

UPDATE ON NGWANYIA V. ASHCROFT (ASYLEE ADJUSTMENT LAWSUIT)

GOVERNMENT APPEALS TO EIGHTH CIRCUIT COURT OF APPEALS

On April 9, 2004, the government appealed the favorable district court decision in *Ngwanyia v. Ashcroft* to the Eighth Circuit Court of Appeals. *Ngwanyia v. Ashcroft* is a class action lawsuit against the United States Citizenship and Immigration Services (CIS) (previously the Immigration and Naturalization Services). The case challenges the agency's mishandling of the asylee adjustment program.

This fact sheet will answer questions about the government's appeal of the case and will discuss the next steps in the case.

What is *Ngwanyia v. Ashcroft*?

Ngwanyia v. Ashcroft is a class action lawsuit against the CIS. It was filed by asylees in the United States who have applied for lawful permanent residence and who are now waiting for their applications to be decided. The case asks the court to fix two problems. First, it asks the court to order the CIS to immediately grant lawful permanent residency to approximately 22,000 asylees who are at the beginning of the waiting list. Second, it asks the Court to correct problems with the work permit process for asylees.

Who is included in the lawsuit?

The lawsuit is a class action brought on behalf of all asylees in the United States who have applied to become lawful permanent residents and are waiting for their applications to be decided. An asylee is a person who has been granted asylum in the United States. There are more than 150,000 asylees in the United States who have applied to become lawful permanent residents and who are waiting for their applications to be decided. All of these individuals are members of the class, no matter where in the United States they live.

What did the district court order?

On February 12, 2004, the federal district court judge granted asylee class members what they asked for in the lawsuit. There are two parts to the judge's February 12, 2004 order. First, the judge ordered that CIS use approximately 22,000 additional asylee adjustment numbers that had been set aside in prior years but never used. The court ordered that these numbers could be used now to adjust the status of asylees who have applied to become permanent residents. Second, the judge also ordered CIS to give all asylees a work permit that remains valid for the entire period that the person is an asylee.

Did the district court's order go into effect immediately?

No. The district court judge directed that his order would not go into effect for sixty days, which is the period of time that the government had to file an appeal. Additionally, the district court judge also ordered that if the government did appeal, the decision would not go into effect until the appeals court has made a decision on the appeal.

What happens now that the government has appealed the district court decision?

Now that the government has appealed, the case will be decided by the Court of Appeals for the Eighth Circuit (the "Eighth Circuit"). The Eighth Circuit will review the district court's decision and decide whether or not it is correct. The lawyers for the plaintiffs (the asylee class) will have the opportunity to explain to the Eighth Circuit why the district court's decision is correct.

An appeal to the court of appeals generally takes a number of months and can take a year or longer. Until the Eighth Circuit makes a decision, the case will be on hold. The government can make voluntary improvements to the asylee adjustment program, but is not required at this time to make the changes that the district court ordered. If the Eighth Circuit upholds the district court decision (and no appeal is taken from that decision), the government will be required to make the changes ordered by the district court at that time.

Has the government already made any changes to the asylee adjustment program in response to the lawsuit?

Yes. In response to the lawsuit, the government has already made several important changes to the asylee adjustment program. First, since the lawsuit was filed in the spring of 2002, the government has been approving the maximum 10,000 asylee adjustment applications authorized by the President each year. Second, the government has also announced a schedule for deciding asylee adjustment applications, based upon the filing date of the application. *See* <http://uscis.gov/graphics/fieldoffices/nebraska/asyleeadj.htm>. As a result, asylees will have a general idea of when they can expect to have their application decided.

What should I do if I don't have a current document showing that I can work in the United States?

Because the Court's order has not yet taken effect, CIS is not automatically issuing Employment Authorization Documents (EADs). For now, if you want an EAD, you must still apply for one. Similarly, if your EAD is about to expire, and you want to renew it, you must file an application to renew it.

If you have an I-94 with a stamp on it saying you are authorized to work, you can also use this to demonstrate work authorization to your employer. As an asylee, you are also eligible for an unrestricted social security number from the Social Security Administration. A social security number can also be used to demonstrate authorization to work to an employer.