by substantial evidence.” That false claim of U.S. citizenship was a non-waivable violation, thereby eliminating any prospect of obtaining permanent residence. **Godfrey v. Lynch**, No. 15-1027, *slip op.* at 8 (8th Cir. 1/22/2016). <http://media.ca8.uscourts.gov/opndir/16/01/151027P.pdf>

■ **Breach of employment contracts for H-2B temporary workers.** The 8th Circuit Court of Appeals reversed the U.S. District Court’s (Eastern District of Arkansas—Little Rock) dismissal of the H-2B temporary workers’ breach of contract and tax fraud claims, finding the complaint “sufficiently alleged that they had employment contracts with Deggeller, the terms of which included the Department of Labor’s prevailing wage. The complaint therefore stated a valid claim that Deggeller breached those contracts by failing to pay the required wage.” **Cuellar-Aguilar v. Deggeller Attractions, Inc.**, No. 15-1219, *slip op.* at 10 (8th Cir. 12/15/2015). <http://media.ca8.uscourts.gov/opndir/15/12/151219P.pdf>

■ **The U.S. Department of Labor’s H-1B investigation was unauthorized.** The 8th Circuit Court of Appeals held the Department of Labor’s findings of H-1B temporary worker visa violations and awards against the plaintiff, Greater Missouri Medical Pro-Care Providers, could not stand since they were based on DOL Secretary Thomas Perez’s unauthorized investigation of matters beyond that of the aggrieved-party complainant, Alena Gay Arat. **Greater Missouri Medical Pro-Care Providers, Inc. v. Perez**, No. 14-3717, *slip op.* (8th Cir. 12/14/2015). <http://media.ca8.uscourts.gov/opndir/15/12/143717P.pdf>

ADMINISTRATIVE ACTION

■ **Department of Homeland Security extends TPS designation for Sudan.** On 1/25/2016, the Department of Homeland Security extended temporary protected status (TPS) for Sudanese holders of such status from 5/3/2016 to 11/2/2017. According to DHS Secretary Jeh Johnson, such action is warranted “because the conditions in Sudan that prompted the 2013 TPS redesignation continue to be met. Sudan continues to experience ongoing armed conflict and extraordinary and temporary conditions within the country that prevent its nationals from returning to Sudan in safety.” 81 Fed. Reg. 4045-51 (1/25/2016). <https://www.gpo.gov/fdsys/pkg/FR-2016-01-25/pdf/2016-01387.pdf>

■ **Department of Homeland Security redesignates and extends TPS for South Sudan.** On 1/25/2016, the Department of Homeland Security redesignated South Sudan for temporary protected status (TPS) and extended such status for those currently holding it from 5/3/2016 to 11/2/2017. According to DHS Secretary Jeh Johnson, such action is warranted “because the ongoing armed conflict and extraordinary and temporary conditions that prompted the 2014 TPS redesignation have persisted, and in some cases deteriorated, and would pose a serious threat to the personal safety of South Sudanese nationals if they were required to return to their country.” 81 Fed. Reg. 4051-59 (1/25/2016). <https://www.gpo.gov/fdsys/pkg/FR-2016-01-25/pdf/2016-01388.pdf>

■ **Department of Homeland Security issues final rule affecting certain worker visa classifications.** On 1/15/2016, the Department of Homeland Security published a final rule announcing changes to programs serving the H-1B1, E-3, and CW-1 nonimmigrant classifications and the EB-1 immigrant classifications. The final rule becomes effective on 2/16/2016. 81 Fed. Reg. 2068-84 (1/15/2016). <https://www.gpo.gov/fdsys/pkg/FR-2016-01-15/pdf/2016-00478.pdf>

LOOKING AHEAD

■ **U.S. Supreme Court grants cert in *United States v. Texas*.** On 1/19/2016, the U.S. Supreme Court granted cert in the case of *United States v. Texas* (No. 15-674) to address the conflict over President Obama’s 11/20/2014 executive actions (guidance) concerning deferred action for certain foreign nationals. The questions to be addressed are:

1. whether a State that voluntarily

provides a subsidy to all aliens with deferred action has Article III standing and a justiciable cause of action under the Administrative Procedure Act (APA), 5 U.S.C. 500 et seq., to challenge the guidance because it will lead to more aliens having deferred action;

2. whether the guidance is arbitrary and capricious or otherwise not in accordance with law;
3. whether the guidance was subject to the APA’s notice-and-comment procedures; and
4. whether the guidance violates the Take Care Clause of the Constitution, Art. II, §3.

<http://www.supremecourt.gov/qb/15-00674qp.pdf>

– R. MARK FREY
Frey Law Office

INTELLECTUAL PROPERTY

JUDICIAL LAW

■ **Copyright: Denial of attorney’s fees.** A panel for the United States Court of Appeals for the 8th Circuit recently affirmed a ruling from the District Court for the Northern District of Iowa dismissing a lawsuit for copyright infringement and denying defendant’s request for attorney’s fees. Killer Joe Nevada, LLC, sued several “John Doe” defendants alleging copyright infringement of the 2012 motion picture *Killer Joe*. After subpoenaing internet service providers to identify the users of allegedly infringing internet protocol addresses, defendant Leaverton was identified, and the complaint was amended to name her as a defendant. Leaverton denied the allegations and counterclaimed for a declaratory judgment of non-infringement. Killer Joe Nevada then moved to dismiss the complaint with prejudice and to dismiss Leaverton’s counterclaim. Leaverton opposed the dismissal unless she was awarded attorney’s fees. The district court dismissed the complaint and counterclaim and denied the request for fees. The 8th Circuit held the district court did not abuse its discretion in denying attorney’s fees because the lawsuit was not unreasonable or frivolous; the losing litigant, Killer Joe Nevada, did not have improper motivations in bringing the lawsuit as evidenced by its prompt dismissal of the complaint upon a determination of non-infringement; and there was no clear error of judgment in weighing the factors. *Killer Joe Nev., LLC v. Doe*, 807 F.3d 908 (8th Cir. 2015).



Regular Bench & Bar columnist Tony Zeuli is an intellectual property trial lawyer with Merchant & Gould. Prior to becoming

a registered patent attorney, Tony worked in the field of nuclear physics for the University of Chicago and Department of Energy at Argonne National Laboratory. Tony is a frequent speaker and writer on patent litigation issues at national intellectual property law conferences such as those sponsored by the American Intellectual Property Law Association and the Association of Patent Law Firms, and his articles have appeared in national publications such as *The Federal Lawyer*. Tony can be reached at 612.371.5208 or by visiting merchantgould.com/zeuli.

Merchant & Gould
An Intellectual Property Law Firm

James C. Erickson, Sr.



30 YEARS OF EXPERTISE

Fire & Property Damage
Policy Appraisals
Personal Injury/Death
Mediations/Arbitrations
Minnesota/Wisconsin



Erickson, Bell, Beckman & Quinn
1700 W Highway 36, Ste 110
Roseville, MN 55113
Phone: 651-223-4999
Email: jerickson@ebbqlaw.com