



AMERICAN IMMIGRATION LAW FOUNDATION  
LEGAL ACTION CENTER  
LITIGATION CLEARINGHOUSE  
NEWSLETTER

Vol. 2, No. 5

April 13, 2007

### COURT GRANTS, IN PART, MOTION TO DISMISS IN CLASS ACTION TO RESTORE SSI BENEFITS FOR ASYLEES AND REFUGEES

The District Court for the Eastern District of Pennsylvania granted, in part, the government's motion to dismiss a class action seeking to restore SSI (Supplemental Security Income) benefits for refugees and asylees. See *Kaplan v. Chertoff*, 06-5304, 2007 U.S. Dist. LEXIS 22935 (E.D. Pa. March 29, 2007). Plaintiffs' SSI benefits were terminated after seven years because they had not become U.S. citizens.

The court dismissed the claims against the Social Security Administration finding that the plaintiffs do not have a property interest in SSI benefits after the seven year limitation imposed by Congress. The court denied the motion with respect to the claims against DHS and the FBI. The court held that the plaintiffs have two viable claims: 1) that unreasonable delay in processing the adjustment and naturalization applications violates the APA, and 2) that USCIS's arbitrary implementation of expedited processing violates the Equal Protection Clause.

To read more about this case, see the December 8, 2006 Litigation Clearinghouse Newsletter, <http://www.aifl.org/lac/litclearinghouse.shtml>

### MOTIONS TO REOPEN AFTER DEPARTURE FROM THE UNITED STATES

The BIA, citing 8 CFR §§ 1003.2(d) and 1003.23(b)(1), takes the position that the BIA and IJs lack jurisdiction to review motions filed by people who have been deported or have departed and that any departure from the United States constitutes the withdrawal of a pending motion. The Ninth and Eleventh Circuits, however, have found these regulations inapplicable in certain situations. Pending cases in other circuits are challenging the regulations, both as applied and on their face. The following decisions address motions filed on behalf of people who have departed or been deported.

*Continued on next page*

### COURT RULES ISSUE PRELIMINARY ORDER IN HUTTO LAWSUITS

The District Court for the Western District of Texas issued a preliminary order setting an expedited schedule in cases brought by children detained at the Hutto detention facility in Taylor, Texas. The court found that the plaintiffs are "highly likely to prevail" on claims that 1) Hutto is not a "licensed program" as defined in the settlement in *Flores v. Meese*, No. 85-4544 (C.D. Cal. 1997), 2) that defendants have provided no reason for placing plaintiffs in a secure facility, and 3) that Hutto is not in compliance with the *Flores* standards regarding various aspects of daily life, including suitable accommodations and food, appropriate routine medical and dental care, and adequate education.

Although the court denied the plaintiffs' request to be released, the court recognized that the children's "continued detention in substandard conditions is an urgent problem." Thus, the court ordered that the case expedited and set the trial for August 2007.

The ACLU, The University of Texas School of Law and Leboeuf, Lamb, Greene & Macrae, LLP represent the plaintiffs. A copy of the court's order and the ACLU's press release is available at: <http://www.aclu.org/immigrants/detention/29307prs20070410.html>. For more information about this case and to read the complaint, see <http://www.aclu.org/immigrants/detention/hutto.html>.

#### NEW AT THE LAC ...

##### New Litigation Clearinghouse Issue Pages

AILF's Litigation Clearinghouse has created several issue-specific web pages that focus on topics currently being litigated in the federal courts. See [http://www.aifl.org/lac/lac\\_lit\\_index.shtml](http://www.aifl.org/lac/lac_lit_index.shtml). The pages include recent Litigation Clearinghouse Newsletter articles, court updates, and relevant resources such as practice advisories and pleadings, where available. The newest pages focus on **mandamus actions and judicial review of asylum one year filing decisions**.

