



AMERICAN IMMIGRATION LAW FOUNDATION
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COURT CERTIFIES CLASS IN RELIGIOUS WORKERS SUIT

A federal district court granted a motion for class certification in a case challenging USCIS' policy of requiring religious workers to have an approved visa petition (I-360) before they can file an adjustment of status application (I-485). Because religious workers cannot file concurrently, often their non-immigrant status expires before the I-360 is approved, and they are forced to leave the United States and their religious work. Plaintiffs allege that the USCIS policy violates the INA, the First Amendment, the Equal Protection Clause, and the Religious Freedom Restoration Act. The case is *Ruiz-Diaz v. USA*, No. 07-1881 (W.D. Wash. filed Nov. 21, 2007).

The class is defined as follows: "all individuals currently in the United States who are beneficiaries of a Petition for Special Immigration (Religious Worker) (Form I-360) that has been filed or will be filed, and who were or would be eligible to file an Application for Adjustment of Status (Form I-485) but for CIS's policy codified at 8 C.F.R. § 245.2(a)(2)(i)(B) that the Form I-360 petition must be approved before the Form I-485 application can be filed." Read the court's order and find out more about the case at http://www.ailef.org/lac/clearinghouse_otherissues.shtml.

COURT CERTIFIES CIRCUIT-WIDE CLASS IN SURVIVING SPOUSE SUIT

A federal district court provisionally certified a class of plaintiffs suing USCIS for denying their immigrant visas. The plaintiffs are surviving spouses of deceased U.S. citizens who had filed I-130 applications. USCIS' position is that surviving spouses are no longer "immediate relatives" under INA § 201(b)(2) unless the couple was married for at least two years. The case is *Hootkins v. Chertoff*, No. 07-5696 (C.D. Cal. filed Aug. 30, 2007).

The plaintiffs had asked the court to certify a class of all beneficiaries of immediate relative petitions whose petitioning relatives died before the applications were

adjudicated and approved. However, the court limited the class to surviving spouses of U.S. citizens (as opposed to other immediate relatives) and restricted the class to cases arising within the jurisdiction of the Ninth Circuit. The class is defined as follows: "All aliens whose United States citizen spouses died before the couple's two-year wedding anniversary, and whose citizen spouse filed, within the jurisdiction of the Ninth Circuit, an I-130 petition and an I-864 affidavit of support on behalf of the alien spouse."

The Ninth Circuit is the only circuit court to rule on the issue presented in *Hootkins*. In *Freeman v. Gonzales*, 444 F. 3d 1031 (9th Cir. 2006), the court held that surviving spouses of deceased U.S. citizens who previously filed adjustment of status applications remain immediate relatives even after the citizen's death. There are pending appeals in at least three other circuits – the First, Third and Sixth. For more information about surviving spouse litigation, see AILF's Litigation Issue page, http://www.ailef.org/lac/clearinghouse_otherissues.shtml and <http://www.ssad.org/litigation/classaction.html>.

NEW AT THE LAC ...

New Practice Advisory, "Finality" of Removal Orders for Judicial Review Purposes (June 23, 2008). This practice advisory addresses whether a removal decision issued by an Immigration Judge or the BIA is a "final" removal order for purposes of federal court review. Federal courts can only review "final" removal orders. This advisory discusses whether a BIA remand, for example, affects the "finality" of the order.

Updated Practice Advisory, Introduction to Habeas Corpus (June 2008). This is a short introduction to habeas corpus, addressing when and how a petition for habeas corpus can be used in the immigration context.

AILF's Practice Advisories are available at http://www.ailef.org/lac/lac_pa_topics.shtml.

LPRS FILE LAWSUITS TO ENFORCE CSPA § 3 AND RETAIN EARLIER PRIORITY DATES FOR THEIR CHILDREN

In separate lawsuits filed in the District Court for the Central District of California, plaintiffs challenge USCIS' failure to implement § 3 of the Child Status Protection Act (CSPA), codified at 8 U.S.C. § 1153(h)(3). This provision states that where certain beneficiaries of family-based visa petitions, including derivative beneficiaries, are unable to retain the status of "child" under the CSPA formula, they nevertheless are entitled to automatic conversion of the petition to the appropriate category and retention of the priority date from the original petition.

