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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: January 28, 2008
15 vs.) Time: 10:00 a.m.
16) Courtroom: 5
MICHAEL CHERTOFF, U.S. Department) Honorable Christina A. Snyder
17 of Homeland Security, et. al.,) MEMORANDUM OF POINTS AND
18) AUTHORITIES IN SUPPORT OF
19 Defendants-respondents.) MOTION FOR CLASS
20) CERTIFICATION
21)
22) CLASS ACTION
23)
24)
25)
26)
27)
28)

1 many times, than the number of identified class members.

2 Counsel for plaintiffs-petitioners, for example have not been able to
3 locate any surviving spouses of Hurricane Katrina victims, although U.S.
4 Representative F. James Sensenbrenner, Jr. (R-WI) introduced legislation in
5 the 109th Congress (H.R. 3827, never became law) to assist such surviving
6 spouses, leading counsel to believe that such victims do, in fact, exist. It is
7 believed that there are many hundreds, if not thousands, of surviving spouses
8 throughout the country whose petitioning relatives died prior to
9 beneficiaries' adjudication and approval of lawful permanent resident status.

10 Counsel for plaintiffs-petitioners, Brent W. Renison, has maintained a
11 spreadsheet of cases affected by defendants-respondents erroneous
12 interpretation of the word "spouse" since 2004. The spreadsheet includes
13 surviving spouses from Arkansas, Arizona, California, Colorado,
14 Connecticut, Florida, Georgia, Illinois, Louisiana, Massachusetts,
15 Maryland, Michigan, Missouri, North Carolina, New Jersey, Nevada, New
16 York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee,
17 Texas, Virginia, Washington and Wisconsin. The list includes surviving
18 spouses from the following countries: Australia, Philippines, Mexico,
19 Canada, Costa Rica, Belgium, India, Russia, Turkey, Ecuador, Peru, United
20 Kingdom, Kenya, Uzbekistan, Vietnam, Columbia, Ghana, Poland, Nigeria,
21 Korea, Japan, South Africa, Brazil, Venezuela, Haiti, China, Romania,
22 Thailand, Kosovo, Spain, Cambodia, Nepal, Pakistan, Czech Republic,
23 Jamaica, Burma, Finland, Hungary, Lithuania, Barbados, Syria, Germany,
24 Malaysia, Bolivia, Dominican Republic, and Ukraine. The class is
25 numerous, nationwide, and represents many countries.

26
27 Although defendants-respondents have expended welcome efforts to
28

1 reduce processing delays and security check backlogs, such backlogs and
2 delays continue to be rather commonplace. So long as delays between filing
3 and adjudication continue to be significant, class members who suffer the
4 death of a relative will continue to face the wrongful denial of their
5 applications at the hands of defendants-respondents.

6 **B. QUESTIONS OF LAW AND FACT ARE COMMON TO**
7 **THE CLASS**

8 The proposed class meets the commonality requirement of Fed. R. Civ.
9 P. 23(a)(2) because there are questions of law and fact common to the class.
10 Common questions of law include whether defendants-respondents
11 unlawfully stripped plaintiffs-respondents of immediate relative status upon
12 the death of their petitioning relatives, and the proper definition of “spouse”
13 for purposes of 8 U.S.C. § 1151(b)(2)(A)(i). Common questions of fact
14 include whether plaintiffs-respondents met the essential prerequisites for
15 immediate relative status including marriage to a United States citizen and
16 the filing by the citizen of a petition.
17

18 The variances in the class members’ and plaintiffs-petitioners’
19 marriage are irrelevant to their complaints against defendants-respondents
20 for immediate relative status, because the determination of immediate
21 relative status is one that can be made as a matter of law. Plaintiffs-
22 petitioners are not asking the Court to decide whether each merits discretion
23 to be accorded the status of Lawful Permanent Resident, but whether class
24 members qualify *as a matter of law* as immediate relatives. The individual
25 variations found in each of plaintiffs-petitioners’ cases are relevant only to
26 the individual determinations, to be made by defendants-respondents,
27 whether each merits the positive exercise of discretion for Lawful Permanent
28

1 Resident Status. The issues in this action are limited in scope, and not
2 affected by individual circumstances of class members. Common issues
3 predominate.