## *Motions to Reopen Continued*

### **Favorable Decisions**

*Lin v. Gonzales*, 473 F.3d 979 (9th Cir. 2007). The court found that 8 CFR § 3.23(b)(1) “is phrased in the *present* tense and so by its terms applies only to a person who departs the United States while he or she ‘*is* the subject of removal ...proceedings.’” According to the Ninth Circuit, once a person leaves the United States, he or she is no longer subject to proceedings. Thus, because the petitioner was removed to China and then filed his motion to reopen, his proceedings were completed and 8 CFR § 3.23(b)(1) was inapplicable.

*Contreras-Rodriguez v. U.S. Atty. Gen.*, 462 F.3d 1314 (11th Cir. 2006). The court found that the statute and regulation governing motions to rescind in absentia orders, INA § 240(b)(5)(C) and 8 CFR § 1003.23(b)(4)(ii), allow a person who did not receive notice to file a motion to reopen “at any time,” even if the client has departed the United States.

*Singh v. Gonzales*, 412 F.3d 1117 (9th Cir. 2005). The court found 8 CFR § 1003.2(d) inapplicable to a motion to reopen to rescind an in absentia order where the person had departed the United States before the commencement of proceedings.

*Cardoso-Tlaseca v. Gonzales*, 460 F.3d 1102 (9th Cir. 2006). The court, relying on *Wiedersperg v. INS*, 896 F.2d 1179 (9th Cir. 1990), found that where a person’s conviction is vacated, he or she has a right to file a motion to reopen, despite having been removed, if the conviction was a “key part” of the removal order.

### **Adverse Decision**

*Navarro-Miranda v. Ashcroft*, 330 F.3d 672 (5th Cir. 2003). The court upheld the BIA’s reasoning that 8 CFR § 3.2(d) trumps the BIA’s sua sponte authority to reopen and reconsider a case at any time.

AILF’s Legal Action Center would like to hear from attorneys whose clients’ cases raise issues about the IJ or BIA’s jurisdiction to review a motion after the

person has departed. Please email us at [clearinghouse@ailf.org](mailto:clearinghouse@ailf.org).

## **MARK YOUR CALENDAR: LITIGATION AND DETENTION MEETINGS AT AILA CONFERENCE**

Please join us for litigation and detention meetings at AILA’s Annual Conference in Orlando, Florida. AILF is sponsoring a litigation meeting on Wednesday, June 13, from 6:30 - 8:30 p.m. Please note that this meeting is on the opening night of the conference. The Detention Watch Network and AILF are co-sponsoring a detention meeting on Saturday, June 16 from 12-2 p.m.

For more information about the AILA Annual Conference and to register, see <http://www.aila.org/content/default.aspx?docid=11163>.

## **CLEARINGHOUSE HIGHLIGHT**

*In each edition of this newsletter, the Clearinghouse highlights cases that showcase novel arguments, creative lawyering, and issues of first impression.*

### **District Court Finds Jurisdiction to Review Adjustment of Status Application Prior to Renewing Request in Removal Proceedings**

*Hillcrest Baptist Church v. U.S.A.*, No. 06-1042, 2007 U.S. Dist. LEXIS 12782 (W.D. Wash. 2007). Plaintiffs filed a complaint for declaratory and injunctive relief after USCIS denied their applications for adjustment of status. The government moved to dismiss on the ground that plaintiffs had not exhausted their administrative remedies because they had not renewed their application in removal proceedings. The court recognized that several circuits have agreed with the government’s position. However, the court concluded that Ninth Circuit precedent supported the finding that 28 USC § 1331 (federal question jurisdiction) and the Administrative Procedure Act give the court jurisdiction to review the adjustment of status denial.

### **AILF Legal Action Center, Litigation Clearinghouse**

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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 case information.

**Litigation Clearinghouse Newsletters are posted on AILF’s web page at [www.ailf.org/lac/litclearinghouse.shtml](http://www.ailf.org/lac/litclearinghouse.shtml).**