UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

| | | |
|---|---|---|
| GEIDY MAVELY SOTO ALVARADO and MAURICIO ANTONIO GARCIA SOTO, | ) | |
| Plaintiffs, | ) | |
| v. | ) | C.A. No. 22-184 WES |
| MERRICK B. GARLAND, United States Attorney General, et al., | ) | |
| Defendants. | ) | |

**MEMORANDUM AND ORDER**

WILLIAM E. SMITH, District Judge.

Before the Court is Plaintiffs' Motion for Relief from Final Judgment and/or for Leave to Amend Complaint ("Pls.' Mot."), ECF No. 12. The Court dismissed Plaintiffs' Complaint, ECF No. 1, in December 2022, concluding that it lacked subject matter jurisdiction over Plaintiffs' claims. See Mem. & Ord., ECF No. 8. Plaintiffs subsequently filed a notice of appeal in the United States Court of Appeals for the First Circuit. See Notice of Appeal, ECF No. 10. Now, pursuant to Federal Rules of Civil Procedure 60(b)(6) and 15(a)(2), Plaintiffs request that the Court relieve them from final judgment and permit them to amend their Complaint to assert a basis for subject matter jurisdiction that they did not initially raise. See Pls.' Mot. 1. For the reasons

that follow, Plaintiffs' Motion is GRANTED.

I. Discussion[1]

In their Complaint, Plaintiffs asserted that three statutes -- the Mandamus and Venue Act, the Administrative Procedures Act, and the Declaratory Judgment Act -- overcome the jurisdictional bar imposed by the Immigration and Nationality Act ("INA") on their claims. See Compl. ¶ 6; Mem. & Ord. 6-7. The Court considered and rejected each. See Mem. & Ord. 8-10. Plaintiffs now assert that 8 U.S.C. § 1154(h), a provision of the INA, provides the Court with jurisdiction over their claims, and ask the Court to relieve them from final judgment pursuant to Rule 60(b)(6) and allow them to amend their Complaint under Rule 15(a)(2).

a. Rule 60(b)(6)

Federal Rule of Civil Procedure 60(b) permits a court to "relieve a party . . . from a final judgment" for any of several enumerated reasons, including, as relevant here, "any . . . reason that justifies relief." Fed. R. Civ. P. 60(b)(6). Motions under Rule 60(b) are properly filed before the district court, even where, as here, an appeal is pending. See Standard Oil Co. of Cal. V. United States, 429 U.S. 17, 17 (1976) (per curiam) ("We

[1] For a recitation of the factual background of this case, see Soto Alvarado v. Garland, C.A. No. 22-184 WES, 2022 WL 17475602 (D.R.I. Dec. 6, 2022).

hold that the District Court may entertain a Rule 60(b) motion without leave . . .").

Motions under Rule 60(b) are "equitable determination[s], taking into account the entire facts and circumstances surrounding the party's omission, including factors such as the danger of prejudice to the non-movant, the length of the delay, the reason for the delay, and whether the movant acted in good faith." Davila-Alvarez v. Escuela de Medicina Universidad Cent. Del Caribe, 257 F.3d 58, 64 (1st Cir. 2001). A party seeking relief under Rule 60(b) must establish "at the very least, [1] that [their] motion is timely; [2] that exceptional circumstances exist, favoring extraordinary relief; [3] that if the judgment is set aside, [they] have the right stuff to mount a potentially meritorious claim or defense; and [4] that no unfair prejudice will accrue to the opposing parties should the motion be granted." Rivera-Velazquez v. Hartford Steam Boiler Inspection & Ins. Co., 750 F.3d 1, 3-4 (1st Cir. 2014). In determining whether relief is appropriate, "district courts must weigh the reasons advanced for reopening the judgment against the desire to achieve finality in litigation." Paul Revere Variable Annuity Ins. Co. v. Zang, 248 F.3d 1, 6 (1st Cir. 2001). "[R]elief under Rule 60(b) is extraordinary in nature and . . . motions invoking the rule should be granted sparingly." Rivera-Velazquez, 750 F.3d at 3 (quoting Karak v. Bursaw Oil Corp., 288 F.3d 15, 19 (1st Cir. 2002)).

