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U.S. Dept. of Education Alters Discriminatory Fulbright Application Process in Response to NCLA Suit

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

Washington, DC (July 22, 2022) – Kuwaiti-born Samar Ahmad can breathe a sigh of relief after learning that her national origin [will not be used against her](#) in the application process for a Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed the lawsuit, *Edgar Ulloa Lujan and Samar Ahmad v. U.S. Department of Education, et al.*, as well as a preliminary injunction on behalf of Ms. Ahmad, challenging the U.S. Department of Education’s 1998 rule and its decision to reject her 2021 application on the basis of her Arabic-speaking heritage. The Department of Education (ED) has agreed not to apply the rule to her and other similarly situated applicants this year.

Ms. Ahmad and all other “heritage” speakers of foreign languages in the 2022 application cycle will be eligible for up to the full points on the criterion that evaluates an applicant’s language proficiency. The scholarship provides grants to colleges and universities to fund individual doctoral students who conduct research in other countries, in modern foreign languages and area studies for periods of six to 12 months. Ms. Ahmad, a doctoral student at Georgetown University, was born in Kuwait and grew up speaking Arabic. When she applied in 2021, the Department docked her 15 points for language proficiency solely because Arabic is the language of her national heritage rather than one first learned in school. This large 15-point “native-language penalty” knocked Ms. Ahmad out of the running despite her near-perfect scores in the remaining portions of the application. Ms. Ahmad has reapplied in 2022 and identifies herself as a “heritage” speaker of Arabic in her 2022 application.

The native-language penalty is unconstitutional because it treats applicants’ national origin as a decisive factor in access to federal education assistance and significantly disadvantages immigrants from non-English-speaking countries and children of such immigrants. It also violates the Fulbright-Hays Act itself, which does not allow the Department to award Fulbright-Hays Doctoral Fellowships based on whether the foreign language used for the research is “native” or “non-native” to the applicant.

While NCLA and Ms. Ahmad are gratified by the Department’s agreement not to penalize “heritage” speakers for the ongoing application cycle, the Department has not yet agreed to permanently revise the regulation that imposes the native-language penalty. Until it does, applicants in future cycles could still face unlawful discrimination. Pending the final outcome of NCLA’s lawsuit, the native-language penalty would still apply against “native” speakers, whom the Department defines as immigrants who speak their native language more fluently than “heritage” speakers. NCLA intends to continue pursuing this lawsuit and engage ED in further discussions to ensure that, going forward, no applicant will face discrimination based on his or her national origin.

NCLA released the following statement:

“For nearly a quarter century, the U.S. Department of Education has been violating Americans’ due-process right to equal treatment by their government with regard to their national origin. NCLA is pleased the agency has agreed to respect that right for our client and those similarly situated while the case is being litigated. We will

continue fighting the Department’s unlawful discrimination until the ‘native language’ regulation is overturned in its entirety.”

— **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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