In both suits, the named plaintiffs originally were named as beneficiaries in petitions filed for them by U.S. citizen parents (3rd preference category) or by their U.S. citizen siblings (4th preference category). Each plaintiff had one or more minor children who was listed as a derivative beneficiary on the original petition. Each of the plaintiffs eventually became a lawful permanent resident. Their children "aged-out," however, and were not able to immigrate through the original petitions. The plaintiffs now are seeking to enforce § 1153(h)(3) and retain the original priority date for their children

The cases are *Costelo v. Chertoff*, No. 08-688 (C.D. Cal. filed June 20, 2008), and *Cuellar de Osorio v. Sharfen*, No. 08-0840 (C.D. Cal. filed June 23, 2008). *Cuellar de Osorio* is an individual suit brought by six named plaintiffs. *Costelo* was filed as a class action.

SUPREME COURT TO HEAR SUIT FILED BY IMMIGRANT DETAINED AFTER 9/11

The Supreme Court granted certiorari to determine whether high-ranking government officials may be held personally liable for violating a Pakistani immigrant's constitutional rights while in detention. Following his arrest and detention for more than 150 days in a maximum security detention center after 9/11 attacks, petitioner Iqbal filed a lawsuit against then-Attorney General, John Ashcroft and other officers and officials. He maintains he was detained in restrictive conditions solely because of his race, religion and national origin and not because of any involvement in terrorism. The Second Circuit

ruled in favor of the petitioner, rejecting defendants' defense of qualified immunity in relation to the majority of plaintiff's claims.

The Supreme Court granted certiorari to decide 1) whether plaintiff's allegation that the officers and officials condoned or agreed to subject plaintiff to unconstitutional acts is sufficient to state individual-capacity *Bivens* claims against those individuals and 2) whether the high-level officials and officers may be held personally liable for the unconstitutional acts of subordinate officials if they had constructive knowledge of the subordinate officials' acts. The case is *Iqbal v. Hasty*, 490 F.3d 143 (2d Cir. June 14, 2007), cert granted *Ashcroft v. Iqbal*, No. 01-1015, 2008 U.S. LEXIS 4906 (U.S. June 16, 2008).

COUNSEL SEEKING DECLARATIONS FOR FOIA SUIT

Counsel for a LPR challenging USCIS' FOIA procedures is seeking declarations from immigration lawyers whose clients have been harmed by the agency's failure to expedite their FOIA requests. The suit alleges that the agency is violating the terms of a settlement agreement in *Mayock v. INS*, 714 F. Supp. 1558 (N.D. Cal. 1989), rev'd and remanded sub nom, *Mayock v. Nelson*, 938 F. 2d 1006 (9th Cir. 1991). The settlement agreement states that government agencies will expedite a FOIA request if the requestor shows exceptional need or urgency, such as potential infringements on due process rights. In the instant action, defendants refused to expedite plaintiff's FOIA request because plaintiff was not before an immigration judge. Inter alia, plaintiff alleges that the government's position violates the *Mayock* settlement agreement because it does not provide priority treatment for cases where the requestor demonstrates that 1) an individual's life or personal safety would be jeopardized by the failure to process a request immediately; or 2) substantial due process rights of the requestor would be impaired by the failure to process immediately.

Contact Kip Evan Steinberg at kip@steinberg-immigration-law.com for more information about providing a declaration. Read the pleadings, a sample declaration, and more about this suit at http://www.aifl.org/lac/clearinghouse_otherissues.shtml.

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The Clearinghouse is a project of AILF's Legal Action Center. The Litigation Clearinghouse serves as a national point of contact for lawyers conducting or contemplating immigration litigation. The LAC encourages immigration attorneys to contact the Clearinghouse to share case information.

Litigation Clearinghouse Newsletters are posted on AILF's web page at www.aifl.org/lac/litclearinghouse.shtml.

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