



AMERICAN IMMIGRATION LAW FOUNDATION

Update on *Ngwanyia v. Gonzales*, No. 02-502(RHK/AJB) (D. Minnesota). (asylee adjustment class action) (as of January 3, 2006)

Background

AILF successfully sued the former Immigration and Naturalization Service (INS) -- now known as the U.S. Citizenship and Immigration Services within the Department of Homeland Security -- for unlawfully failing to adjust the status of thousands of asylees. In an agreement to settle the case, the government guaranteed that it will adjust the status of *at least* 61,000 asylees within the three year period of Fiscal Year 2005 and the next two fiscal years. U.S. District Judge Richard Kyl signed the formal order approving settlement on July 12, 2005.

Status of Class Members' Adjustments of Status

The government reports that it adjusted the immigration status of over 30,000 applicants in the 2005 fiscal year (ending September 2005), significantly exceeding their original goal of 18,000 adjustment applications. AILF is awaiting confirmation of this report. While extremely please with the progress, AILF continues to do follow up enforcement of the agreement.

The USCIS maintains a chart that can tell individual class members the approximate date their application for adjustment of status should be processed according to the date they filed it. The web address for this chart is:

<http://uscis.gov/graphics/fieldoffices/nebraska/asyleeadj.htm>

If you believe your or your client's adjustment of status application already should have been processed, there is an email box set up for questions and concerns regarding adjusting status from asylee to legal permanent resident. The address is:

NSCLawsuit.Asylum@dhs.gov.

If you send a complaint to this email box and do not get a reply after 30 days, please contact Kate Voigt at kvoigt@ailf.org.

No Impact from REAL ID Act

The REAL ID Act eliminated the 10,000 per year asylee adjustment cap. This is good for asylees. The change in law does not affect the *Ngwanyia* settlement. The Settlement Agreement is still valid and requires the government to adjust the status of a *minimum* of 61,000 asylees in this and the next two fiscal years.

Specifically, section 101(g) of the REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 231, amends section 209 of the Immigration and Nationality Act to eliminate the yearly cap on asylee adjustments. That means that there is no longer a limit to the number of asylees who can become lawful permanent residents (LPRs) in any year.

However, the amendment does not say how many asylees the government must adjust in any year, and does not say how long the government can take to adjust any particular asylee or all asylees.

The *Ngwanyia* Settlement Agreement protects the class. The Settlement Agreement requires the government to adjust *an additional* 31,000 asylees over and above the number the government anticipated adjusting during this and the next two fiscal years – which was 10,000 per year. The government agreed – after the REAL ID Act passed -- that at least *61,000 asylees* will have their status adjusted to LPR during this and the next two fiscal years. The government reports that it is ahead of schedule in adjusting asylees. We are hopeful that this trend will continue.