This case presents the kind of extraordinary circumstances contemplated by Rule 60(b)(6). Plaintiffs' counsel emphasized at the hearing on this motion that the omission of 8 U.S.C. § 1154(h) as a basis for jurisdiction in the Complaint was a result of his lack of understanding of the legislative history of the statute. Once the omission was brought to his attention, Plaintiffs' counsel acted promptly to alert Defendants, and there was no undue delay in filing the motion in this Court. There is no indication of bad faith on the part of Plaintiffs. Finally, and perhaps most importantly, there are significant equities at stake for Plaintiffs since this lawsuit is the only avenue available to Plaintiff Soto Alvarado to obtain citizenship. In light of these factors, relief under Rule 60(b)(6) is appropriate.

In addition, "[i]n this situation, the Rule 60(b) motion must be considered in light of 28 U.S.C. § 1653." Odishelidze v. Aetna Life & Cas. Co., 853 F.2d 21, 24 (1st Cir. 1988). That statute provides: "Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts." 28 U.S.C. § 1653. Defendants contend that § 1653 is inapplicable because its use is limited to administrative errors, not the correction of jurisdictional facts. See Defs.' Opp'n 12, ECF No. 19 (citing Odishelidze, 853 F.2d at 24-25 (permitting amendment to correct typographical error)). Here, however, Plaintiffs do not seek to change or correct any jurisdictional facts; rather, they seek to

amend a defective allegation of jurisdiction, which is permissible under § 1653. "Indeed, amendment should be permitted, rather than dismissal, whenever it appears that a basis for federal jurisdiction can be stated by plaintiff." Odishelidze, 853 F.2d at 24 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure § 1214 (1969)). Accordingly, Plaintiffs' Motion for Relief from Judgment is GRANTED.

b. Rule 15(a)

Federal Rule of Civil Procedure 15(a) governs a motion to amend a complaint. Once a district court enters a final judgment, the court loses authority to consider a Rule 15(a) motion "unless and until the judgment is set aside." Fisher v. Kadant, Inc., 589 F.3d 505, 508 (1st Cir. 2009). Only once the district court concludes that relief under Rule 60(b) is appropriate can it consider whether relief under Rule 15(a) is also warranted. Id. at 509. Because the Court has determined that relief under Rule 60(b) is warranted here, it turns next to the issue of Rule 15(a) relief.

Under Rule 15(a)(2), the Court may "freely give leave [to amend the complaint] when justice so requires." The Rule "take[s] a liberal stance toward amendments of pleadings, consistent with the federal courts' longstanding policy favoring the resolution of disputes on the merits." Amyndas Pharms., S.A. v. Zealand Pharma A/S, 48 F.4th 18, 36 (1st Cir. 2022). The First Circuit has

emphasized that leave should be granted absent special reasons, including "undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party. . ., futility of amendment, etc. . . ." Id. (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)). A party may still amend the complaint even after filing a notice of appeal. See, e.g., Dartmouth Rev. v. Dartmouth Coll., 889 F.2d 13, 22 (1st Cir. 1989) ("After judgment has entered and jurisdiction has been transferred to an appellate court, amendments are still possible[.]"), overruled on other grounds by Educadores Puertorriquenos en Accion v. Hernandez, 367 F.3d 61 (1st Cir. 2004).

Defendants argue that leave to amend should not be granted, asserting that the proposed amendment would be futile because 8 U.S.C. § 1154(h), which Plaintiffs now assert as a basis for jurisdiction, does not provide the Court with jurisdiction over this case. Consideration of this question requires the Court to delve into the meaning of the statute, in the factual context presented, in order to determine whether the Plaintiffs' assertion is effectively devoid of merit and therefore futile. Much like a motion to dismiss, it is the Defendants' burden to show that Plaintiffs' claim lacks merit and should be denied. See Amyndas Pharms., S.A., 48 F.4th at 40 (quoting Juarez v. Select Portfolio Servicing, Inc., 708 F.3d 269, 276 (1st Cir. 2013)) ("Whether a

proposed amendment is futile is 'gauged by reference to the liberal criteria of Federal Rule of Civil Procedure 12(b)(6).'"); Lumetrics, Inc. v. Bristol Instruments, Inc., 101 F. Supp. 3d 264, 268 (W.D.N.Y. 2015) (quoting Ferring B.V. v. Allergan, Inc., 4 F. Supp. 3d 612, 618 (S.D.N.Y. 2014)) ("The party opposing a motion to amend bears the burden of establishing that an amendment would be futile.").

