AMERICAN IMMIGRATION LAW FOUNDATION
LEGAL ACTION CENTER
LITIGATION CLEARINGHOUSE NEWSLETTER

Vol. 2, No. 11 September 17, 2007

UNIONS CHALLENGE INCREASE OF FEES FOR IMMIGRANT APPLICATIONS AND PETITIONS

The Service Employees International Union (SEIU) and Pineros y Campesinos Unidos del Noroeste (Northwest Treeplanters and Farmworkers United) (PCUN) brought suit in United States District Court for the District of Oregon challenging a USCIS rule implementing a new fee schedule. The new fee schedule took effect on July 30, 2007.

The unions allege that defendants 1) violated section 286 of the INA by imposing fees on individuals that exceed the costs of providing adjudication and naturalization services, 2) violated immigration laws, the APA and the United States Constitution by implementing revenue-raising measures, and 3) violated the Chief Financial Officers Act of 1990, the INA and the APA by failing to properly account for their revenues and costs. Plaintiffs request that the court declare the new rule to be unlawful and vacate it. The case is *Service Employees International Union, et. al v. Chertoff*, No. 07-1286 (D. Or. *filed* Aug. 28, 2007).

UNIONS CHALLENGE SOCIAL SECURITY NO-MATCH RULE; COURT GRANTS TRO

Several labor unions, including the AFL-CIO, filed suit to prevent the implementation of DHS's final rule regarding employers who receive social security no-match letters. The rule, published in the Federal Register on August 15, 2007, has an effective date of September 14, 2007. See *Safe-Harbor Procedures for Employers Who Receive a No-Match Letter*, 72 Fed. Reg. 45611 (Aug. 15, 2007) available at http://www.aila.org/content/default.aspx?docid=23097. Days after the suit was filed, on August 31, 2007, the district court granted a TRO enjoining defendants from "giving any effect or otherwise taking any action to implement" the new rule. The court scheduled a hearing to consider a preliminary injunction for October 1, 2007.

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FIFTH CIRCUIT REVERSES POSITION IN NATZ DELAY CASE *WALJI*

In a rare turnabout, the Fifth Circuit granted a petition for rehearing and reversed itself in *Walji v. Gonzales*. The court thus opened the door for naturalization applicants to seek judicial remedies for government delays.

The case was brought under 8 U.S.C. § 1447(b). Under this provision, district courts have jurisdiction over naturalization applications that are pending for more than 120 days after the date on which USCIS conducts the examination of the applicant. In the original decision, dated June 19, 2007, the Fifth Circuit held that the 120-day period does not begin to run until after the FBI check is complete. Following this decision, the petitioner filed a petition for rehearing en banc. AILA submitted an amicus brief in support of the rehearing petition.

In its September 14, 2007 order, the court granted the petition for panel rehearing, withdrew its June 19, 2007 opinion, and issued a new opinion. The court concluded that the statutory language, the regulations, and the legislative history of § 1447(b) all indicate that the "examination" in § 1447 means the naturalization interview and that the 120 days begins to run from the date of the interview.

For more information about naturalization delay litigation, see AILF's Litigation Issue Page at http://www.ailf.org/lac/lit_issue_pages.shtml.

NEW AT THE LAC …

Court Strikes Down Motion to Reopen Departure Regulation. In a landmark decision, the Fourth Circuit held that the regulation barring motions to reopen filed after a person departs or is removed is invalid because it conflicts with the motion to reopen statute. The case is *William v. Gonzales*, No. 06-1284 (4th Cir. Sept. 6, 2007). AILF appeared as amicus curiae in support of the petitioner. To read a summary of this decision, see http://www.ailf.org/lac/lac_lit_motionreopen.shtml.

No-Match Lawsuit Continued
Several chambers of commerce and other business groups moved to intervene as plaintiffs in this case pursuant to Federal Rule of Civil Procedure 24(b). The court granted their unopposed motion on September 11, 2007.

