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NCLA Files Lawsuit Against Discriminatory Dept. of Education Rule for Fulbright-Hays Fellowships

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

Washington, DC (May 10, 2022) – A [complaint](#) filed Tuesday by the New Civil Liberties Alliance argues the U.S. Department of Education’s application process for the Fulbright-Hays Fellowship unlawfully discriminates based on applicants’ nation of origin. NCLA, a nonpartisan, nonprofit civil rights group, represents the plaintiffs in *Samar Ahmad and Edgar Ulloa Lujan v. U.S. Department of Education, et al.*, which asks the U.S. District Court for the Western District of Texas to declare this process unconstitutional and not authorized by the Fulbright-Hays Act of 1961.

The Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship was established to support and promote U.S. students to conduct doctoral research in foreign countries using a foreign language. The Department of Education evaluates applicants on a 105-point scale, with language proficiency counting for 15 points. Starting in 1998, the Department began to use the language-proficiency criterion to disadvantage U.S. students whom the Department deemed to be “non-native-born” by assigning them 0 out of 15 points for language proficiency if they acquired the relevant foreign language through their national heritage.

Ahmad and Ulloa Lujan are doctoral candidates at Georgetown University. Ms. Ahmad was born in Kuwait and grew up speaking Arabic. Mr. Lujan grew up in Juarez, Mexico, speaking Spanish since childhood. The Department of Education penalized the Plaintiffs’ applications for not satisfying the fellowship’s foreign-language-proficiency requirement, even though they are fluent in Arabic and Spanish, respectively.

Due to the competitive nature of the Fulbright-Hays Fellowship, being ineligible for 15 out of 105 possible points presents an insurmountable barrier to obtaining the award. The regulation thus directly undermines the program’s purpose of international openness and exchange by reducing the number of highly proficient foreign-language speakers in the United States. The Department’s foreign-language criterion even perversely encourages U.S. students who speak the foreign language of their national heritage to let their language skills atrophy—thereby becoming less fluent “heritage speakers” who face a 5-point penalty—instead of training to be fluent in that language and becoming “native speakers” who face a 15-point penalty.

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. The Department revised its language-proficiency regulations in 1998 with the apparent purpose of discouraging and disadvantaging “non-native born” applicants. But students with immigrant heritage have a constitutional due process right to be free from the Department’s blatant and un-American discrimination.

NCLA released the following statement:

“The Department of Education systematically discriminates on the basis of Fulbright-Hays applicants’ nation of origin. The Department admitted its anti-immigrant animus in 1998 when it enacted a regulation for the express

purpose of discouraging applicants whom it deems “non-native born” from using the fellowship to study in any country that speaks the language of their national heritage. The 1998 regulation, for instance, effectively bars a U.S.-born student with Cuban heritage from using the Fulbright-Hays Fellowship to study in Spain simply because she grew up speaking Spanish. The courts must put a stop to this unconstitutional and un-American discrimination.”

— **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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