"As with any question of statutory interpretation, [the Court's] analysis begins with the plain language of the statute." Jimenez v. Quarterman, 555 U.S. 113, 118 (2009). The statute provides:

> The legal termination of a marriage may not be the sole basis for revocation under section 1155 of this title of a petition filed under subsection (a)(1)(A)(iii) or a petition filed under subsection (a)(1)(B)(ii) pursuant to conditions described in subsection (a)(1)(A)(iii)(I). Remarriage of an alien whose petition was approved under subsection (a)(1)(B)(ii) or (a)(1)(A)(iii) or marriage of an alien described in clause (iv) or (vi) of subsection (a)(1)(A) or in subsection (a)(1)(B)(iii) shall not be the basis for revocation of a petition approval under section 1155 of this title.

8 U.S.C. § 1154(h) (emphasis added).

Here, Plaintiff Soto Alvarado's petition was initially approved pursuant to subsection (a)(1)(A)(iii) as specified in the statute. See Compl. ¶¶ 2, 18-19. However, this case presents an unusual timeline: Plaintiff Soto Alvarado divorced her abusive spouse on June 28, 2017, and she filed her I-360 petition on June 30, 2017. Id. ¶¶ 2, 18. On August 10, 2018, she married her

current spouse. Id. ¶¶ 3, 19. United States Citizenship and Immigration Services ("USCIS") approved her petition on February 2, 2019. Id. ¶¶ 2, 19. Following an interview by a USCIS officer, USCIS informed Plaintiff on March 1, 2021, of its intent to revoke the approval of her petition, indicating that she did not have a "qualifying relationship" at the time her application was approved. Id. ¶ 20. On March 29, 2022, USCIS revoked the approval. Id. ¶ 22. The relevant sequence of events is as follows: Plaintiff Soto Alvarado divorced her abusive spouse, filed her I-360 petition, remarried, received approval of her petition, and then approval was revoked.

Applying the plain language of the statute to this timeline proves difficult. The statute dictates that "[r]emarriage of an alien whose petition was approved . . . shall not be the basis for revocation of a petition approval . . ." § 1154(h). It is not clear from the text of the statute whether it refers only to a remarriage that occurs after the petition is approved, or whether a remarriage following the filing of a petition but prior to its approval would come under its purview. In other words, the statute could be interpreted to say that a petitioner can be approved and remarried and fall under the terms of the statute regardless of what order those events occurred in, or it could be read to state that a petitioner is only covered by the statute if they remarry after their petition is approved and not if they remarry after

they file the petition but before approval. Under the former interpretation, Plaintiff would be covered by the provision, but under the latter, she would not.

In the face of this ambiguity, the Court looks to the legislative history of the statute. Blum v. Stenson, 465 U.S. 886, 896 (1984) ("Where, as here, resolution of a question of federal law turns on a statute and the intention of Congress, we look first to the statutory language and then to the legislative history if the statutory language is unclear."). In addition to the history discussed in the Court's Memorandum and Order on Defendants' Motion to Dismiss, see Mem. & Order 2 n.2, there is a significant record of Congress's intent in reauthorizing the Violence Against Women Act ("VAWA") in 2000, demonstrating that Congress's goals included supporting battered immigrants who had begun new relationships and sought to remarry. Prior to the 2000 amendments, the statute provided: "The legal termination of a marriage may not be the sole basis for revocation under section 1155 of this title of a petition filed under subsection (a)(1)(A)(iii) of this section or a petition filed under subsection (a)(1)(B)(ii) of this section pursuant to conditions described in subsection (a)(1)(A)(iii)(I) of this section." 8 U.S.C. § 1154(h) (1994). The 2000 amendment provided, in relevant part:

> Section 204(h) of the Immigration and Nationality Act (8 U.S.C. 1154(h)) is amended by adding at the end the following: "Remarriage of an alien whose petition was

> approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) or marriage of an alien described in section 204(a)(1)(A)(iv) or (vi) or 204(a)(1)(B)(iii) shall not be the basis for revocation of a petition approval under section 205."

