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NO JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ARZHANG ALIMORADI,	)	Case No. CV 08-02529 DDP (JCx)
	)	
Plaintiff,	)	
	)	<b>ORDER GRANTING PLAINTIFF'S MOTION</b>
v.	)	<b>FOR SUMMARY JUDGMENT, DENYING</b>
	)	<b>DEFENDANT'S MOTION FOR SUMMARY</b>
	)	<b>JUDGMENT</b>
U.S. CITIZENSHIP &	)	
IMMIGRATION SERVICES, A	)	
BUREAU OF THE DEPARTMENT OF	)	[Motions filed on November 10,
HOMELAND SECURITY,	)	2008, Dkt. No. 18, and December
	)	26, 2008, Dkt. No. 21]
Defendants.	)	
_____	)	

In this matter, Arzhang Alimoradi challenges Defendant United States Citizenship and Immigration Services' decision to deny him status as a lawful permanent resident. Before the Court are the parties' cross-motions for summary judgment on this issue.

**I. BACKGROUND<sup>1</sup>**

Plaintiff Arzhang Alimoradi, Ph.D., is a native and citizen of Iran, who came to the U.S. on an F-1 student visa on August 27, 2001. (Pl.'s Statement of Gen. Issues ("SGI") ¶ 1.) On November 11, 2002, Dr. Alimoradi registered for the National Security Entry-

<sup>1</sup> Unless otherwise noted, all facts are undisputed by the parties.

1 Exit Registration System. (Id.) He received his Ph.D. from the  
2 University of Memphis in December 2004. (Id.)

3 Dr. Alimoradi is a scientific researcher whose focus is on the  
4 application of artificial intelligence in structural engineering  
5 and earthquake engineering. (Certified Administrative Record  
6 ("A.R.") 80.) Among his many accomplishments, Dr. Alimoradi has  
7 been involved with earthquake research at several prestigious  
8 universities, is a successful science and engineering professor,  
9 and, perhaps most notably, has been the southern California "backup  
10 person" for a major northern California "earthquake clearinghouse  
11 procedure." (A.R. 80.) A clearinghouse is the "focal point of  
12 coordinating post-earthquake investigations between researchers and  
13 organizations from around the globe in the aftermath of a major  
14 earthquake." (Id.) He has published articles in numerous academic  
15 journals, and his "state-of-the-art" research "helps civil  
16 engineers to design an earthquake resistant building structure" to  
17 a degree that other researchers had not to this point succeeded.  
18 In other words, Dr. Alimoradi's entire illustrious career revolves  
19 around helping communities to build safely and to prepare  
20 successfully for earthquakes, and he would like to live in Southern  
21 California - an earthquake center.

22 Dr. Alimoradi was offered U.S. employment by John A. Martin  
23 Associates ("JAMA"), one of the United States' largest structural  
24 engineering firms. (A.R. 14.) JAMA deems Dr. Alimoradi's  
25 employment to be vital to the success of its company. (Pl.'s SGI ¶  
26 1.) On February 16, 2005, JAMA's Vice President and General  
27 Counsel, Dr. Farzad Naeim, filed an I-140 visa petition on behalf  
28 of Dr. Alimoradi. (Id. ¶ 2.) Although Dr. Naeim is an attorney,

