AMERICAN IMMIGRATION LAW FOUNDATION

Preliminary Injunction and Class Certification Granted in I-212, *Perez-Gonzalez* Suit
November 14, 2006

The federal district court granted plaintiffs' motions for a preliminary injunction and class certification in *Duran Gonzalez v. DHS*, 2:06-cv-1411 (W.D. Wash), the suit challenging DHS's willful refusal to follow the Ninth Circuit's decision *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). The preliminary injunction, issued by District Court Judge Marsha J. Pechman, protects individuals with pending I-212 waiver applications and individuals whose applications already have been denied.

Pending I-212 Waiver Applications
The court's order says that government "may not deny any I-212 applications in the Ninth Circuit on the grounds that the applicant is inadmissible under INA § 212(a)(9)(C)(i) and ten years have not elapsed since the applicant's last departure from the United States."

Denied I-212 Waiver Applications
The court's order also enjoins the government from giving "any legal effect to denied I-212 applications" in cases where:

(a) the applicant was in the Ninth Circuit at the time of his or her application,
(b) the application was denied between August 13, 2004 (the date *Perez-Gonzalez* was filed) and the date of this Order [November 13, 2006], and
(c) the application was denied solely on the grounds that the applicant was inadmissible under INA § 212(a)(9)(C)(i) and ten years had not elapsed since the applicant's last departure from the United States.

Because this suit now has been certified as a class, the preliminary injunction applies to anyone who falls within the class definition. Individuals who fall within the class definition are automatically class members and do not need to sign up to be a class member. The court's order defines the class as follows:

(a) Individuals who are inadmissible under INA § 212(a)(9)(C)(i)(II) and have filed an I-212 waiver application within the jurisdiction of the Ninth Circuit in conjunction with their application for adjustment of status under INA § 245(i), prior to any final reinstatement of removal determination, where USCIS denied

the I-212 application because 10 years had not elapsed since the date of the applicant's last departure from the United States; and

(b) Individuals who are inadmissible under INA § 212(a)(9)(C)(i)(II) and have filed or will file an I-212 waiver application within the jurisdiction of the Ninth Circuit in conjunction with their application for adjustment of status under INA § 245(i), prior to any final reinstatement of removal determination, where USCIS has not yet adjudicated the application but where USCIS will deny their I-212 application on the grounds that 10 years have not elapsed since the date of the applicant's last departure from the United States.

The court's order does not affect individuals outside of the Ninth Circuit.

Please let us know if DHS violates the preliminary injunction. If DHS denies your client's I-212 waiver application and/or DHS arrests your client and/or reinstates a prior removal order against your client because 10 years had not elapsed after his or her departure from the U.S., please email us immediately at clearinghouse@ailf.org. We also are keeping track of class members whose I-212 waiver applications were denied before the court issued the preliminary injunction. If you have not contacted us already about the denial of your client's I-212 waiver application, please email us at clearinghouse@ailf.org.

To read the court's order and for more information about the suit, please see http://www.ailf.org/lac/lac_lit.shtml.

The suit is brought by Northwest Immigrants Right Project, the American Immigration Law Foundation, and Van Der Hout, Brigagliano & Nightingale, LLP.