

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NAGTELECOM LLC
4262 Entre Ct, Suite K
Chantilly, VA 20151

PAVEL NAGIBIN
c/o Gregory Bryl, Esq.
1629 K Street NW, Suite 300
Washington, DC 20006

Plaintiffs

v.

WILLIAM BARR, United States Attorney
General
U.S. Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530-0001

KEVIN K. McALEENAN, Acting Secretary
of the Department of Homeland Security
Office of the General Counsel
U.S. Department of Homeland Security
Washington, DC 20528

KENNETH T. CUCCINELLI, Acting Dir. of
U.S. Citizenship and Immigration Servs.
Office of the Chief Counsel, USCIS
20 Massachusetts Ave NW, Room 4025
Washington, DC 20529

Defendants.

No. _____

**COMPLAINT FOR WRIT OF MANDAMUS, AND DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

This is an action for a declaratory and injunctive relief, and redress of due process violations by the Department of Homeland Security and other government agencies.

Plaintiff Pavel Nagibin is a natural person faced with a "secret" finding by the DHS and/or related agencies against him that he is permanently ineligible for either immigrant or non-immigrant visa under INA 212(a). There are no proceedings in which this secret determination can be challenged, and the plaintiffs never received any document outlining said determination and the specific grounds therefor.

Plaintiffs are therefore facing a situation whereby some mysterious secret material is used against them to deny any immigration benefit and make it impossible to challenge the adverse agency action. Ironically, Plaintiff Nagibin, who has Russian and Asian heritage, appears to be facing some sort of a "secret" police that easily puts the Soviet secret police to shame, given the plaintiffs' attendant inability to confront their accuser.

The DHS is not free to make non-discretionary permanent ineligibility determinations in secret and without giving the applicant the chance to rebut whatever derogatory information it is relying upon. This Court should redress the plaintiffs' grievance and remedy the wrongs committed against them.

JURISDICTION AND VENUE

1. This Court's jurisdiction over this matter lies pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343 (deprivation of rights), 28 U.S.C. § 2201 *et seq.* (declaratory judgments), 5 U.S.C. §§ 551 *et seq.* (Administrative Procedure Act or "APA"), 28 U.S.C. § 1361 (authorizing issuance of mandamus), and 18 U.S. Code § 242 (deprivation of rights under color of law). Relief is requested pursuant to said statutes and the U.S. Constitution.

2. Pursuant to 28 U.S.C. 1391(e), venue is proper in the District of Columbia District in that Defendants are officers and employees of the United States sued in their official capacities and located within the District.

ALLEGATIONS OF FACT

Plaintiffs

3. Plaintiff Nagtelecom LLC ("Nagtelecom") is a Virginia limited liability company engaged in trading computer equipment between the United States and emerging markets in Eastern Europe and Central Asia.

4. Plaintiff Pavel Nagibin ("Nagibin") is a natural person and a citizen of the Russian Federation who has previously traveled to the United States as a non-immigrant and who is seeking entry into the United States as both immigrant and non-immigrant (dual intent). Nagibin is a majority stakeholder of Nagtelecom.

Defendants

5. All Defendants are officials of the United States government and its agencies acting under color of law with respect to the matters referenced herein.

6. Defendant William Barr is the Attorney General of the United States and is sued in his official capacity. Defendant Barr is responsible, *inter alia*, for administering and enforcing the immigration and naturalization laws of the United States, for overall supervision of the functions of the Department of Homeland Security (DHS) and United States Citizenship and Immigration Services (USCIS), as well as for prescribing regulations by which a person can petition for a close family member to be classified as an immediate relative for immigration purposes.

7. Defendant Kevin K. McAleenan is the Acting Secretary of the Department of Homeland Security, and is sued in his official capacity. Defendant McAleenan is generally

charged with implementing the Immigration and Nationality Act (INA) and is authorized to delegate powers and authority to subordinate employees of the DHS. This Defendant is responsible for implementing the provisions of the INA under which U.S. citizens can petition for close family members to be classified as immediate relatives for immigration purposes.

8. Defendant Kenneth T. Cuccinelli is the Acting Director of the U.S. Citizenship and Immigration Services (USCIS), the federal agency primarily responsible for implementing and enforcing the INA, including processing and adjudicating visa petitions by and/or on behalf of intending immigrants and non-immigrants. Defendant Cuccinelli is responsible for overall supervision of the functions of the USCIS, including the processing and adjudication of immigrant and non-immigrant visa petitions.

9. All Defendants are sued in their official capacity.

Background

10. Pavel Nagibin ("Nagibin") is a citizen of Russia who has traveled to the United States in the past for both business and recreational purposes.