1 he did not enter an appearance on Dr. Alimoradi's behalf when  
2 filing the I-140 petition, nor did he indicate on the petition that  
3 he was Dr. Alimoradi's attorney or representative. (Id.) At the  
4 same time, Dr. Naeim filed an I-129: Petition for Nonimmigrant  
5 Worker (H1B visa). (A.R. 85.) The H1B visa grants temporary work  
6 status (but not a green card) to certain individuals. As part of  
7 preparing the I-129 petition, Dr. Naeim filed a Labor Condition  
8 Application (ETA 9035E), which was certified by the Department of  
9 Labor for the period August 1, 2005 through July 31, 2008. (Id.)  
10 The United States Citizenship & Immigration Services ("USCIS" or  
11 the "Agency") approved the I-140 Petition on August 18, 2005 (Pl.'s  
12 SGI ¶ 3), certifying Dr. Alimoradi as an "[o]utstanding professor[]  
13 or researcher[]" pursuant to 8 U.S.C. § 1153(b)(1)(B). This  
14 qualifies Dr. Alimoradi as a "priority worker[]" who is at the top  
15 of the list (assuming other prerequisites are met) to obtain legal  
16 permanent residency in the United States. 8 U.S.C. § 1153(b)(1).  
17 Dr. Alimoradi was approved for the I-140 Petition because of his  
18 "extraordinary ability" as a researcher specializing in earthquake  
19 structural engineering science. (Pl.'s SGI ¶ 15.) Around this  
20 time, Dr. Alimoradi was also granted an Optional Practical Training  
21 ("OPT") Employment Authorization Document ("EAD"), which was valid  
22 until January 2, 2006. (Id. ¶ 6.) On September 12, 2005, after  
23 receiving OPT employment authorization, Dr. Alimoradi personally  
24 filed a Form I-485 application for adjustment of his immigration  
25 status. (Id. ¶ 7.) Dr. Naeim reviewed this application with Dr.  
26 Alimoradi "numerous times" before its submission. (A.R. 86.)

27 To summarize - Dr. Alimoradi, with the help of Dr. Naeim and  
28 JAMA, applied for an H1B visa and his green card concurrently, as

1 two alternate means of obtaining legal work status. At this point,  
2 Dr. Naeim believed and told Dr. Alimoradi that the combination of  
3 the approved Labor Condition Application obtained through the H1B  
4 process, the approved I-140, and the pending I-485 status  
5 adjustment petition permitted him to work at JAMA until the  
6 expiration of the approved Labor Condition Application in July  
7 2008. (A.R. 86.) Dr. Naeim believed "that the mere filing of I-  
8 485 would provide Alimoradi yet one more source of authorization to  
9 work," in addition to the approved Labor Condition Application.  
10 (A.R. 86.) In fact, Dr. Alimoradi was required to file a different  
11 application for employment in conjunction with his I-485: the I-765  
12 Application for Employment Authorization. See 8 C.F.R. §  
13 274a.12(c)(9). According to Dr. Alimoradi, he relied on Dr.  
14 Naeim's explanation of the prerequisites for legal employment. As  
15 a result, Dr. Alimoradi was unaware that the Labor Condition  
16 Application was insufficient, and that he needed instead to file a  
17 I-765 application to obtain a second Employment Authorization  
18 Document.

19 Two years later, on August 1, 2007, USCIS sent Dr. Alimoradi a  
20 Request for Evidence ("RFE") regarding his Form I-485, in which  
21 USCIS requested evidence of employment authorization from the  
22 period dating January 2, 2006 to the date of the letter. (Id. ¶  
23 8.) This is the first time Dr. Alimoradi became aware that his  
24 employment authorization had lapsed after January 2, 2006. (Id. ¶  
25 10.)

26 On August 13, 2007, Dr. Alimoradi filed a new EAD I-765  
27 application for authorized employment, which USCIS granted on  
28 October 23, 2007. (A.R. 2, 75.) Dr. Alimoradi's period of

1 unauthorized employment thus runs from January 2, 2006 to October  
2 23, 2007. (A.R. 2.)

3 Dr. Alimoradi retained attorney Eric Avazian to respond to the  
4 RFE from USCIS, and Avazian filed a Form G-28 notice of appearance  
5 as Dr. Alimoradi's counsel on August 31, 2007. (Pl.'s SGI ¶ 9.)  
6 In Dr. Alimoradi's response to the RFE, on August 28, 2007, he  
7 requested that his I-485 application for adjustment of immigration  
8 status be approved, based on the exception for lapses in lawful  
9 status "through no fault of his own or for technical reasons." 8  
10 U.S.C. ¶ 1255(c). The basis of this claim was that Dr. Naeim had  
11 given him incorrect legal advice. (Pl.'s SGI ¶ 10.) Dr. Naeim  
12 submitted an affidavit to USCIS conceding that he provided legal  
13 counsel to Dr. Alimoradi and describing his erroneous advice, which  
14 in part he attributed to his inexperience with the complexities of  
15 immigration law. (A.R. 85.)

