

**FILED**

October 7, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 05-50680  
Summary Calendar

---

JOSEPH M. MEDRANO,

Plaintiff-Appellant,

versus

JO ANN BARNHART, COMMISSIONER  
OF SOCIAL SECURITY,

Defendant-Appellee.

---

Appeal from the United States District Court for  
the Western District of Texas  
(USDC No. 5:04-CV-75)

---

Before REAVLEY, JOLLY and OWEN, Circuit Judges.

PER CURIAM:\*

Joseph M. Medrano appeals the denial by the district court of his request for attorney's fees and expenses under the Equal Access to Justice Act (EAJA), 28

U.S.C. § 2412(d). We affirm for these reasons:

---

\*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

1. Because there was extensive evidence in the record supporting both sides of the dispute and the evidence did not conclusively weigh in favor of either side, the district court did not abuse its discretion in determining that the government's position was substantially justified. *Pierce v. Underwood*, 487 U.S. 552, 565, 108 S.Ct. 2541, 2550, 101 L.Ed.2d 490 (1988) (the position of the government will be deemed to be substantially justified "if there is a 'genuine dispute' ... or 'if reasonable people could differ as to [the appropriateness of the contested action]'"").
2. The fact that the district court ultimately remanded the case back to the agency to further develop the factual record does not lead to a finding of no substantial justification. *Id.* at 566 n.2 (stating that "a position can be justified even though it is not correct").

AFFIRMED.