4 **C. THE CLAIMS OF THE REPRESENTATIVE PARTIES ARE**
5 **TYPICAL OF THE CLAIMS OF THE CLASS**

6 The proposed class meets the typicality requirement of Fed.R.Civ.P.
7 23(a)(3) because the claims of the named plaintiffs-petitioners are typical of
8 the claims of each of the class members. The named plaintiffs-petitioners
9 complain of the defendants-respondents misinterpretation of the term
10 “spouse” for purposes of the immediate relative definition found at 8 U.S.C.
11 §1151(b)(2)(A)(i), and of defendants-respondents illegal actions in denying
12 or withholding lawful permanent resident status to plaintiffs-petitioners
13 solely due to the death of their spouse. The claims of each class
14 representative are typical of the claims of each member of that class.
15

16 The named plaintiffs-petitioners applied for Lawful Permanent
17 Resident status, in order to reside lawfully within the United States. Class
18 members also applied for Lawful Permanent Resident status, and share the
19 same goal as plaintiffs-petitioners.

20 **D. PLAINTIFFS-PETITIONERS WILL FAIRLY AND**
21 **ADEQUATELY PROTECT THE INTERESTS OF THE**
22 **CLASS**

23 The named plaintiffs-petitioners will fairly and adequately protect the
24 interests of the class as required by Fed.R.Civ.P. 23(a)(4) because their
25 interests are identical to those of the other members of the class. Plaintiffs-
26 petitioners know of no conflicts between their interests and those of the class
27 they seek to represent.
28

1 Plaintiffs-petitioners, like class members, each want to be able to
2 reside lawfully in the United States with their families, as was the wish of
3 their United States citizen spouses, expressed through the filing of the
4 Petition for Alien Relative, Form I-130, filed on their behalf.

5 **II. THIS ACTION IS MAINTAINABLE AS A CLASS ACTION**

6
7 **A. QUESTIONS OF LAW OR FACT COMMON TO THE**
8 **MEMBERS OF THE CLASS PREDOMINATE AND A**
9 **CLASS ACTION IS SUPERIOR TO OTHER METHODS**

10 The central question in the lawsuit is the definition of the word
11 “spouse” found in 8 U.S.C. § 1151(b)(2)(A)(i). Other questions of law or
12 fact specific to each of the class members are dwarfed by the significance of
13 the interpretation of the word spouse. Because the Court has jurisdiction to
14 review questions of law with respect to the adjudication of plaintiffs-
15 petitioners’ applications for lawful permanent resident status, the
16 significance of the word spouse in the statute predominates over variances in
17 the class members individual circumstances.

18 For example, most class members entered lawfully in one of many
19 nonimmigrant visa classifications (including B, F, H, etc.), and subsequently
20 filed lawfully to adjust status from nonimmigrant to immigrant by filing
21 Form I-485 pursuant to 8 U.S.C. § 1255 based on a concurrently filed
22 immigrant petition, Form I-130, filed by his or her spouse pursuant to 8
23 U.S.C. § 1154. Some class members entered lawfully as nonimmigrant K-1
24 fiancé(e)s of U.S. citizens following a petition for alien fiancé(e), Form I-
25 129F, filed pursuant to 8 U.S.C. § 1184(d). Such class members married
26 within 90 days of entry as required by 8 U.S.C. § 1101(a)(15)(K)(i), and
27 filed lawfully to adjust status from K-1 nonimmigrant to immigrant by filing
28

1 Form I-485 pursuant to 8 U.S.C. § 1255. Pursuant to 8 U.S.C. §
2 1186a(g)(1), the term “alien spouse” means an immediate relative described
3 in 8 U.S.C. § 1151(b)(2)(A)(i) *and* an alien admitted under 8 U.S.C. §
4 1184(d) as the fiancée or fiancé of a U.S. citizen. Therefore, the definition
5 of the word “spouse” is controlling for each of these class members,
6 although the manner of their visa processing may be slightly different.