11. Nagibin is creator and founder of OOO NAG (aka NAG LLC) (hereafter "NAG"), a successful Russia-based limited liability entity engaged in trading used and refurbished computer networking and telecommunications equipment (*see* www.nag.company).

12. NAG's primary trading activity is supplying above-referenced equipment to what is known as the emerging markets, mainly in the territory of the Russian Federation and the countries previously part of the Former Soviet Union.

13. At present, NAG has between 250 and 300 employees and generates a revenue of several hundred thousand dollars per month and over five (5) million dollars annually. NAG has done so for the past several years.

14. In 2011-2012, as part of his duties as General Manager at NAG, Nagibin went into partnership with one Alexander Kuzmin ("Kuzmin"), who was engaged in Texas, United States in a similar line of business. The two formed Orion Networks International, Inc. ("Orion"), a Texas-based entity.

15. Nagibin was responsible for the demand side of the business (customer base) and Kuzmin handled the supply side (sourcing equipment).

16. In November 2012, Orion filed an L-1 visa petition on behalf of Nagibin.

17. Nagibin satisfied the eligibility criteria for an L-1 visa, and Orion's petition on his behalf was subsequently granted.

18. Nagibin was then issued an L-1 visa and used it to travel to the United States for purposes within the scope of the L-1 visa and without incident.

19. During Nagibin's time in the United States, the Nagibin/Kuzmin partnership went sour, for two primary reasons. One was a personal dispute between the two unrelated to business. The other was that Kuzmin made lots of effort to induce Nagibin to invest in the other businesses Kuzmin had or planned to start, and in the course of such inducement provided information Nagibin later verified was untrue.

20. After a significant breakdown in the relationship between Nagibin and Kuzmin, Nagibin decided not to continue doing business with Kuzmin and took his business elsewhere.

21. Nagibin was also the majority shareholder of Orion and wanted to transfer the control of that entity away from Kuzmin, but certain provisions in Orion's governing documents stood to impede such a move. After extensive consultation with attorneys in the United States, Nagibin decided to let go of Orion.

22. Kuzmin was extremely upset about Nagibin's decision to part ways with him and Orion, and made several threats to Nagibin personally about undermining Nagibin's future business in the United States.

23. Nagibin then went into a joint venture with one Oleg Nayandin, who was engaged in computer-related business in Virginia, United States.

24. Instead of the Texas-based Orion, this new partnership began to operate through Nagtelecom.

25. Virginia-based Nagtelecom is also an affiliate of Russia-based NAG.

26. The new partnership operating through Nagtelecom proved to be successful and soon exceeded in size its predecessor Orion in its trade volume.

27. Based on such success, Nagibin decided to expand NAG's U.S. operations.

28. Such expansion required the presence of an individual (such Nagibin or another NAG employee) thoroughly familiar with NAG's business operations in Russia and capable of making profitable decisions regarding identifying, sourcing, and purchasing used computer equipment in the United States.

29. To that end, in April 2014, Nagtelecom filed an L-1 petition for one Elena Kovalenko ("Kovalenko").

30. At the time, Kovalenko was an employee of NAG, and had a multi-year B1/B2 visitor visa allowing her to travel to the United States multiple times and without incident.

31. After Nagtelecom filed an L-1 visa petition on behalf of Kovalenko, Nagtelecom's office in Virginia received a field visit from U.S. government officials.

32. Said officials conducted an extensive interview with Nayandin regarding Nagtelecom's business activities and indicated to Nayandin that they did not find anything improper and did not direct him to stop any business activities.

33. Nor did Nagtelecom subsequently receive any communication from any U.S. government agency alleging that any of Nagtelecom's activities were improper or warranted further investigation.

34. However, On September 2, 2015, Kovalenko's visa was refused under INA 212(a)(3)(A)(i)(II),¹ and Kovalenko was never issued an L-1 visa. The visa refusal is attached hereto as **Exhibit A**.

35. Upon information and belief, Kuzmin sent or caused to be sent to the DHS and/or other related government agencies certain derogatory information about Nagibin and his business, which affected consideration of Nagtelecom's L-1 visa petition on behalf of Kovalenko.

36. Said derogatory information was not true, did not have any basis in fact and/or law, was sent by Kuzmin for the sole purpose of harming Nagibin, and could be rebutted by Nagtelecom and/or Nagibin if either were given an opportunity to confront it.

37. Although the L-1 visa was refused to be issued to Kovalenko, Nagibin continued to consider alternatives in pursuit of expanding Nagtelecom's operations in the United States, including relocating to the United States himself as an intra-company executive transferee.

38. In October 2015, Nagibin applied for a B1/B2 visa to come to the U.S. with his family for purposes of tourism during the Christmas holiday season.