The case is *American Federation of Labor and Congress of Industrial Organizations et al. v. Chertoff et al.*, No. 07- 4472 (N.D. Cal. *filed* Aug. 29, 2007). Read more about this suit and see pleadings and court orders, http://www.nilc.org/immsemplymnt/SSA_Related_Info/ssa004.htm

SETTLEMENT ANNOUNCED IN HUTTO DETENTION SUIT

On August 27, 2007, plaintiffs and DHS reached a settlement in the Hutto detention center litigation. The settlement will improve detention conditions for immigrant children and their families at the Hutto detention center in Taylor, Texas.

The plaintiffs were 26 immigrant children detained with their parents at Hutto. They alleged that the conditions inside the detention center violate numerous provisions of *Flores v. Meese*, a 1997 court settlement that established minimum standards and conditions for the housing and release of all minors in federal immigration custody. To read more about the lawsuit and see the pleadings and settlement, see http://www.aclu.org/immigrants/detention/hutto.html

LAWSUITS FILED IN RESPONSE TO RAIDS

In the past week, two lawsuits were filed challenging the governments' actions in raids nationwide. The first of the cases was brought by two plaintiffs representing over 100 people arrested during an August raid of Koch Foods, an Ohio food processing plant. Plaintiffs' complaint alleges that actions by the local Sheriff and ICE during the arrest of the petitioners violated the Constitution and petitioners' right to full and equal benefit of the laws under 42 U.S.C. § 1981. Petitioners ask the court to order defendants to adjudicate petitioners' bond, enjoin the transfer of the detainees, and grant a stay of removal preventing the removal of the detainees. The case is *Martinez, et. al v. Chertoff, et. al*, No. 07-722 (D. Ohio *filed* Aug. 31, 2007).

In a second lawsuit, the United Food and Commercial Workers International Union (UFCW) and several LPRs and U.S. citizens brought a class action challenging the raids at the Swift plants in December 2006. The complaint alleges that the defendants violated the INA and the Fourth and Fifth Amendments by arresting workers without a warrant and without reasonable suspicion that they were violating the INA. The complaint also alleges that the defendants arrested parents without regard to their dependant children in violation of DHS policies and due process. Finally, the complaint states that plaintiffs were not given prompt access to counsel in violation of the First and Fifth Amendments. Plaintiffs seek damages and injunctive relief. The case is *United Food and Commercial Workers Int'l Union, et. al v. Chertoff, et. al*, No. 07-00188 (N.D. Tex. *filed* Sept. 12, 2007).

More information about the cases and other raids-litigation is at AILF's Raid Litigation Issue Page, http://www.ailf.org/lac/clearinghouse_122106_ICE.shtml.

SURVIVING SPOUSES CHALLENGE USCIS'S DENIAL OF IMMEDIATE RELATIVE VISAS

Spouses of deceased United States citizens have filed a class action challenging USCIS's denial of their immigrant visa petitions. In the plaintiffs' cases, USCIS found that they were no longer immediate relatives under INA § 201(b)(2) after their spouses' deaths. The case is *Hootkins, et al. v. Chertoff, et al.*, No. 07- 05696 (C.D. Cal. *filed* Aug. 30, 2007). The proposed national class includes "[a]ll beneficiaries of immediate relative petitions whose petitioning relatives died prior to beneficiaries' adjudication and approval of lawful permanent resident status." The court has not yet certified the class. The complaint and other related materials are available at http://www.entrylaw.com/classaction.html. At least two courts have issued favorable decisions in cases addressing this same issue, *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006) and *Robinson v. Chetoff*, No. 06-5702, 2007 U.S. Dist. LEXIS 34956 (D.N.J. May 14, 2007) (unpublished).

AILF Legal Action Center, Litigation Clearinghouse
www.ailf.org/lac clearinghouse@ailf.org
Beth Werlin, Litigation Clearinghouse Attorney
Emily Creighton, Staff Attorney

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.ailf.org/lac/litclearinghouse.shtml.
AILF is grateful for the generous support of LexisNexis.