16 On October 10, 2007, USCIS sent a Notice of Intent to Deny  
17 ("NOID") to Dr. Alimoradi, informing him of its intent to deny his  
18 I-485 application for status adjustment, based on the argument that  
19 ineffective counsel did not excuse a lapse in his employment  
20 authorization. (Pl.'s SGI ¶ 11.) Dr. Alimoradi responded to the  
21 NOID by stating that USCIS had ignored his claim to an exception  
22 under § 245(c). (*Id.* ¶ 12.) On January 15, 2008, USCIS denied Dr.  
23 Alimoradi's I-485 application (the "USCIS Decision"), due to the  
24 period in which Dr. Alimoradi had worked without employment  
25 authorization. (*Id.* ¶ 14, A.R. 2.)

26 The parties have now filed cross-motions for summary judgment.

27 **II. LEGAL STANDARD**

28 A. Summary Judgment

1 Summary judgment is appropriate where "the pleadings, the  
2 discovery and disclosure materials on file, and any affidavits show  
3 that there is no genuine issue as to any material fact and that the  
4 movant is entitled to a judgment as a matter of law."  
5 Fed. R. Civ. P. 56(c). In determining a motion for summary  
6 judgment, all reasonable inferences from the evidence must be drawn  
7 in favor of the nonmoving party. Anderson v. Liberty Lobby, Inc.,  
8 477 U.S. 242, 255 (1986). A genuine issue exists if "the evidence  
9 is such that a reasonable jury could return a verdict for the  
10 nonmoving party"; and material facts are those "that might affect  
11 the outcome of the suit under the governing law." Anderson, 477  
12 U.S. at 248. However, no genuine issue of fact exists "[w]here the  
13 record taken as a whole could not lead a rational trier of fact to  
14 find for the non-moving party." Matsushita Elec. Indus. Co. v.  
15 Zenith Radio Corp., 475 U.S. 574, 587 (1986).

16 B. Administrative Procedure Act

17 The Administrative Procedure Act ("APA") provides for judicial  
18 review of final agency decisions. 5 U.S.C. §§ 702, 706. The APA  
19 "commands reviewing courts to 'hold unlawful and set aside' agency  
20 action that is 'arbitrary, capricious, an abuse of discretion, or  
21 otherwise not in accordance with law.'" Thomas Jefferson Univ. v.  
22 Shalala, 512 U.S. 504, 512 (1994)(quoting 5. U.S.C. § 706(2)(A)).  
23 However, a court may not "substitute its own construction of a  
24 statutory provision for a reasonable interpretation made by the  
25 administrator of an agency." Chevron U.S.A., Inc. v. Natural  
26 Resource Defense Council, Inc., 467 U.S. 837, 844 (1984). Where  
27 there is a potential statutory ambiguity, "the court must look for  
28 guidance to any relevant regulations promulgated by an agency

1 charged with administering the statute.'" Texaco Inc. v. United  
2 States, 528 F.3d 703, 710 (9th Cir. 2008)(quoting Morales v.  
3 Sociedad Espanola de Auxilio Mutuo y Beneficencia, 524 F.3d 54 (1st  
4 Cir. 2008)(citing Chevron, U.S.A., Inc. v. Natural Res. Def.  
5 Council, Inc., 467 U.S. 837, 843 (1984)). A court is required to  
6 apply the agency's interpretation of the statute, "as embodied in a  
7 regulation, as long as it constitutes a permissible construction of  
8 the statutory text." Id.

9 Similarly, an administrative agency's factual findings are  
10 reviewed for "substantial evidence." Family Inc. v. U.S.  
11 Citizenship and Immigration Services, 469 F.3d 1313, 1315 (9th Cir.  
12 2006)(citing Monjaraz-Munoz v. INS, 327 F.3d 892, 895 (9th Cir.  
13 2003), amended by 339 F.3d 1012 (9th Cir. 2003). Under this  
14 deferential standard, a court may not substitute its own judgement  
15 for the agency's, and may only reverse an agency's findings where  
16 the evidence presented would "compel a reasonable finder of fact to  
17 reach a contrary result." Id.