H.R. Rep. No. 106-939, at 68 (2000), available at https://www.congress.gov/106/crpt/hrpt939/CRPT-106hrpt939.pdf. With this amendment, lawmakers appear to have intended to promote marriage by allowing self-petitioners to remarry without jeopardizing their self-petitions. See Ex. 1, 146 Cong. Rec. § 10192 (2000), ECF No. 18-1.

Defendants point to one statement in the Congressional Record to support their counterargument, which states that the statute "helps battered immigrants more successfully protect themselves from ongoing domestic violence by allowing battered immigrants with approved self-petitions to remarry," contending that this sentence establishes that there is a temporal requirement imposed upon the remarriage: it may only occur after the immigrant's self-petition is approved. Id. at § 10192. Defendants contend that remarriage before approval of the I-360 petition effectively voids the petition and requires the petitioner to pursue a different path, presumably an I-130 petition by the new spouse on behalf of the immigrant. This argument, however, does not account for a situation like this one where the remarriage was to another undocumented person. In such a case, in the government's approach, the I-360 petition would be voided with no alternate path to

replace it. Plaintiffs contend that, while this sentence does say that remarriage after approval of the petition is not a basis for revocation, it is silent as to the permissibility of remarriage prior to approval of a pending petition. Plaintiffs also point to another statement contained in the Congressional Record that the statute "[c]larifies that remarriage has no effect on [a] pending VAWA immigration petition," to support their argument that there are no temporal limitations imposed on the remarriage. Id. at § 10196.

Given that both the plain language and the legislative history of the statute can be interpreted to support both parties' arguments, the Court concludes that Defendants have not demonstrated that an amendment to the Complaint to add § 1154(h) as a basis for jurisdiction would be futile. Accordingly, Plaintiffs' Motion to Amend is GRANTED.[2]

---

[2] Defendants cite to Delmas v. Gonzales, 422 F. Supp. 2d 1299 (S.D. Fla. 2005) to support their position that section 1154(h) does not reach a self-petitioner who remarries before her petition is approved. Defs.' Opp'n 2, ECF No. 19. The court concluded in Delmas that "an abused spouse who remarries prior to filing a self-petition is not the type of battered immigrant woman Congress was concerned with when enacting VAWA." Delmas, 422 F. Supp. 2d at 1303. However, Delmas concerned a plaintiff who remarried prior to filing her petition; thus, the court did not have occasion to address the circumstance presented here, where Plaintiff remarried after filing her petition but before it was approved. See id. at 1301. Therefore, the reasoning of Delmas is inapposite to this case.

Defendants also contend that, in the absence of clear statutory guidance, the INA's implementing regulations should govern, pointing to 8 C.F.R. § 204.2(c)(1)(ii), which states that

II. Conclusion

Plaintiffs' Motion for Relief from Judgment and to Amend Complaint, ECF No. 12, is GRANTED. The Judgment dismissing Plaintiffs' Complaint, ECF No. 9, is VACATED. Plaintiffs shall file an amended complaint within fourteen days from the date of this order.

IT IS SO ORDERED.

William E. Smith
District Judge
Date: July 17, 2023

"[t]he self-petitioner's remarriage . . . will be a basis for the denial of a pending self-petition." Defs.' Opp'n 2. Where a statute is "silent or ambiguous with respect to a specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843 (1984). Here, however, USCIS has acknowledged the regulation is outdated and has been superseded by the 2000 amendments, explaining in its manual: "The VAWA regulations at 8 C.F.R. 204.2 were promulgated in March 1996 and have not been updated to include superseding statutory provisions. Note that some of the regulatory provisions may no longer apply." USCIS Policy Manual, June 14, 2023, Vol. 3, Part D, Ch. 1(c), n.11, available at https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-1. Because the statutory provision at issue here did not exist when USCIS promulgated the regulation Defendants cite, it cannot be said that the agency's interpretation "is based on a permissible construction of the statute." Chevron, 467 U.S. at 843.