7 Additionally, some class members were abroad when their U.S.
8 citizen spouses filed Form I-130, Petition for Alien Relative, pursuant to 8
9 U.S.C. § 1154. The manner of their application for lawful permanent
10 resident status does not affect the determination of their immediate relative
11 status pursuant to 8 U.S.C. § 1151(b)(2)(A)(i), which rests upon the proper
12 determination of the term “spouse” found in that section. *The question of*
13 *law – whether defendants-respondents may strip plaintiffs-petitioners of the*
14 *status of spouse – predominates over other questions only affecting*
15 *individual members.*

16 A class action is superior to other available methods for the fair
17 and efficient adjudication of the controversy, because multiple lawsuits
18 involving the same defendants-respondents and essentially the same issues
19 throughout the United States will lead to conflicting decisions and decidedly
20 non-uniform results. The United States Constitution, Art. I, § 8, cl. 4, grants
21 Congress the power “To establish a uniform Rule of Naturalization...”, and
22 there is a public interest in the uniform application of our Nation’s
23 immigration laws.

24 A number of cases involving the surviving spouse issue have been
25 filed in United States District Courts, following the decision in *Freeman v.*
26 *Gonzales*, 444 F.3d 1031 (9th Cir. 2006). *See Robinson v. Chertoff*, No.
27
28

1 Civ.A.06-5702 (SRC), 2007 WL 1412284 (D.N.J. May 14, 2007)
2 *government notice of appeal filed July 2, 2007; Taing v. Gonzales*, 07 Civ.
3 10499 (WGY) (E.D.Mass. filed March 14, 2007); *Lockhart v. Chertoff*, 07
4 Civ. 00823 (KMO) (N.D. Ohio filed March 20, 2007). *Turek v. Dep't of*
5 *Homeland Security*, 450 F. Supp. 2d 736 (E.D. Mich. 2006). The extent of
6 this litigation is relevant to the Court's findings with respect to class
7 certification, pursuant to Fed.R.Civ.P. 23(b)(3)(B).

8 The extent and nature of the litigation concerning this controversy
9 is also related to the desirability of concentrating the litigation of the claims
10 in this forum. *See* Fed.R.Civ.P. 23(b)(3)(C). Specifically, counsel in the
11 *Robinson, Taing, and Lockhart* cases, *supra*, coordinated briefing resources
12 with undersigned counsel, while counsel in *Turek, supra*, did not. As
13 defendants-respondents move to deport class members, and as class
14 members seek to challenge their unlawful denials, the future course of that
15 litigation remains uncertain. Because there is no monetary figure at stake in
16 this litigation, and because there is no process for appointment of counsel in
17 immigration cases, class members will continue to be limited by resources
18 while defendants-respondents will continue to be able to assign experienced
19 attorneys from the Office of Immigration Litigation or the United States
20 Attorney's offices. A review of the briefing in *Robinson, Taing, and*
21 *Lockhart* will reveal many of the same arguments being maintained by each
22 party.
23

24 California District Court is desirable due to the large number of
25 California class members known to undersigned counsel. Out of 106
26 identified class members, 25 are in California (23.6%), and a total of 42 are
27 in the jurisdiction of the Ninth Circuit (39.6%). The state with the second-
28

1 most numerous class members is New York, with 13 class members
2 (12.3%), with a total of 15 identified class members in the Second Circuit
3 (14.2%). Due to the high percentage of identified class members in the
4 jurisdiction of the forum, it is desirable to concentrate the litigation of claims
5 in this Court.

