

1 Brent W. Renison (Ore. SBN 96475)  
Admitted pro hac vice  
2 PARRILLI RENISON LLC  
5285 SW Meadows Rd., Ste 175  
3 Lake Oswego, Oregon 97035  
Telephone: (503) 597-7190  
4 Facsimile: (503) 726-0730  
brent@entrylaw.com  
5

6 Attorneys for Plaintiffs-Petitioners and  
Class Members  
7

8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION  
11

12 CAROLYN ROBB HOOTKINS, et. al., ) Case No. CV07-5696 CAS (MANx)  
13 )

14 Plaintiffs-petitioners, )

Date: June 9, 2008

) Time: 10:00 a.m.

15 vs. )

Courtroom: 5

) Honorable Christina A. Snyder

16 MICHAEL CHERTOFF, U.S. Department )  
17 of Homeland Security, et. al., )

PLAINTIFFS' REPLY IN SUPPORT OF

) SUPPLEMENTAL MEMORANDUM

18 Defendants-respondents. )

OF LAW IN SUPPORT OF MOTION

) FOR CLASS CERTIFICATION

) CLASS ACTION  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

1 In reply to Defendants' Response to Plaintiffs' Supplemental Memorandum  
2 of Law in Support of Motion for Class Certification ("Def.'s Resp. Supp. Memo."),  
3 plaintiffs reply that class certification is nevertheless appropriate for the following  
4 reasons. With respect to Def.'s Resp. Supp. Memo. pp. 2-4, where defendants argue that  
5 plaintiffs had remedies that they have not pursued, or have cases or motions that have not  
6 yet been adjudicated, defendants miss the point. Plaintiffs' claims are that the rules being  
7 applied to them are illegal with respect to treatment as immediate relatives. This analysis  
8 is unaffected by the individual facts of each plaintiffs' case, because the proper  
9 application of the law in all the cases is at issue.  
10  
11  
12

13 Defendants argue that plaintiffs are "trying to form a nationwide class based  
14 on the decision in the *Freeman* case, which only applies within the Ninth Circuit." Def.'s  
15 Resp. Supp. Memo. 4. Plaintiffs, however, do not argue that *Freeman* is binding on  
16 plaintiffs and class members outside the Ninth Circuit, but rather that the statute is clear  
17 and that defendants' interpretation of the law is not in accordance with the statute.  
18 Defendants arguments against commonality are restatements of previous arguments, and  
19 without merit. Def.'s Resp. Supp. Memo pp. 5-7. The shared common issue is the  
20 proper interpretation of the immediate relative definition, and the permissible inquiry in  
21 relation to the immigrant visa petition.  
22  
23  
24  
25

26 Defendants argue that plaintiffs have not met the requirements of typicality,  
27 Def.'s Resp. Supp. Memo pp. 8-10, primarily because defendants allege that the litigation  
28

1 will focus on plaintiffs' individual facts. Nevertheless, the inquiry at issue is a legal one,  
2 and no trial will be necessary. The Court need only instruct defendants on the proper  
3 application of the immediate relative definition, and allow defendants to adjudicate each  
4 individual case on its own merits. Provided plaintiffs and class members can obtain a  
5 lawful adjudication of the I-130 and I-129F petitions filed on their behalf, they can obtain  
6 approval for lawful permanent resident status through one of a number of administrative  
7 processes, including an I-485 through USCIS, or a renewed I-485 through an  
8 Immigration Judge, or through Consular Processing with the U.S. State Department. The  
9 Court need only rule on the law that applies to immediate relative petitions, and leave the  
10 individual adjudications to the agencies. The claims of plaintiffs are typical of the claims  
11 of class members, and can be adjudicated as a matter of law by the Court on the basis of  
12 the statutes at issue.  
13  
14  
15  
16  
17

18 Defendants argue that plaintiffs have not met the requirements of adequacy,  
19 Def.'s Resp. Supp. Memo pp. 10-13, stating that plaintiffs "do not address the real issue:  
20 how they will ensure that they will adequately represent the proposed class, since the  
21 nature of the proposed class is very diverse and disparate." Id. at 11. The alleged  
22 differences outlined by defendants on pages 11-13 of Def.'s Resp. Supp. Memo only  
23 serve to underscore that defendants themselves have created these variances by  
24 establishing inconsistent and illegal requirements for those who are in the same position –  
25 immediate relatives who are the beneficiaries of properly filed petitions when the U.S.  
26  
27  
28

1 citizen relative dies during bureaucratic processing. If the proper standard were applied  
2 by defendants, the alleged differences would disappear. Defendants should not be  
3 allowed to defeat adequacy by their own unlawful actions.  
4

5 Defendants argue that plaintiffs have not demonstrated that the class is  
6 maintainable under 23(b)(3), Def.'s Resp. Supp. Memo pp. 13-15 (see also Supplemental  
7 Statement to Defendants' Response pp. 1-2), because the elements of predominance and  
8 superiority are not established. Plaintiffs addressed predominance in the Memorandum in  
9 Support of Motion for Class Certification (Docket No. 11), at pages 6-7, and alleged  
10 superiority at pages 7-8.  
11