39. At the time, Nagibin was an owner of a multi-million dollar business (NAG) with substantial personal income, a large residence, and other significant ties to Russia. The size,

¹ Which makes inadmissible "[a]ny alien who . . . seeks to enter the United States . . . (i) . . . (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information."

revenue, and hundreds of employees of NAG make it quite easy to establish both Nagibin's significant ties to Russia and the legitimacy of NAG's business activities.

40. During his consular interview for the B1/B2 visa, Nagibin was asked about Kovalenko, her position at NAG, her intent to transfer to the United States as an intra-company transferee (given the affiliate relationship between NAG and Nagtelecom), and other related matters.

41. During his consular interview, Nagibin was told that he was "flagged" in the system based on his business activities in the United States and that further investigation of those activities was necessary.

42. Almost 4 years later, on June 5, 2019, Nagibin was refused a visa on the grounds of INA 212(a)(6)(E) (Alien Smugglers), 212(a)(6)(C) (Misrepresentation), and 212(a)(3)(A)(i)(II) (Intent to violate U.S. export laws related to goods, technology or sensitive information). The refusal letter is attached hereto as **Exhibit B**.

43. Upon information and belief, the same derogatory information (submitted to U.S. government by Kuzmin) that affected Kovalenko's L-1 visa petition also affected the processing of Nagibin's B1/B2 visa application.

44. Said derogatory information was not true, did not have any basis in fact and/or law, was supplied by Kuzmin for the sole purpose of harming Nagibin, and could be rebutted by Nagtelecom and/or Nagibin if either were given an opportunity to confront it.

45. At all times relevant hereto, including the entire duration of his business partnerships with both Kuzmin (through Orion) and Nayandin (through Nagtelecom), Nagibin, NAG, Orion, and Nagtelecom (whether taken together or individually), i.e., Nagibin and his affiliate businesses, did not engage, attempt to engage, or intend to engage in export and/or sale

of any goods and/or services that would violate *any* United States laws, including those set forth in INA 212(a).

46. Rather, Nagibin and his affiliate businesses were exporting used computer networking equipment such as used internet hubs and routers from the United States to Russia and CIS countries, the export of which is not prohibited by any law and is entirely permissible.

47. At all times relevant hereto, Nagibin and his affiliate businesses did not engage (or attempt to engage) in any conduct that falls under the classification of "alien smuggling" as that term is defined in U.S. law.

48. At all times relevant hereto, Nagibin and his affiliate businesses did not engage in any act and did not make any statement, either directly or through agents, that falls under the category of "misrepresentation" as that term is defined in the INA.

49. At all times relevant hereto, Nagibin answered each question posed to him by any official of the U.S. Government completely and truthfully.

50. At all times relevant hereto, Nayandin answered each question posed to him by any official of the U.S. Government completely and truthfully.

51. Both Nagtelecom and Nagibin continue to have the intent to expand their business operations in the United States.

52. Nagtelecom desires to petition on behalf of Nagibin or another person having the knowledge and expertise sufficient to advance Nagtelecom's business objectives for an L-1 visa or a similar visa allowing dual intent.

53. Both Nagtelecom and Nagibin, together and each separately, are facing a permanent bar resulting from the "secret information" supplied by Kuzmin that is untrue, has no basis in law and/or fact, and that neither Nagtelecom nor Kuzmin has had any opportunity to confront.

54. Nagibin is not eligible to apply for a dual intent and/or an immigrant visa at this time and in the future because he is facing a permanent bar based on the secret derogatory information originated in the United States and supplied to the DHS and/or related government agencies.

55. Nagtelecom is not able to petition on behalf of Nagibin or another person for a dual intent and/or an immigrant visa because of the permanent bar stemming from the secret derogatory information.

56. There exists no procedural vehicle for either Nagtelecom or Nagibin to challenge and rebut the "secret derogatory information" and the attendant finding of 212(a)(3)(i)(II), 212(a)(6)(C)(i), and 212(a)(6)(E) ineligibility, which ineligibility is based on a set of untruthful allegations having no basis in law and/or fact.

57. Further, to date, the DHS and/or any related agencies have never made a formal finding that Nagibin and/or his affiliate businesses have: knowingly and intentionally committed fraud within the meaning of 212(a)(6)(C)(i), and/or engaged or intend to engage in illegal exports within the meaning of 212(a)(3)(A)(i)(II), and/or engaged in alien smuggling within the meaning of 212(a)(6)(E), much less articulate a basis for any such finding.

58. Nagibin and his affiliate businesses have always been in compliance with all applicable U.S. (and Russian Federation) laws.

59. None of the parties involved and suffering harm, namely NAG, Nagtelecom, and Nagibin, are, or have ever been, part of any criminal (or similar) complaint or investigation.

60. The secret and unpublished finding by the DHS that Nagibin and his affiliate businesses are ineligible for any immigration benefit by virtue of 212(a) subsections referenced above is a question of law and a threshold non-discretionary ineligibility determination.

