



AMERICAN IMMIGRATION LAW FOUNDATION
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CLASS ACTION CHALLENGES USCIS'S FAILURE TO PROVIDE EVIDENCE OF LPR STATUS

Lawful permanent residents have filed a class action challenging USCIS' failure to provide documentation of their residency. Under section 304(d) of the INA, the government is required to provide LPRs with a certificate of alien registration or an alien registration receipt card. The plaintiffs are long-term LPRs with expired or missing registration cards (I-551s). They have sought to renew or replace their I-551s by filing I-90s and complying with USCIS's application requirements. The plaintiffs allege that USCIS has not provided them with evidence of their LPR status. Instead, it has interrogated the plaintiffs about past criminal conduct and/or old deportation proceedings and ordered plaintiffs to produce documents, some of which DHS already possesses.

The complaint alleges that USCIS has "converted the process by which new green cards are issued into an enforcement procedure, and condition[ed] the issuance of such cards on Plaintiffs' compliance with requirements beyond those contemplated, or authorized, by law." The complaint requests mandamus, injunctive and declaratory relief.

The case is *Pantoja-Castillo et al. v. Sanchez et al.*, No. 07-204 (S.D. Tex.). The first amended complaint was filed on August 17, 2007 and includes class allegations. The proposed national class includes LPRs who have or will file I-90 applications to renew or replace their I-551s, who have complied with the requirements of 8 C.F.R. §264.5 (2007), and in whose cases Defendants have requested or will request documentation about alleged involvement with the criminal justice system and/or past deportation proceedings. The court has not yet certified the class. Counsel for plaintiffs is seeking to identify potential class members. Please email Lisa Brodyaga at LisaBrodyaga@aol.com if your client may be a class member.

In related news, DHS recently published a proposed rule regarding I-551s. See Application Process for Replacing I-551 Without Expiration Date, 72 Fed. Reg. 46922 (Aug. 22 2007) available at <http://www.aila.org/content/default.aspx?docid=23145>. The proposed rule would require all LPRs with I-551s with no expiration dates to apply for replacement cards. Eventually, DHS will terminate the validity of I-551s without expiration dates. Written comments to the proposed rule are due on September 21, 2007.

NEW SUPREME COURT PROCEDURAL RULES

The Supreme Court adopted revisions to the Rules of Court for practice before the Supreme Court. The revised rules take effect on October 1, 2007.

Under the revised rules, the Court will limit the length of documents by measuring word count, instead of page limits (as it does currently). The Court also has revised the briefing schedule, shortening the time period in which to file response and reply briefs. Parties will be required to file an

NEW AT THE LAC ...

Updates to Litigation Issue Pages

AILF has updated its Litigation Issue Pages on naturalization delay litigation, *Matter of Blake*, and mandamus litigation to reflect recent court decisions. See the Natz Delay Litigation Page for updates on the Fifth Circuit decision *Walji v. Gonzales* and a discussion of the Fourth Circuit in *Etape v. Chertoff*; the *Matter of Blake* Litigation Page for circuit court decisions interpreting the BIA's decision in *Matter of Blake*; and the Mandamus Litigation Page for district court decisions on the availability of mandamus relief. All of the Litigation Issue Pages are available on the Legal Action Center's section of AILF's webpage under "Litigation Clearinghouse," see http://www.ailf.org/lac/lac_index.shtml.

Supreme Court Continued

electronic version of all merits briefs at the time the paper copy is filed. The Clerk of Court has issued guidelines for submission of electronic versions of briefs. In addition, the Court revised the rules for amicus curiae briefs by changing the timeframe for filing briefs and adding notification requirements.

The official version of the rules, with revisions effective October 1, 2007, is available on the Supreme Court's webpage at <http://www.supremecourtus.gov/ctrules/2007rulesofthecourt.pdf>. The Court also has posted a press release and memorandum regarding the changes, see <http://www.supremecourtus.gov/ctrules/ctrules.html>.

The Supreme Court's summer recess is approaching the end. The October 2007 Term begins with oral arguments on October 1, 2007. The Court's opening conference is scheduled for September 24, 2007. To date, the Court has not granted certiorari in any immigration cases for the upcoming term.

NEW RESOURCES FOR GANG-BASED AND LGBT/HIV ASYLUM CLAIMS

The Capital Area Immigrants' Rights Coalition (CAIR Coalition) has updated a resource manual to assist practitioners representing individuals from Central America who seek asylum from gang-based violence. The manual provides a summary of relevant asylum law from Immigration Courts, the BIA and federal courts; information about individual countries and country-specific arguments for asylum relief; and relevant articles and studies. The manual is available at <http://www.aifl.org/lac/GangResourceManual.pdf>.

Holland & Knight LLP recently compiled a chart summarizing federal court decisions in LGBT/HIV asylum cases. The chart stemmed from a roundtable on preparing an asylum case on sexual orientation and/or gender at AILA's Annual Conference. The case summaries include key facts about each case and the courts' reasoning. They are organized both by circuit and by country. The chart is available at <http://www.immigrationequality.org/uploadedfiles/Holland%20and%20Knight%20LGBT%20asylum%20summary.pdf>.

CLEARINGHOUSE HIGHLIGHT

In each edition of this newsletter, the Clearinghouse highlights cases that showcase novel arguments, creative lawyering, and issues of first impression.

Ninth Circuit Discusses IJ's Designation of Country of Removal. In *Hadera v. Gonzales*, ___F.3d___, 2007 U.S. App. LEXIS 17004 (9th Cir. July 18, 2007), the Ninth Circuit granted a petition for review and remanded a case in which the IJ failed to properly apply the four-step inquiry established in *Jama v. ICE*, 543 U.S. 335 (2005), to determine the proper country of removal.

In *Jama*, the Supreme Court analyzed the statutory framework for determining the country to which an individual may be removed (see INA § 241(b)). The Court organized the statutory framework into a four-stage inquiry: (1) An noncitizen shall be removed to the country of his [or her] choice, unless one of the conditions eliminating that command is satisfied; (2) otherwise [s]he shall be removed to the country of which [s]he is a citizen, unless one of the conditions eliminating that command is satisfied; (3) otherwise [s]he shall be removed to one of the countries with which [s]he has a lesser connection; or (4) if that is impracticable, inadvisable or impossible, [s]he shall be removed to another country whose government will accept him or her.

In *Hadera*, the Ninth Circuit found that because the petitioner failed to designate a country of removal under Step 1, and because the IJ determined the petitioner was stateless under Step 2, the IJ should have proceeded to Step 3 and considered with which country the petitioner had a "lesser connection". Instead, the IJ – without consideration of this factor – designated Ethiopia as the country of removal, despite finding that the petitioner was not likely a citizen of Ethiopia.

In addition, the court rejected the government's argument that whenever a petitioner's country of citizenship is in question, the IJ must stop at Step 2 and presume petitioner's citizenship. Rather, the court held that it is within the IJ's powers to determine that Ethiopia was unlikely to accept the petitioner as a citizen.

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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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