

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Appeal of

LINDITA COLAJ, on behalf of herself and
all persons similarly situated

Petitioner-Plaintiff,

For a Judgment Pursuant to § 3001 and Articles 9 and
78 of the Civil Practice Law and Rules,

VERIFIED PETITION

-against-

Index No.:

SAMUEL D. ROBERTS, as Commissioner of the
New York State Office of Temporary and Disability
Assistance,

and

STEVEN BANKS, as Commissioner of the
New York City Human Resources Administration,

Respondents-Defendants.
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PRELIMINARY STATEMENT

1. Petitioner LINDITA COLAJ brings this proceeding pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”), the Constitution and laws of New York, and the United States Constitution, seeking reversal of the Decision after Fair Hearing (“DAFH”) issued by Respondent New York State Office of Temporary and Disability Assistance’s (“OTDA”), in which OTDA affirmed Respondent New York City Human Resources Administration’s (“HRA”) denial of her application for critical Safety Net Assistance on the basis of her immigration status.

2. Ms. Colaj also seeks, on behalf of herself and a class of similarly situated applicants, a Declaration pursuant to CPLR § 3001 that Respondents' policy applied in that denial and DAFH is arbitrary and capricious, and violates her and the class's rights under the United States Constitution's Equal Protection Clause, as made actionable under 42 U.S.C. § 1983; the New York Constitution's Equal Protection Clause and provision guaranteeing "aid and care to the needy" under N.Y. Const. Art. I, §6; and New York law.

3. Specifically, Ms. Colaj seeks a declaration that individuals seeking Safety Net Assistance who are asylum applicants with work authorization must be classified as immigrants "permanently residing under color of law" ("PRUCOL") when local social services districts determine the eligibility of such individuals for Safety Net Assistance. She asks this Court to enjoin OTDA and HRA to consider her and other similarly situated asylum applicants with work authorization to be "PRUCOL," and accordingly grant them Safety Net Assistance if they are otherwise eligible.

4. Ms. Colaj brings this class action on behalf of herself and all past, present, and future applicants for Safety Net Assistance in New York State who applied for Safety Net Assistance within the three years preceding this Petition and who, at the time of their application:

- a) were or are applicants for asylum granted work authorization by the United States Citizenship and Immigration Services ("USCIS"), and
- b) were or will be denied Safety Net Assistance benefits solely as a result of their immigration status.

5. The DAFH that is the subject of this Article 78 proceeding and complaint is identified by Respondent OTDA as Fair Hearing No. 7453658K. *In the Matter of the Appeal of Lindita Colaj*, Fair Hearing No. 7453658K (Apr. 28, 2017), Ex. B to the Affirmation of Abby

Biberman (“Biberman Aff.”). This decision upheld the prior determination of Respondent Steven Banks, as Commissioner of the New York City Human Resources Administration, to deny Ms. Colaj’s application for Safety Net Assistance benefits due to alien status. Biberman Aff. Ex. B.

THE PARTIES

6. Petitioner LINDITA COLAJ is a 35-year-old Albanian immigrant who resides in the Bronx with her severely disabled 4-year-old son. Ms. Colaj was the appellant in an Administrative Fair Hearing that occurred on March 16, 2017, the outcome of which is challenged in this Petition.

7. Respondent SAMUEL D. ROBERTS is the Commissioner of OTDA and is responsible for the administration of Public Assistance and Supplemental Nutrition Assistance Programs in New York State, for adjudicating and issuing decisions after hearings requested by Public Assistance and Supplemental Nutrition Assistance Program benefits recipients, and for the compliance of local social services districts with all State, federal, and other applicable law.

8. Respondent STEVEN BANKS is the Commissioner of HRA and is responsible for the administration of Public Assistance benefits in New York City and for HRA’s compliance with the applicable law and regulations.

VENUE

9. Venue is proper in New York County, pursuant to C.P.L.R. §§ 506(b) and 7804(b), in that it is the county where HRA maintains its principal place of business.