61. Said finding is not a type of administrative action the authority for which is specified to be in the discretion of the Attorney General or the Secretary of Homeland Security.

62. The secret ineligibility determination is baseless and is being challenged in the instant action.

63. No exclusion, deportation, or removal proceedings have ever been commenced against Nagibin.

64. Plaintiffs have exhausted their administrative remedies.

65. There are no pending removal proceedings in which Nagibin (or any co-Plaintiff) could challenge the secret ineligibility determination.

FIRST CLAIM FOR RELIEF: DECLARATORY JUDGMENT

66. Plaintiffs re-allege and incorporate herein all the preceding paragraphs.

67. The subject of the DHS' 212(a) inadmissibility determination/finding is the legality of the trading activities of Nagtelecom and NAG, and the attendant finding that Nagtelecom, NAG, and/or Nagibin engaged or intend to engage in trade violating U.S. export laws.

68. The DHS determination that either Nagtelecom or NAG (or Nagibin) engaged or intend to engage in trading computer equipment the export of which from the United States is prohibited rests on false information and does not have any basis in law or fact.

69. The DHS inadmissibility finding is erroneous, arbitrary, capricious, and contrary to law.

70. The secret and unpublished DHS finding is procedurally improper and made without any rebuttal information from the plaintiffs.

71. The DHS finding is erroneous also because it is made without any basis to find intent on the part of the alien, as required by the INA.

72. The DHS finding acts as a bar for Nagtelecom to bring to the United States a person with sufficient knowledge to advance Nagtelecom's business objectives.

73. The DHS finding may not and should not be used to "flag" Nagibin in the government computer system.

74. Plaintiffs are entitled to a declaration that the DHS finding is a nullity and cannot be used against Plaintiffs to erect a permanent bar to Nagtelecom's ability to bring an L-1 transferee and to Nagibin's admissibility.

75. Plaintiffs are entitled to an injunction prohibiting any use of said finding to erect a permanent bar to Nagtelecom's ability to bring an L-1 transferee and to Nagibin's admissibility.

SECOND CLAIM FOR RELIEF: VIOLATION OF THE APA

76. Plaintiffs re-allege and incorporate herein all the preceding paragraphs.

77. Defendants are officials of a federal administrative agency covered by the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 *et seq.*

78. The secret and unpublished DHS finding is procedurally improper and made without any rebuttal information from the plaintiffs.

79. The DHS finding is erroneous because it is made without any basis in law or fact.

80. The secret and unpublished DHS finding which is nonetheless used as a permanent bar, is erroneous, arbitrary, capricious, and contrary to law.

81. This court should set aside the finding under the relevant provision of the APA and enjoin any use of it by any government agency.

THIRD CLAIM FOR RELIEF: VIOLATION OF DUE PROCESS

82. Plaintiffs re-allege and incorporate herein all the preceding paragraphs.

83. The Due Process Clause of the Fifth Amendment to the United States

Constitution prevents the federal government from depriving individuals and entities of a liberty and/or property interest without due process of law.

84. The secret and unpublished DHS finding used to erect as a permanent bar deprives Plaintiffs of property and/or liberty interests in violation of their rights to due process.

85. The finding does not allow Plaintiffs to present any evidence and/or argument in rebuttal of whatever derogatory information serves as a basis for that finding in violation of Plaintiffs' rights to due process.

86. The secret and unpublished DHS finding is procedurally improper and made without any rebuttal information from the plaintiffs.

87. The finding is erroneous because it is made without any basis to find intent on the part of either plaintiff, as required by the INA.

88. Plaintiffs are entitled to an order declaring said finding a nullity and prohibiting the use of said finding by any government agency to erect a permanent bar to Nagtelecom's ability to bring an L-1 transferee and to Nagibin's admissibility.

PRAYER FOR RELIEF

89. Based on the foregoing, Plaintiffs respectfully request that this Court:
- a. Declare the DHS finding referenced above a nullity as arbitrary, capricious and contrary to law;
 - b. Declare the DHS finding a nullity as made without due process of law and in violation of Plaintiffs' due process rights;
 - c. Issue an order prohibiting the DHS and any other agency from using said finding as grounds for a permanent bar to Nagtelecom's ability to bring an L-1 transferee and to Nagibin's admissibility for an immigrant and/or dual intent visa;

- d. Issue an order requiring the DHS to communicate to the Yekaterinburg Consulate that the permanent bar previously appearing in the system has been lifted and removed;
- e. Award Plaintiffs attorney fees under the Equal Access to Justice Act and any other applicable statute, regulation, and/or other law;
- f. Grant any other relief this Court deems just and proper.

Respectfully submitted,

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