



AMERICAN IMMIGRATION LAW FOUNDATION
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FEDERAL DISTRICT COURT REJECTS SPECIFIC CONSENT REQUIREMENT FOR SIJ APPLICANTS

On January 8, 2008, a district court enjoined the government from requiring specific consent before an immigrant minor in federal custody may seek a special immigrant juvenile-predicate order in state court. The court held that the specific consent requirement, INA § 101(a)(27)(J)(iii)(I), is limited to instances where a state court will “determine . . . custody status or placement.” In SIJ cases where the minor is in federal custody, the state court’s role generally is to make child welfare determinations regarding abuse, neglect, or abandonment, and a child’s best interests. Thus, because an SIJ-predicate order will not determine custody or status, no specific consent is required. The court certified the class of plaintiffs whose requests for specific consent are denied or not adjudicated before they turn 18.

The court also denied summary adjudication on claims that the government’s age-out regulations imposed ultra vires eligibility requirements. However, the court said that plaintiffs could raise the claim that defendants unreasonably delayed adjudication of SIJ applications of minors who are subject to the age-out regulations.

The case is *Perez-Olano v. Gonzales*, No. 05-03604 (C.D. Cal. Jan. 8, 2008), and the court’s order is available at <http://www.aifl.org/lac/perez-SIJdecision.pdf>.

SUPREME COURT UPDATE

Tolling the Voluntary Departure Period When Filing a Motion to Reopen

On January 7, 2008, the Supreme Court heard arguments in *Dada v. Mukasey*, No. 06-1181, the case addressing the interplay between motions to reopen and voluntary departure. The transcript from the hearing is available on the Supreme Court’s website, http://www.supremecourtus.gov/oral_arguments/argument_transcripts.html. The issue presented to the

Court was whether the filing of a motion to reopen removal proceedings automatically tolls the voluntary departure period. Following oral argument, the Court ordered the parties to submit supplemental briefing to address: “Whether an alien who has been granted voluntary departure and has filed a timely motion to reopen should be permitted to withdraw the request for voluntary departure prior to the expiration of the departure period.”

Particularly Serious Crime and Jurisdiction: Case Dismissed

On December 27, 2007, the Supreme Court dismissed *Ali v. Achim*, No. 06-1346. The Court had granted a petition for certiorari to determine whether an offense must be an aggravated felony to be classified as a “particularly serious crime.” On December 21, 2007, the petitioner filed a motion for voluntary dismissal asking the Court to dismiss the writ of certiorari pursuant to a settlement agreement. The motion

NEW AT THE LAC ...

New Practice Advisory on § 212(h) Waivers. *§ 212(h) Eligibility: Case Law and Potential Arguments* (Jan. 22, 2008), available at http://www.aifl.org/lac/lac_pa_topics.shtml. This Practice Advisory addresses statutory requirements for § 212(h) waivers; availability of § 212(h) waivers in removal proceedings for both LPRs and non-LPRs; and situations when a “stand-alone” § 212(h) waiver can, or arguably might, be filed.

Mandamus Jurisdiction. AILF’s LAC is continuing to litigate whether the federal district courts have jurisdiction to compel USCIS to perform its non-discretionary duty to adjudicate applications that have been unreasonably delayed. AILF filed an amicus brief in *Liu v. Mukasey*, No. 07-3538 (7th Cir.) on January 18, 2008.

Motions to Reopen After Departure. AILF’s LAC also is continuing to challenge the regulatory bar to motions to reopen filed after a person is removed or departed the United States. AILF filed an amicus brief in *Rosilla-Puga v. Chertoff*, No. 07-9564 (10th Cir.) on January 18, 2008.

Supreme Court Continued

stated that the petitioner and the government entered into a settlement agreement and petitioner has agreed not to pursue his claims for asylum and withholding of removal.