### 18 **III. DISCUSSION**

#### 19 **A. INA § 245(c) (8 U.S.C. § 1255(c))**

20 As described in the Court's previous order on Defendant's  
21 motion to dismiss, section 245 of the Immigration and Nationality  
22 Act ("INA") sets forth when an individual is eligible to apply for  
23 adjustment of status. See 8 U.S.C. § 1255. As relevant here, a  
24 person is not eligible for status adjustment if:

25  
26 (2) [the alien] continues in or accepts unauthorized  
27 employment prior to filing an application for adjustment of  
28 status or who is in unlawful immigration status on the date of  
filing the application for adjustment of status or who has  
failed (other than through no fault of his own or for

1 technical reasons) to maintain continuously a lawful status  
2 since entry into the United States

3 8 U.S.C. § 1255(c)(emphasis added).

4 Section 1255(c) thus contains a limited exception for "no  
5 fault" or "technical reasons." Id. This exception is not defined  
6 in the statute, but in the Agency's implementing regulations.<sup>2</sup> In  
7 its order dated August 29, 2008, this Court found that the Agency's  
8 regulations were "manifestly contrary to the plain language of the  
9 statute" and "arbitrary and capricious" as applied to Dr.  
10 Alimoradi. (Order, August 29, 2008 ("August 2008 Order") 11.) The  
11 Court found that Dr. Alimoradi could invoke this exception,  
12 assuming Dr. Alimoradi's allegations as true. (August 2008 Order  
13 17.) The Court further held that the exception applied to Dr.  
14 Alimoradi because his work is "crucial to public safety and the  
15 national security of the United States." (Id.)

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20 <sup>2</sup> The implementing regulations limits "no fault of his own or  
21 for technical reasons" to where:

- 22 (i) Inaction of another individual or organization designated  
23 by regulation to act on behalf of an individual and over whose  
24 actions the individual has no control, if the inaction is  
25 acknowledged by that individual or organization . . . ; or  
26 (ii) A technical violation resulting from inaction of the  
27 Service . . . [; or]  
28 (iii) A technical violation caused by the physical inability  
of the applicant to request an extension of nonimmigrant stay  
from the Service either in person or by mail . . . [; or]  
(iv) A technical violation resulting from the Service's  
application of the maximum five/six year period of stay for  
certain H-1 nurses . . . .

8 CFR § 1245.1(d)(2).

1 Although Defendant concedes that Dr. Alimoradi "qualifies"<sup>3</sup>  
2 for the exception in (c)(2),<sup>4</sup> Defendant argues that Dr. Alimoradi  
3 does not satisfy the requirements of this exception. (D.'s Mot. 9,  
4 n.7.) Specifically, Defendant argues Dr. Alimoradi is not entitled  
5 to an adjustment of status because: 1) Dr. Alimoradi's  
6 qualifications are irrelevant to whether his period of unauthorized  
7 employment was through no fault of his own or technical reasons;  
8 and 2) various factual arguments, including that Dr. Naiem and JAMA  
9 were not designated by agency regulation to act on his behalf and  
10 that Dr. Alimoradi maintained control over filing for employment  
11 authorization. (D.'s Mot. 9, 14.)

12 1. Relevancy of Dr. Alimoradi's Qualifications

13 Defendant argues that Plaintiff's skills as an outstanding  
14 researcher have no impact on the determination of whether his  
15 unauthorized employment was through no fault of his own or for  
16 technical reasons. However, as noted in the Court's August 2008  
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18 <sup>3</sup> In its Reply, Defendant reverses course and retracts this  
19 concession, then raises new arguments as to why Dr. Alimoradi does  
20 not qualify for the exception in § 245(c)(2). These arguments are  
21 not timely or properly raised and thus, in the interests of  
22 judicial economy and a fair hearing on the merits, the Court will  
23 not consider them. Zamani v. Carnes, 491 F.3d 990, 997 (9th Cir.  
24 2007)("The district court need not consider arguments raised for  
25 the first time in a reply brief.") Defendant further raises no  
legal issues in its Reply that could not have been timely and  
properly raised in its motion to dismiss or in the present Motion.  
The Court also notes that Defendant did not submit a timely  
Statement of Uncontroverted Facts and Conclusions of Law with its  
Motion, as is required under Local Rule 56-1, and instead submitted  
this for the first time with its Reply.