CONSTITUTIONAL, STATUTORY AND REGULATORY FRAMEWORK

10. The Fourteenth Amendment of the United States Constitution provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

11. Section Eleven of Article I of the New York Constitution states, “No person shall be denied equal protection of the laws of this state or any subdivision thereof.” N.Y. Const. art. I, §11.

12. Section One of article XVII of the New York Constitution provides, “The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions and in such manner and by such means as the legislature may from time to time determine.” N.Y. Const. art. XVII, §1.

13. One of the Public Assistance programs that New York has enacted in fulfillment of its constitutional duty to aid the needy is the Safety Net Assistance program. *See* N.Y. Soc. Serv. Law § 159.

14. The Safety Net Assistance program provides State-funded benefits to eligible individuals and households who do not qualify for federally funded Family Assistance. It consists of cash and non-cash benefits, such as shelter allowance.

15. The Safety Net Assistance program in New York State is administered by OTDA. OTDA supervises local social services districts, such as HRA, in the administration of these benefits to eligible residents. N.Y. Soc. Serv. Law §§ 17, 20, 22, 61.

16. OTDA is responsible for ensuring that the local districts administer the Safety Net Assistance Program in accordance with State law. N.Y. Soc. Serv. Law §§ 20, 22. Social Services Law § 122(1)(c)(ii) defines those immigrants who are eligible for Safety Net Assistance and includes those who are “otherwise permanently residing in the United States under color of law.”

17. Social Services Law § 158(1)(g) similarly provides that “an alien who is permanently residing under color of law but is not a qualified alien” is eligible for Safety Net Assistance.

18. State regulations governing public assistance eligibility also include aliens “otherwise permanently residing in the United States under color of law; as such term was used on August 21, 1996, by the Federal Administration for Children and Families.” 18 N.Y.C.R.R. 349.3(b)(1)(iv).

19. Federal regulations explicitly provide that asylum applicants are “lawfully residing” for the purposes of several federal programs, including Social Security and Medicare. *See, e.g.*, 8 C.F.R. § 1.3; 42 C.F.R §§ 417.422, 422.50, 423.30. While their applications are pending, asylum applicants are “permitted to remain in the United States.” Dep’t of Homeland Sec., Instructions to I-589, Application for Asylum or Withholding of Removal (May 16, 2017) at 13.

20. After an application for asylum has been pending for 150 days, the applicant may apply for employment authorization. 8 C.F.R. § 208.7(a)(1). Once work authorization is granted, it is renewable until a final determination has been made on the asylum application. 8 C.F.R. § 208.7(b).

STATEMENT OF FACTS

21. In May 2015, Lindita Colaj left Albania with her then 2-year-old son, G.C., in order to escape political persecution and get urgent medical care for her son. They have lived in the United States for over two years.

22. Ms. Colaj speaks and understands only Albanian.

23. Ms. Colaj submitted an application for asylum and received an I-797C, Notice of Action, stating that USCIS received the Application on November 24, 2015. Biberman Aff. Ex. D.

24. Ms. Colaj was approved for work authorization starting September 13, 2016.

Biberman Aff. Ex. C.

25. Ms. Colaj has no income and is presently unable to work because she is the sole caretaker for her severely disabled 4-year-old son.

26. Ms. Colaj and her son are both enrolled in Medicaid.

27. On October 28, 2016, Ms. Colaj first applied for ongoing Safety Net Assistance and other relief. She was orally denied due to her immigration status on or around December 2, 2016, and denied in writing on December 23, 2016. Biberman Aff. Ex. A.

28. Because she had not yet received a written denial of her first application, Ms. Colaj submitted a second application for Safety Net Assistance on December 14, 2016.

29. On January 6, 2017, Ms. Colaj requested Fair Hearing 7453658K, to challenge the December 23, 2016 denial of her October 28, 2016 Safety Net Assistance application.

30. On January 11, 2017, HRA issued a written denial of the second application, again citing Ms. Colaj's immigration status as the reason for the denial.