Aggravated Felony

On January 15, 2008, the Supreme Court heard arguments in *United States v. Rodriguez*, 06-1646. The transcript from the hearing is available on the Supreme Court's webpage at http://www.supremecourtus.gov/oral_arguments/argument_transcripts/06-1646.pdf. This case examines whether a state drug-trafficking offense, for which state law authorizes a ten-year sentence because the defendant was a recidivist, qualifies as a predicate offense under the Armed Career Criminal Act, 18 U.S.C. § 924(e). Although this is not an immigration case, the Court's decision could affect the Ninth Circuit's aggravated felony analysis in *United States v. Corona-Sanchez*, 291 F.3d 1201 (9th Cir. 2002). In addition, this case may impact the resolution of the multiple possession issue that has arisen following the Supreme Court's decision in *Lopez v. Gonzales*, 127 S. Ct. 625 (2006). For more information about the multiple possession issue, see AILF's Litigation Issue Page on *Lopez* at http://www.aifl.org/lac/lit_issue_pages.shtml.

MANDATORY DETENTION LITIGATION

District Court Rejects *Matter of Rojas*, Interpreting "when the alien is released"

A district court recently held that INA § 236(c) does not apply to a person who was taken into immigration custody over a month after his release from state custody. In reaching this conclusion, the court rejected *Matter of Rojas*, 23 I&N Dec. 117 (BIA 2001), in which the BIA interpreted the statutory language "when the alien is released." The court noted that "when" includes the characteristic of "immediacy[,]'" and that being taken into detention a month after release from state custody does not satisfy this temporal requirement. The case is *Waffi v. Loiselle*, No. 1:07cv742, 2007 U.S. Dist. LEXIS 93082 (E.D. Va. Dec. 19, 2007) (unpublished). At least one other court has reached this same conclusion. See *Quezado-Bucio*

v. Ridge, 317 F. Supp. 2d 1221 (W.D. Wash. 2004).

Prolonged Detention

On January 7, 2008, the Ninth Circuit heard oral arguments in four cases where the petitioners were challenging their prolonged detention. Petitioners all are in the process of seeking administrative and judicial review of their immigration cases and were detained without bond hearings for years. To read more about these cases, see <http://www.aclu.org/immigrants/33528prs20080107.html>.

COURTS REJECT REASONING OF *MATTER OF SHANU*

In *Matter of Shanu*, 23 I&N Dec. 754 (BIA 2005), the BIA found that the date of adjustment of status qualifies as "the date of admission" in INA § 237(a)(2)(A)(i) and that that in cases where there is more than one admission, any of the dates qualifies as "the date of admission." At least four circuits have explicitly or implicitly rejected this interpretation of the statute. These courts have held that the "date of admission" for purposes of INA § 237(a)(2)(A)(i) is the date of a person's first lawful entry to the U.S.

Zhang v. Mukasey, 509 F.3d 313 (6th Cir. 2007)
Aremu v. Dep't of Homeland Sec., 450 F.3d 578 (4th Cir. 2006)
Abdelqadar v. Gonzales, 413 F.3d 668 (7th Cir. 2005)
Shivaraman v. Ashcroft, 360 F.3d 1142 (9th Cir. 2004)

Q&A ON *CHALY-GARCIA*: CHALLENGE TO DHS' IMPLEMENTATION OF ABC SETTLEMENT

The Ninth Circuit recently addressed DHS' interpretation and implementation of the ABC settlement, specifically what qualifies as registering for ABC benefits. See *Chaly-Garcia v. U.S.*, 508 F.3d 1201 (9th Cir. 2007). Although the plaintiff had not filled out a "registration card," the court found that he nonetheless satisfied the registration rules under the settlement agreement. Lawyers for Chaly-Garcia have issued a Q&A addressing the Ninth Circuit's decision. It is available at <http://www.aifl.org/lac/ChalyGarciaFAQ1.pdf>.

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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.aifl.org/lac/litclearinghouse.shtml.

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