6 Additionally, because defendants-respondents have just issued a
7 Memorandum (See. Def. Mot. to Dismiss, Doc. No. 8, Ex. 1, hereinafter
8 “motion”) purporting to implement specific rules with respect to surviving
9 spouse cases within the Ninth Circuit, it is appropriate for the Court to
10 review the application of these special rules with respect to the statute in
11 question. The Court will be assisted in its review because the plaintiffs who
12 will potentially be affected by the Memorandum are within the Court’s
13 jurisdiction or relatively proximate. The determination as to whether
14 defendants-respondents’ Memorandum comports with the statute can more
15 easily be made in this forum than elsewhere.

16 With respect to the ease of management of the class, a
17 consideration under Fed.R.Civ.P. 23(b)(3)(D), the litigation will likely be
18 focused on the interpretation of a federal statute, and not to intensive fact-
19 based inquiry, due to the scope of the Court’s review of questions of law,
20 making for a manageable class. Furthermore, defendants-respondents have
21 ready access to the immigration records of the class, making notice to class
22 members a relatively simple task.

23
24 **B. THE LAW FIRM OF PARRILLI RENISON LLC AND LAW**
25 **OFFICE OF ALAN R. DIAMANTE WILL FAIRLY AND**
26 **ADEQUATELY REPRESENT THE INTERESTS OF THE**
27 **CLASS AS CLASS COUNSEL**

28 Counsel Brent W. Renison of Parrilli Renison LLC has performed

1 extensive work on the issue of surviving spouses since early 2004.
2 Beginning in May 2004, he litigated the case of *Freeman v. Gonzales*, 444
3 F.3d 1031 (9th Cir. 2006). During the summer of 2004, he began
4 investigating other cases of what became known as the “widow penalty”,
5 whereby surviving spouses of U.S. citizens were being denied legal status
6 solely due to the death of their spouse during administrative processing.
7 What began as five cases on a spreadsheet has become 106 cases over more
8 than three years that records have been kept.

9
10 In February 2007, Renison founded the non-profit group Surviving
11 Spouses Against Deportation (SSAD), and established an internet website
12 (<http://www.ssad.org>) for purposes of education and outreach to those
13 affected by the widow penalty. In June 2007 he was recognized by the
14 President of the American Immigration Lawyers Association with a
15 Presidential Award for Outstanding Achievement in Mentoring and
16 Litigation on Behalf of Immigrant Rights, and in October 2007 was
17 presented with the Gerald H. Robinson Excellence in Advocacy Award by
18 the Oregon Chapter of the American Immigration Lawyers Association.
19 Further, he was listed by Law & Politics as a Superlawyer in 2006 and 2007,
20 one of four lawyers in Oregon listed in the immigration category in 2006 and
21 one of three listed in 2007. He has years of experience in identifying and
22 investigating potential claims involving the widow penalty, and extensive
23 experience in handling claims of the type asserted in the action. Counsel
24 Brent W. Renison does not have class action litigation experience, but has
25 experience in federal court litigation, including serving as lead counsel in a
26 naturalization delay lawsuit resulting in a trial and favorable decision. See
27 *Al-Kudsi v. Gonzales*, No. 05-1584 (D. Ore. Mar. 22, 2006) (establishing
28

1 right to timely adjudication of naturalization application and setting concrete
2 timeline for adjudication, rejecting the holding in *Danilov v. Aguirre*, 370 F.
3 Supp 2d. 441 (E.D. Va. 2005)), as reported in Litigation Clearinghouse
4 Newsletter, American Immigration Law Foundation, Vol. 1, No. 8, April 5,
5 2006.