31. The Fair Hearing was held on March 16, 2017.

32. On April 28, 2017, OTDA issued a DAFH, upholding HRA's determination that Ms. Colaj was ineligible for Safety Net Assistance. *See* DAFH 5.

33. The DAFH mistakenly refers to the January 11, 2017 denial of Safety Net Assistance, despite Ms. Colaj having requested the hearing on January 6, 2017 to challenge the December 23, 2016 denial. *See* DAFH 1.

34. OTDA made several findings of fact in the DAFH, including:
"In order to determine the Appellant's eligibility to receive Public Assistance benefits, the Agency asked the Appellant to provide the Agency with proof of citizenship or of being a legal alien resident." DAFH 1.

35. The DAFH also made the finding of fact that “[t]he Appellant did not provide the Agency with the requested documentation.” DAFH 1.

36. Ms. Colaj did in fact provide documentation of her status as an asylum applicant with work authorization. All of the materials she provided with her application, including her I-797C and employment authorization card, were also submitted as evidence at the Fair Hearing.

37. The DAFH’s applicable law section quotes 18 N.Y.C.R.R. § 349.3(b)(1)(iv), which states that aliens “otherwise permanently residing in the United States under color of law” are eligible for Safety Net Assistance. DAFH 4.

38. The DAFH concludes that, “Pursuant to the Regulations, an applicant for Asylum has not been granted PRUCOL status for SNA purposes.” DAFH 5. This determination is being challenged in this Petition.

CLASS ACTION ALLEGATIONS

39. Ms. Colaj brings this class action pursuant to C.P.L.R. article 9 on behalf of all past, present, and future applicants for Safety Net Assistance in New York State who filed or submitted their applications to their local social services districts within the three years preceding this Petition and who:

- a) were or are asylum applicants with work authorization; and
- b) were or will be denied Safety Net Assistance benefits solely as a result of their immigration status.

40. On information and belief, the proposed class is so numerous that joinder of all members is impracticable.

41. There are questions of law and fact common to the proposed class that

predominate over any questions affecting only individual members, namely, whether, for the purpose of determining eligibility for Safety Net Assistance, Respondents must classify asylum applicants with work authorization as PRUCOL.

42. The claims of Ms. Colaj are typical of the claims of the plaintiff class. All claims arise from Respondents' course of practice and administrative conduct, which unconstitutionally and unlawfully deprive the plaintiff class of critical Safety Net Assistance benefits solely on the basis of their immigration status.

43. Ms. Colaj's claims that the Respondents' policies and actions violate her rights under the United States and New York State Constitutions and New York law are identical to the claims that are raised by the proposed class as a whole, as well as by each member of the proposed class.

44. Ms. Colaj will fairly and adequately protect the interests of the class.

45. In supporting her own claims, Ms. Colaj will simultaneously advance the claims of the other class members.

46. Ms. Colaj is represented by the New York Legal Assistance Group. This public interest law firm has extensive experience in public assistance and class action litigation, having litigated such matters in the courts of New York State and in the United States District Courts in New York. Counsel for Ms. Colaj will diligently and expeditiously press the claims of the class.

47. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Indeed, only a class remedy will afford relief to those who have been victimized by the challenged policies and practices of Respondents which are denying benefits to individuals solely because of their status as asylum applicants with work

authorization.

48. The members of the proposed class have little or no income, and are without the resources that would be necessary to raise their claims in individual actions. Furthermore, due to the complexity of the issues raised by this class action and the scarcity of legal services attorneys available to take public assistance cases, it is unlikely that a substantial number of individual proceedings would be brought by the members of the proposed class.

49. Class certification is therefore essential to ensure that all potential plaintiffs and class members will be protected and that the resources of the judicial system and all counsel will be efficiently utilized.

LEGAL CLAIMS

FIRST CLAIM ON BEHALF OF THE PETITIONER

50. Respondents' denial of Safety Net Assistance to Ms. Colaj was arbitrary and capricious under C.P.L.R. § 7803(3) because there is no rational basis for excluding an asylum applicant with work authorization from the PRUCOL classification, and by that exclusion rendering her ineligible for Safety Net Assistance benefits.