26 <sup>4</sup> Despite this concession, Defendant again argues that Dr.  
27 Alimoradi does not meet the USCIS regulations interpreting the "no  
28 fault/technical reasons" exception. (D.'s Mot. 9.) The Court  
expressly found that these regulations impermissibly construe §  
245(c)(2), and Dr. Alimoradi's failure to satisfy these regulations  
is irrelevant to the instant Motions.

1 Order, Plaintiff's outstanding qualities form part of the  
2 foundation of the Court's opinion that priority workers whose  
3 skill-set places them in the national security interest should not  
4 be arbitrarily and capriciously denied status adjustment based on  
5 minor, non-criminal filing violations.

6 For the sake of emphasis, the Court will repeat from its  
7 August 2008 Order the reasons why it believes Dr. Alimoradi plays a  
8 crucial role in national and regional public safety. In  
9 California, a massive and destructive earthquake is a constant  
10 possibility. The 1994 Northridge earthquake in Southern California  
11 left 57 people dead and more than 1,500 people seriously injured,  
12 and damaged several major freeways. Days later, 9,000 homes and  
13 businesses were without electricity, 20,000 were without gas, and  
14 more than 48,500 had little to no water.<sup>5</sup> The 1989 Loma Prieta  
15 earthquake in Northern California killed 62, injured 3,757, left  
16 more than 12,000 homeless, destroyed portions of the Bay Bridge,  
17 and caused three billion dollars in damage. The 1906 San Francisco  
18 earthquake killed hundreds and left nearly half of the city's  
19 450,000-person population homeless as miles "burned and crumbled  
20 into a windswept desert of desolation."<sup>6</sup> Experts are seriously  
21 concerned about the devastation that a large earthquake could cause  
22 in the near future, and the United States Geological Survey has  
23 recently stressed the need for concerted efforts "to avoid an

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25 <sup>5</sup> See [http://www.lafire.com/famous\\_fires/940117\\_](http://www.lafire.com/famous_fires/940117_NorthridgeEarthquake/quake/01_EQE_exsummary.htm)  
26 [NorthridgeEarthquake/quake/01\\_EQE\\_exsummary.htm](http://www.lafire.com/famous_fires/940117_NorthridgeEarthquake/quake/01_EQE_exsummary.htm) (last accessed  
February 2, 2009).

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28 <sup>6</sup> See [http://www.sfmuseum.org/1906\\_eq\\_quests/eq.htm](http://www.sfmuseum.org/1906_eq_quests/eq.htm) (last  
accessed February 2, 2009).

1 earthquake catastrophe" because "[t]he question is not if but when  
 2 Southern California will be hit by a major earthquake - one so  
 3 damaging that it will permanently change lives and livelihoods in  
 4 the region."<sup>7</sup> (August 2008 Order 11.)

5 Dr. Alimoradi is, by all accounts, a talented and innovative  
 6 researcher in the area of earthquake science. His work could save  
 7 the lives and livelihoods of thousands of Americans in the event of  
 8 a serious earthquake. The United States Government has not only  
 9 recently warned that we must do everything in our power to prepare  
 10 for such a quake, but has specifically certified Dr. Alimoradi as  
 11 one of the crucial individuals who will help accomplish this task.

12 Denying Dr. Alimoradi this exception requires an overly narrow  
 13 interpretation of statute that is both arbitrary and capricious.  
 14 For the reasons stated here and in its August 2008 Order, the Court  
 15 finds that Dr. Alimoradi may invoke the exception under § 245(c).