12 Additionally, even if the Court rules that the action is not maintainable under  
13 23(b)(3), the action is nevertheless maintainable under 23(b)(2), as set out in the  
14 pleadings. Complaint, p. 34, para. 162; First Amended Complaint, p. 35-36, para. 162.  
15 The Court is required only to form a reasonable judgment for each certification  
16 requirement and may consider the "allegations of the class action complaint and the  
17 supplemental evidentiary submissions of the parties." *Californians for Disability Rights,*  
18 *Inc. v. California Dept. of Transp.*, \_\_ F.R.D. \_\_, 2008 WL 697065, at \*3 (N.D. Cal. Mar.  
19 13, 2008). In *Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1180 (9th Cir. 2001),  
20 the Court held,  
21

22 Rule 23(b)(2) provides that a class action is appropriate if 'the party  
23 opposing the class has acted or refused to act on grounds generally  
24 applicable to the class, thereby making appropriate final injunctive relief or  
25

1 corresponding declaratory relief with respect to the class as a whole.’ Fed. R.  
2 Civ. P. 23(b)(2). Class certification under Rule 23(b)(2) is appropriate only  
3 where the primary relief sought is declaratory or injunctive. *Nelsen v. King*  
4 *County*, 895 F.2d 1248, 1254-55 (9th Cir. 1990); *O’Connor v. Boeing N.*  
5 *Am., Inc.*, 180 F.R.D. 359, 377 (C.D. Cal. 1997)”

6 *Id.* at 1195. Whereas the plaintiffs in *Zinser* primarily sought monetary damages,  
7 plaintiffs herein request primarily declaratory and injunctive relief. As stated in the  
8 pleadings, “The instant action should be maintained as a class action under Fed. R. Civ.  
9 P. 23(b)(2) because the defendants-respondents have acted on grounds generally  
10 applicable to each member of the class by misinterpreting the term “spouse” for purposes  
11 of the immediate relative definition found at 8 U.S.C. 1151(b)(2)(A)(i), and of  
12 defendants-respondents’ illegal actions in denying lawful permanent resident status to  
13 plaintiffs-petitioners solely due to the death of their spouse.” Complaint, p. 34, para. 162;  
14 First Amended Complaint, p. 35-36, para. 162. Defendants have acted, and failed to act,  
15 on plaintiffs’ and class members petitions because defendants generally consider them no  
16 longer to be immediate relatives. In the Ninth Circuit, where *Freeman* controls,  
17 defendants claim to have the authority to treat plaintiffs as spouses only if plaintiffs  
18 comply with additional unrelated and illegal requirements.<sup>1</sup> Additionally, defendants do  
19 not consider *Freeman* to apply to K-1 entrants (like plaintiff Nguyen) or those who were  
20 the beneficiary of only an I-130 petition and not an I-485 application, and will not treat  
21

22 \_\_\_\_\_  
23  
24  
25  
26  
27 <sup>1</sup> Namely, the Substitute Sponsor and Humanitarian Reinstatement requirements which  
28 are being challenged as a matter of law.

1 them as immediate relatives. Outside the Ninth Circuit, defendants refuse to treat all  
2 plaintiffs and class members as immediate relatives. Therefore, the class is also  
3 maintainable under 23(b)(2), as stated in the Complaint, because defendants have acted  
4 and failed to act on grounds *generally* applicable to the class, and the requested relief is  
5 *primarily* declaratory or injunctive.  
6  
7

8 DATED this 19th day of May, 2008.  
9

10 By S/ Brent W. Renison  
11 BRENT W. RENISON, Oregon SBN. 96475  
12 PARRILLI RENISON LLC  
13 5285 SW Meadows Rd., Ste 175  
14 Lake Oswego, Oregon 97035  
15 (503) 597-7190  
16 (503) 726-0730 fax  
17 E-mail: [brent@entrylaw.com](mailto:brent@entrylaw.com)  
18 *Admitted pro hac vice*

19 Attorneys for Plaintiffs-petitioners  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 PROOF OF SERVICE

2 I, the undersigned, say: my business address is 5285 SW Meadows Rd., Ste 175,  
3 Lake Oswego, Oregon 97035. I am over the age of eighteen years and not a party to the  
4 above-entitled action.

5 On May 19, 2008, true and correct copies of the plaintiffs': PLAINTIFFS' REPLY  
6 IN SUPPORT OF SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF  
7 MOTION FOR CLASS CERTIFICATION, were served pursuant to the district court's  
8 ECF system to the following ECF filers:

9 Elizabeth Stevens  
10 Sheri R. Glaser  
11 Melissa S. Leibman  
12 Office of Immigration Litigation  
13 USDOJ Civil Division  
14 P.O. Box 878  
Ben Franklin Station  
Washington, DC 20044

15 I declare under penalty of perjury under the laws of the United States of America  
16 that the foregoing is true and correct.

17 EXECUTED on May 19, 2008, at Lake Oswego, Oregon.

18  
19 S/ Brent W. Renison  
20 Brent W. Renison, Declarant