SECOND CLAIM ON BEHALF OF THE PETITIONER

51. Respondents' denial of Safety Net Assistance to Ms. Colaj is affected by an error of law pursuant to CPLR § 7803(3) insofar as the decision violates Ms. Colaj's rights under the New York and United States Constitutions and under New York Social Services Law §§ 122 and 131(1).

**THIRD CLAIM ON BEHALF OF
THE PETITIONER AND THE PLAINTIFF CLASS**

52. Respondents' denial of Safety Net Assistance benefits to Ms. Colaj and the members of the plaintiff class solely as a result of their immigration status violates New York Social Services Law §§ 122 and 131(1).

**FOURTH CLAIM ON BEHALF OF
THE PETITIONER AND THE PLAINTIFF CLASS**

53. Respondents' denial of Safety Net Assistance benefits to Ms. Colaj and the members of the plaintiff class solely as a result of their immigration status violates the Equal Protection Clause of the New York Constitution, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, as made actionable by 42 U.S.C. § 1983.

**FIFTH CLAIM ON BEHALF OF
THE PETITIONER AND THE PLAINTIFF CLASS**

54. Respondents' denial of Safety Net Assistance benefits to Ms. Colaj and the members of the plaintiff class solely as a result of their immigration status violates article XVII, § 1 of the New York Constitution, which guarantees the aid and care of the needy.

RELIEF REQUESTED

WHEREFORE, Petitioner, on behalf of herself, respectfully requests that the Court issue an Order and Judgment:

- a) ANNULING AND REVERSING Respondent OTDA's Fair Hearing Decision No. 7453648K, dated April 28, 2017, and Respondent HRA's denial of Petitioner's Safety Net Assistance application, on the grounds that these determinations are arbitrary and capricious and violate Petitioner's rights to equal protection under the United States and New York Constitutions, to "aid and care to the needy" under article XVII, § 1 of the New York State Constitution, and to Safety Net Assistance under New York law;
- b) DIRECTING Respondent HRA to (i) cease considering Petitioner ineligible for Safety Net Assistance due to her immigration status, (ii) determine Petitioner's eligibility for Safety Net Assistance benefits retroactive to her October 28, 2016 application, and (iii) provide Petitioner with all benefits to which she is entitled;

c) DECLARING that Respondents' denial of her application on the ground that she is an asylum applicant with work authorization violates:

- i. the United States Constitution;
- ii. the New York State Constitution; and
- iii. New York statutes and regulations;

WHEREFORE, on behalf of herself and the proposed class, Petitioner respectfully requests that the Court issue and Order and Judgment:

a) CERTIFYING this action and proceeding, pursuant to CPLR article 9, as a class action;

b) DECLARING that Respondents' policy and practice of denying individuals who are asylum applicants with work authorization, like Ms. Colaj and members of the plaintiff class, Safety Net Assistance benefits solely as a result of their immigration status violates:

- i. the United States Constitution;
- ii. the New York State Constitution; and
- iii. New York statutes and regulations;

c) PERMANENTLY ENJOINING Respondents from continuing their policy and practice of denying Petitioner and the plaintiff class Safety Net Assistance benefits solely as a result of their immigration status;

d) ORDERING Respondent OTDA to:

- i. identify all class members who in the three years preceding this Petition have been denied Safety Net Assistance benefits as a result of Respondent's policy of refusing to recognize asylum applicants with work authorization as PRUCOL;
- ii. Provide adequate notice and relief to all identified individuals;

- e) AWARDING costs and disbursements pursuant to articles 81 and 83 of the CPLR and counsel fees pursuant to C.P.L.R. 909, article 86 of the C.P.L.R., 42 U.S.C. § 1988, and any other relevant state or federal provision; and
- f) GRANTING such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Section 7804 of the CPLR, Respondents shall file with their answer a certified transcript of the record of the proceedings under consideration, and any answering papers shall be served on the undersigned no later than seven (7) days before the return date of the Petition.

Dated: 8/4/17
New York, New York



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