



AMERICAN IMMIGRATION LAW FOUNDATION

Notice from AILF's Legal Action Center:

Asylee Adjustment Class Action Settlement Agreement Signed

The American Immigration Law Foundation, lead counsel for the plaintiff class in the asylee adjustment class action, *Ngwanyia v. Ashcroft*, is pleased to announce that the parties have reached a stipulated settlement of the case. This agreement must be approved by the court before it is final and officially goes into effect, but we are hopeful the court will approve it within the next few months. This notice explains the outlines of the agreement and what we expect to happen next.

Asylee adjustment numbers

Under the settlement agreement, the government will use the full number of asylee adjustments available for asylees each fiscal year currently and into the future. In Fiscal Year 2005 as in prior years, the number of adjustments authorized is 10,000, the maximum annual number allowed under the statute. At the same time, in the next three years the government will “recoup” an additional 31,000 asylee adjustment numbers to compensate for asylee adjustment numbers unused in prior years.

The additional 31,000 adjustment numbers will be over and above the usual annual number of asylee adjustments. That is, for this fiscal year, 10,000 asylee adjustments are authorized; under the settlement agreement, the government will adjust

the status of at least 8,000 additional asylees in the fiscal year, for a total of at least 18,000 in the first fiscal year.

By the end of the 3-year period, the government must adjust the status of all additional 31,000 asylees. This will mean not only that 31,000 waiting asylees will become permanent residents more quickly, but also that all asylees waiting in the queue will essentially “move up” in the waiting list to that extent.

Any asylee adjustment numbers unused in the future will be carried over for use in subsequent fiscal years.

Asylee adjustment point-of-contact

The agreement also provides for an adjustment processing point-of-contact in the government whom asylees and/or their attorneys can contact regarding the cause of delay in processing their applications. The point-of-contact will not, however, be able to or be required to determine whether any particular asylee is in the waiting list.

After the court accepts the settlement agreement, the parties will widely publicize the name and contact information for this point-of-contact.

Employment authorization documents

The settlement agreement calls for asylees seeking renewal of their EADs to have the option to obtain EADs valid for multiple year periods up to 5 years. Applicants will have to prepay for the numbers of years requested.

The agreement also requires that renewal EADs shall be provided to the asylees within 100 days of receipt of a completed application as long as the applicant complies with all instructions in a timely manner. This 100-day provision is in addition to the 90-day interim EAD regulation already in place.

EAD point-of-contact

The defendants will provide an e-mail address by which asylees may inquire about cases in which an EAD renewal has been pending for 80 days or longer. The point-of-contact will determine the cause for delay in the EAD processing and take action to resolve any problems.

Time-line for the *Ngwanyia* settlement agreement to go into effect

Although it is very significant that the parties reached agreement on settlement terms, the settlement does not take effect until it is approved by the District Court Judge who made the original decision in the case. That decision was strongly in favor of plaintiffs; the government appealed that decision to the Court of Appeals for the Eighth Circuit.

The parties have asked the Court of Appeals to send the case back to the District Court Judge for him to review the settlement agreement and determine whether to accept it. There are no time restrictions or deadlines for either court to act, but we are hopeful the courts will act quickly, perhaps within the next several months. In the meantime, the government has assured plaintiffs' lawyers that they are proceeding apace to adjust the status of enough asylees to reach the 18,000 minimum this fiscal year.

***Ngwanyia* Plaintiff class**

The *Ngwanyia* plaintiff class consists of:

All asylees in the United States who have applied for adjustment of status to lawful permanent residence and whose applications for adjustment remain pending.

The District Court decision is reported at 302 F. Supp. 2d 1076. The Eighth Circuit case number is 04-2170/2946 MNM.

Plaintiffs are represented by the American Immigration Law Foundation; the Massachusetts Law Reform Institute; and the firm of Dorsey and Whitney in Minnesota.

For additional information, contact Legal Assistant Kerry Foley at AILF:

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