## 16 2. Application of the No Fault Exception

17 The parties do not dispute that Dr. Alimoradi would qualify  
 18 for § 245(a) adjustment of status under § 245(k), but for the  
 19 length of his period of unauthorized employment.<sup>8</sup> Consequently,  
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21 <sup>7</sup> See Suzanne Perry et al., The ShakeOut Earthquake Scenario -  
 22 A Story that Southern Californians Are Writing, U.S. Geological  
 Survey Circular 1324, Cal. Geological Survey Special Report 207  
 (2008), available at <http://pubs.usgs.gov/circ/1324/>.

23 <sup>8</sup> Despite the Court's prior order, Defendant continues to  
 24 argue that subsections 245(c) should be limited by subsection  
 25 245(k). See 8 U.S.C. § 1255(k). As the Court explained more fully  
 26 in its August 2008 Order, in the context of the entire statutory  
 27 framework, § 245 provides more flexibility for priority works than  
 28 provides a special, unique exemption for priority workers, so long  
 as they were not out-of-status for more than 180 days. Thus, §  
 245(c)(2) is "subject to" § 245(k) in that it offers an extra  
 exemption for priority workers not offered to regular applicants.

(continued...)

1 Dr. Alimoradi seeks to invoke the exception under § 245(c)(2) for  
2 "no fault of his own or technical reasons." 8 U.S.C. 1255(c)(2).

3 Both Dr. Naiem and Dr. Alimoradi state that Dr. Naiem held  
4 himself out as counsel, that he effectively acted as Dr.  
5 Alimoradi's counsel, and that Dr. Alimoradi relied on his legal  
6 advice. Dr. Alimoradi submitted an affidavit by Dr. Naiem  
7 attesting to these facts. In response, Defendant argues that the §  
8 245(c) exception does not apply because Dr. Naiem and JAMA were not  
9 designated by Agency regulation to act on Dr. Alimoradi's behalf,  
10 that Agency correspondence was never addressed to Dr. Naiem or JAMA  
11 as Dr. Alimoradi's counsel, and that Dr. Alimoradi had knowledge  
12 and control over the filing process for employment authorization  
13 and therefore is at fault for failing to comply with it. To begin,  
14 the fact that Dr. Naeim or JAMA did not make an official appearance  
15 on Dr. Alimoradi's behalf does not create a genuine dispute of  
16 material fact. No reasonable juror could find that this evidence,  
17 alone, demonstrates that Dr. Alimoradi did not reasonably rely on  
18 Dr. Naeim's legal advice, because Defendant's evidence does not  
19 affect Plaintiff's degree of fault or whether his violation was  
20 technical in nature.

21 As the Court discussed in its previous order, Mart v. Beebe,  
22 CIV. 99-1391, 2001 WL 13624 (D. Or. 2001) is instructive here. In  
23 that case, the plaintiff applied for asylum, but was not aware that  
24 she needed to extend her visa during the application's pendency.

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26 <sup>8</sup>(...continued)  
27 In other words, a priority worker whose status lapses receives an  
28 obtain relief a priority worker must demonstrate that he or she  
falls into the "no fault/technical reasons" exception.

1 When the plaintiff's application was denied on this ground, the  
2 court found that her "lapse of status" was a "mere technical  
3 violation." See Mart, 2001 WL 13624 at \*5. Similarly, Dr.  
4 Alimoradi was not aware that he needed to file a separate  
5 application for employment authorization. Instead, he relied on  
6 Dr. Naeim, who told him that his approved Labor Condition  
7 Application (valid through July 31, 2008), in combination with an  
8 approved I-140 and pending I-485, would suffice. As the Court  
9 noted in its August 2008 Order, these circumstances demonstrate a  
10 "technical violation" under the § 245(c) exception.