6 Renison has also successfully handled other District Court litigation
7 resulting in favorable judgments. *See Abou-Elmajd v. Gonzales*, No. 065-
8 1154-KI (D. Ore. Oct. 19, 2006) (denying government motion to dismiss
9 controversy as moot due to doctrine of voluntary cessation); *Alqudah v.*
10 *Gonzales*, No. 06-1367-BR (D. Ore. Mar. 7, 2007) (stipulated judgement in
11 favor of plaintiff). Renison also substantially participated in the briefing of
12 *Robinson v. Chertoff*, No. Civ.A.06-5702 (SRC), 2007 WL 1412284 (D.N.J.
13 May 14, 2007) *government notice of appeal filed July 2, 2007*; and provided
14 mentoring assistance in *Taing v. Gonzales*, 07 Civ. 10499 (WGY)
15 (E.D.Mass. filed March 14, 2007), and *Lockhart v. Chertoff*, 07 Civ. 00823
16 (KMO) (N.D. Ohio filed March 20, 2007).

17
18 Parrilli Renison LLC has associated with experienced local counsel,
19 Alan R. Diamante, who has experience with immigration litigation within
20 the United States District Court for the Central District of California. Both
21 Parrilli Renison LLC and Law Office of Alan R. Diamante are acting *pro*
22 *bono publico* in this action, and have the resources and commitment
23 necessary to represent the class.

24 **III. NOTICE AND MEMBERSHIP IN CLASS**

25 If the class is certified under Rule 23(b)(3), the requirements of notice
26 under Fed.R.Civ.P. 23(c)(2)(A) include individual notice to all members
27 who can be identified through reasonable effort. Because class members
28

1 were all beneficiaries of immigrant petitions filed with the required fee at
2 defendants-respondents agencies, defendants-respondents are in a position to
3 identify all class members through reasonable review of administrative
4 records available. While counsel for plaintiffs-petitioners have been able to
5 identify many class members through informal networks and contact from
6 class members following media stories, defendants-respondents are in the
7 best position to identify class members.

8 DATED this 23rd day of November, 2007.

9
10
11 By _____
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26
27 Attorneys for Plaintiffs-petitioners
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 November 26, 2007, I served the within document(s) described as:
6 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION
7 FOR CLASS CERTIFICATION, on the interested party(ies) in this action as follows:

8 I inserted a true and correct copy of the document(s) in a sealed envelope and
9 caused each such envelope, with first-class postage thereon fully prepaid, to be deposited
10 in a recognized place of deposit of the United States Mail for collection and mailing to
11 the office/residence of the addressee(s) on the date shown below following ordinary
business practices, addressed as follows:

12 Elizabeth Stevens
13 Office of Immigration Litigation
14 USDOJ Civil Division
15 P.O. Box 878
16 Ben Franklin Station
Washington, DC 20044

17 Leon W. Weidman, Chief
18 United States Attorney's Office
19 Room 7516, Federal Building
20 300 N. Los Angeles Street
Los Angeles, CA 90012

21 Alberto Gonzales
22 United States Attorney General
23 United States Department of Justice
24 950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

25 Michael Chertoff
26 Secretary, Department of Homeland Security
27 United States Department of Homeland Security
28 Washington, D.C. 20528

1
2 Emilio Gonzalez
3 Director, United States Citizenship and Immigration Services
4 United States Department of Homeland Security
5 425 I Street NW
6 Washington, D.C. 20536

7 Condoleezza Rice
8 Secretary of State
9 United States Department of State
10 Attn: Christopher Riche, Exec. Dir. Legal Advisor
11 Rm. 5519
12 2201 C Street NW
13 Washington, D.C. 20520

14 Maura Harty
15 Assistant Secretary for Consular Affairs
16 United States Department of State
17 Attn: Christopher Riche, Exec. Dir. Legal Advisor
18 Rm. 5519
19 2201 C Street NW
20 Washington, D.C. 20520

21
22 I declare under penalty of perjury under the laws of the United States of America
23 that the foregoing is true and correct.

24 EXECUTED on November 23, 2007, at Portland, Oregon.

25
26
27
28

Brent W. Renison, Declarant