

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

CARMEN L. ENCARNACION,)
Appellant,)
)
v.) Vet. App. No. 21-1411-EAJA
)
DENIS MCDONOUGH,)
Secretary of Veterans Affairs,)
Appellee.)

**SECRETARY’S RESPONSE UNDER U.S. VET. APP. R. 39(a)(1) TO
APPELLANT’S APPLICATION FOR ATTORNEY FEES AND EXPENSES**

Pursuant to U.S. Vet. App. Rule 39(a)(1), Appellee, Secretary of Veterans Affairs, responds to Appellant’s application for an award of attorney fees and expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412.

Appellant’s EAJA application satisfies the jurisdictional requirements of the statute as set out by this Court in *Bazalo v. Brown*, 9 Vet.App. 304, 308 (1996) (en banc). Additionally, the Secretary concedes that Appellant has met the three predicate findings for an EAJA award: (1) Appellant is a "prevailing party;" (2) the Secretary’s position was not “substantially justified;” and (3) there are no “special circumstances” which would make an award unjust. 28 U.S.C. § 2412(d).

For purposes of avoiding further litigation and the costs related thereto, the Secretary is not contesting the reasonableness of Appellant’s attorney fees or expenses, see 28 U.S.C. § 2412(d)(1)(C) and is prepared to make payment to Appellant and his representative of record. The Secretary’s concession here, however, in no way denotes the Secretary’s position as to any issue or matter

presented herein which may potentially affect the litigation or settlement of future applications for attorney fees and costs filed with this Court pursuant to 28 U.S.C. § 2412.

Accordingly, the Secretary does not contest a total award of **\$29,356.31** for fees and expenses.

CONCLUSION

WHEREFORE, Appellee responds to Appellant's application for the award of attorney fees and other expenses, and advises the Court that he does not contest an award in an amount deemed reasonable by the Court, up to **\$29,356.31**.

Respectfully submitted,

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