11 Similarly, Dr. Alimoradi cannot be found at fault for actions  
12 based upon Dr. Naeim's incorrect advice, particularly in light of  
13 the fact that his I-485 status adjustment application was validly  
14 submitted before his EAD employment authorization ended - when Dr.  
15 Alimoradi was both lawfully employed and had legal immigration  
16 status. See, e.g., Choin v. Mukasey, 537 F.3d 1116 (9th Cir.  
17 2008)(finding alien spouse had married her husband in good faith  
18 and could not be automatically precluded from naturalization, even  
19 though her marriage ended in divorce five days before a two-year,  
20 statutorily-mandated probationary period); Freeman v. Gonzalez, 444  
21 F.3d 1031, 1033-34 (9th Cir. 2006)(finding no fault where an alien  
22 spouse's citizen husband died after she had lawfully submitted an  
23 application for naturalization, but before the application's  
24 consideration, and that her current marriage status did not  
25 automatically preclude her naturalization application).  
26 Additionally, the fact that Dr. Alimoradi was informed by his  
27 university that he needed to renew his EAD employment authorization  
28 or Dr. Alimoradi's general familiarity with the employment

1 authorization process do not indicate his fault. Contrary to  
2 Defendant's contentions, these facts cannot raise a genuine dispute  
3 of material fact, because they underscore the degree to which  
4 Plaintiff relied on Dr. Naiem's advice, as well as the technical  
5 complexity of this area of law.

6 Nevertheless, Defendant argues that Dr. Alimoradi is to blame  
7 because Dr. Naeim is merely a "company executive without any  
8 background in immigration law." (Mot. 12.) Again, based on this  
9 evidence, no reasonable juror could find that Dr. Alimoradi was at  
10 fault. It is hard to imagine a circumstance where a person has  
11 less control over their employment authorization than when, as with  
12 Dr. Alimoradi, his employer's general counsel mistakenly informs  
13 him that his employment authorization requirements have been  
14 satisfied.<sup>9</sup>

15 \_\_\_\_\_  
16 <sup>9</sup> This is also not, as Defendant argues, merely an equitable  
17 concern. The statute expressly makes it easier for priority  
18 workers to receive status adjustments. Subsection § 245(k)  
19 provides a six month exemption for priority workers from  
20 demonstrating any evidence of lawful status or employment  
21 authorization. Beyond this date, a priority worker such as Dr.  
22 Alimoradi must demonstrate that their lapse of employment  
23 authorization or immigration status is due to "no fault of their  
24 own or technical reasons." To find otherwise presents a serious  
25 public safety risk and is in conflict with the national interest.

26 As stated by this Court in its August 2008 Order, in passing  
27 the Immigration and Nationality Act, there is ample room for the  
28 Attorney General, in his or her discretion, to pass regulations  
that would forgive minor, non-criminal, technical violations when  
it is in the interest of national security or public safety.  
Defendant's interpretation of USCIS' governing statute would  
effectively leave the Agency paralyzed and without the flexibility  
to act in this country's best interests. The Court emphatically  
repeats that such a reading arbitrarily eschews common sense and  
creates a fundamental tension not only with the statute's plain  
language, but with its larger purpose in creating priority worker  
visas. These visas, by their very definition, are designed to make  
it easier for those skilled individuals for whom we have a great  
need to become permanent residents. See 8 U.S.C. § 1153(b)(1).  
Congress' goal of encouraging priority workers to stay in the

(continued...)

1 As there is no genuine dispute of material fact, this matter  
2 is suitable for judgment as a matter of law. The Court finds that  
3 Dr. Alimoradi satisfies the "no fault/technical reasons" exception  
4 at § 245(c)(2).

5 B. Effective Assistance of Counsel

6 As the Court has granted Plaintiff's Motion for Summary  
7 Judgment based on the above analysis, it does not reach the issue  
8 of effective assistance of counsel.

9 **IV. CONCLUSION**

10 Plaintiff's motion for summary judgment is GRANTED.  
11 Defendant's motion is DENIED.

12  
13 IT IS SO ORDERED.

14  
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16  
17 Dated: February 10, 2009



18 DEAN D. PREGERSON  
19 United States District Judge

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25 \_\_\_\_\_  
26 <sup>9</sup>(...continued)  
27 United States is directly undermined if the USCIS refuses to offer  
28 these special individuals relief from innocent mistakes. Section  
245(c)(2) thus provides an exemption for those individuals whose  
status or employment authorization lapses through no fault of their  
own or technical reasons.