



AMERICAN IMMIGRATION LAW FOUNDATION
LEGAL ACTION CENTER
LITIGATION CLEARINGHOUSE
NEWSLETTER

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ADC SEEKS JUDICIAL REMEDIES FOR NATURALIZATION DELAYS

The American-Arab Anti-Discrimination Committee (ADC) is launching a national legal and media campaign to bring attention to the significant delays in processing of naturalization petitions filed by members of the Arab, South-Asian, and Muslim communities. ADC's Legal Department is seeking the assistance of immigration attorneys nationally.

Although the INA requires the government to issue a decision on the naturalization application within 120 days after the examination, many applicants wait months and even years longer. The INA provides for judicial relief for stalled naturalization applications. Under INA § 336(b), 8 U.S.C. § 1447(b), naturalization applicants may file a complaint in the district court, and the district court may adjudicate the naturalization application or order CIS to do so. Many immigration attorneys attain successful results for their clients upon filing a federal court action.

According to ADC, the added judicial step that many naturalization applicants now must take is creating significant delays and is not financially feasible for all petitioners. Therefore, ADC is seeking to call attention to this problem through a legal action and media campaign, to take place in a few weeks time, wherein attorneys all over the country will simultaneously file legal actions for their delayed-naturalization clients. ADC will join in each of those actions around the country and coordinate the effort to be at the same time, in multiple jurisdictions, with simultaneous press conferences taking place in four to five cities following the filing.

If you have such a client and are interested in joining ADC in this campaign and filing an action to compel USCIS to process their naturalization, please contact Ms. Lema Bashir at the ADC Legal Department by calling (202) 244-2990 or via email at legal@adc.org. Please do so by close of business Friday, March 10, 2006.

Additional Resource:

AILF Practice Advisory, "Circumventing Naturalization Delays: How to Get Judicial Relief Under 8 U.S.C. § 1447(b) for a Stalled Naturalization Application" (Updated October 6, 2005) (available at http://www.ailf.org/lac/lac_pa_index.asp).

ATTORNEYS APPLY FOR ISSUANCE OF A SUBPOENA WHEN FOIA DELAYED

Immigration attorneys nationwide are facing significant FOIA processing delays. FOIA requests filed with CIS are languishing for ten months or even a year so far. For attorneys whose clients are in removal proceedings, FOIA delays can frustrate and prevent adequate preparation for a hearing. In order to obtain information contained in their clients' A-files, some immigration lawyers are looking to alternative methods for obtaining the information. One approach that may be successful is to file an application for a subpoena.

Section 240(b)(1) of the INA provides Immigration Judges with authority to issue subpoenas. Subpoenas

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New at the LAC ...

In February 2006, AILF's Legal Action Center filed an amicus curiae brief in *Kim v. Gonzales*, 4th Cir., No. 05-2319. AILF's brief addressed the district court's jurisdiction over APA claims post-REAL ID Act.

New and Updated AILF Practice Advisories:
http://www.ailf.org/lac/lac_pa_index.asp

*Employment Authorization and Asylum:
Strategies to Avoid Stopping the Asylum Clock*
(February 28, 2006)

*Failure to Depart After a Grant of Voluntary
Departure: The consequences and Arguments to
Avoid Them* (Updated February 21, 2006)

can require the production of papers and other documentary evidence. The subpoena regulation, 8 C.F.R. § 1003.35(b)(2), says that “[a] party applying for a subpoena shall be required, as a condition precedent to its issuance, to state in writing or at the proceeding, what he or she expects to prove by such witnesses or documentary evidence, and to show affirmatively that he or she has made diligent effort, without success, to produce the same.” See also 8 C.F.R. § 1287.4 and *Matter of Duran*, 20 I&N Dec. 1 (1989).

COURTS WEIGH IN ON AUTOMATIC STAY REGULATION, 8 C.F.R. § 1003.19(i)(2)

This is the third in a series of articles focusing on developments concerning mandatory detention.

If DHS initially denies bond or sets bond in the amount of \$10,000 or more, DHS may invoke an automatic stay if an IJ authorizes the individual’s release following a bond redetermination hearing. The current version of the automatic stay regulation, codified at 8 C.F.R. § 1003.19(i)(2), was implemented in October 2001. Since that time, numerous individuals have challenged the validity of the automatic stay provision in habeas petitions. The courts have reached various results.

Several courts have refused to apply or explicitly struck down the regulation because it (1) violates due process, and/or (2) is ultra vires to the detention statute. Other courts have upheld the regulation, finding that the automatic stay is constitutionally permissible. The following decisions analyze the validity of the automatic stay provision and offer guidance for individuals litigating this issue:

Struck Down Regulation

Almonte-Vargas v. Elwood, No. 02-2666, 2002 U.S. Dist. LEXIS 12387 (E.D. Pa. 2002) (unpublished); *Ashley v. Ridge*, 288 F. Supp. 2d 662 (D.N.J. 2003); *Bezman v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003); *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D.

Mich. 2003); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004); *Zabadi v. Chertoff*, No 05-01796 (N.D. Cal. June 17, 2005) (unpublished).

Upheld Regulation

Piscotta v. Ashcroft, 311 F. Supp. 2d 445 (D.N.J. 2004); *Marin v. Ashcroft*, No. 04-675 (D.N.J. 2004) (unpublished).

CLEARINGHOUSE HIGHLIGHT

In each edition of this newsletter, the Clearinghouse will highlight one case in order to showcase novel arguments, creative lawyering, and issues of first impression.

***Ramirez-Molina v. Ziglar*, No. 03-50596, 2006 U.S. App. LEXIS 820 (5th Cir. 2006)**

In this petition for review, the court considered the effect of new INA § 242(a)(2)(D), enacted by the REAL ID Act, on challenges to reinstatement orders. Under INA § 241(a)(5), once a reinstatement order is issued, the prior removal order “is not subject to being ... reviewed...” Nonetheless, the court found that INA § 242(a)(2)(D) permits review of legal or constitutional challenges to an underlying removal order. Section 242(a)(2)(D) says that “no other provision of this chapter ... which limits or eliminates judicial review, shall be construed as precluding constitutional claims or claims of law.” Because INA § 241(a)(5) is in the same chapter as INA § 242 and “limits or eliminates judicial review,” the court found it was covered by INA § 242(a)(2)(D).

Despite the favorable holding regarding INA § 242(a)(2)(D), the court dismissed the petition. The Petitioner had not been able to establish a “gross miscarriage of justice” because he had conceded removability and waived appeal in 1999. *The Petitioner was represented by Lynn Coyle, Barbara Hines and Javier Maldonado.*

AILA prepares digests of all Supreme Court and significant appeals court decisions and posts them on Infonet. The digests are sorted by court and are searchable.

<http://www.aila.org/content/default.aspx?docid=18572>

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AILF’s Legal Action Center works to advance fundamental fairness in United States immigration law and to protect the constitutional and legal rights of noncitizens. The LAC conducts national impact litigation; writes amicus curiae briefs; produces practice advisories; conducts the Litigation Institute and other legal educational programs; and mentors, coordinates and provides technical support for lawyers litigating due process and fairness issues in family, removal and business immigration cases.

The Clearinghouse is a project of the 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 information about your cases.

Litigation Clearinghouse Newsletters are posted on AILF’s web page at www.ailf.org/lac/litclearinghouse.shtml.