



AMERICAN IMMIGRATION LAW FOUNDATION
LEGAL ACTION CENTER
LITIGATION CLEARINGHOUSE
NEWSLETTER

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**COURT GRANTS PRELIMINARY
INJUNCTION, CERTIFIES CLASS IN *PEREZ-
GONZALEZ* I-212 LITIGATION**

On November 13, 2006, the federal district court granted plaintiffs' motions for a preliminary injunction and class certification in *Duran Gonzalez v. DHS*, 2:06-cv-1411 (W.D. Wash), the suit challenging DHS's willful refusal to follow the Ninth Circuit's decision *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). Plaintiffs are represented by Northwest Immigrants Right Project, the American Immigration Law Foundation, and Van Der Hout, Brigagliano & Nightingale, LLP. In *Perez-Gonzalez*, the Ninth Circuit determined that individuals who have previously been removed or deported may apply for adjustment of status (under INA § 245(i)) along with an accompanying I-212 waiver application. The preliminary injunction, issued by District Court Judge Marsha J. Pechman, protects individuals with pending I-212 waiver applications and individuals whose applications already have been denied. For more information about the preliminary injunction and a description of the class, see http://www.aifl.org/lac/lac_lit_92806.shtml.

Please let us know if DHS violates the preliminary injunction. If DHS denies your Ninth Circuit client's I-212 waiver application and/or DHS arrests your client and/or reinstates a prior removal order against your client because 10 years had not elapsed after his or her departure from the U.S., please email us immediately at clearinghouse@aifl.org. We also are keeping track of class members whose I-212 waiver applications were denied before the court issued the preliminary injunction. If you have not contacted us already about the denial of your client's I-212 waiver application, please email us.

**CGRS IS COLLECTING ASYLUM ONE YEAR
DEADLINE DECISIONS**

The Center for Gender & Refugee Studies is taking a close look at the impact of the one-year deadline on

asylum seekers around the country. Following up on CGRS's December 2005 Immigration Briefings article, the Center is seeking information from attorneys about the application of the asylum filing deadline and its exceptions. CGRS is particularly interested in grants or denials in cases where the applicant was diagnosed with PTSD; the application of the deadline to minors; or other sympathetic scenarios.

Please send IJ and BIA decisions to CGRS by fax, (415) 581-8824, or by email, Stephen Knight at knight@uchastings.edu. Attorneys also can share information and/or request specific advice or assistance on this issue by filling out this form: <http://cgrs.uchastings.edu/assistance/> Please indicate that there is a one-year issue in your case.

NEW AT THE LAC ...

CSPA Victory: *Maximov v. Ridge*, Nos. 03-401124, 04-0033 (2d Cir. amicus brief filed June 15, 2005). In this Second Circuit amicus brief, AILF's LAC argued that under the statutory definition for "unmarried," a derivative beneficiary of an asylum application is covered by the CSPA when the beneficiary is unmarried at the time that asylum is granted, notwithstanding a prior marriage that ended in divorce. Subsequently, the government agreed to a remand to the Board. The Board recently remanded the case to an Immigration Judge, agreeing with AILF that under this statutory definition, it appeared that the respondent was eligible for derivative asylee status. **Resource:** For more information and analysis about the CSPA, see AILF's CSPA Practice Advisories, dated September 26, 2006, February 24, 2005 and March 8, 2004. They are available at http://www.aifl.org/lac/lac_pa_chrono.shtml.

Jurisdiction Over Natz Application After INA § 336(b) Action Filed. *Etape v. Chertoff*, No. 06-1916 and *Rahim v. Caterisano*, et al., No. 06-1990 (4th Cir. amicus brief filed November 16, 2006). The LAC filed an amicus brief in this appeal from a district court dismissal of a naturalization case. The LAC argues that the district court has sole jurisdiction over a naturalization case filed under INA § 336(b), 8 U.S.C. § 1447(b).

TELL US ABOUT YOUR EXPERIENCES WITH MANDAMUS

Filing a petition for writ of mandamus can be a relatively simple and quick remedy in situations where the government has failed to act on an application or petition. For example, mandamus actions have resulted in the processing of delayed visa petitions, EAD applications, and adjustment of status applications.

As adjudications delays have increased, so too have mandamus actions. It seems that the rise in immigration-related mandamus actions has influenced the way the government responds to these complaints. Often the government moves to dismiss the complaint, and some courts have dismissed them. Because many mandamus decisions are not published and are not easy to locate through online search tools, it may be difficult to make an informed decision about whether to file a mandamus petition. AILF is developing a page on our Litigation Clearinghouse website devoted to sharing information about mandamus actions so practitioners will have a better idea of what to expect when filing an immigration related mandamus. **Please share your experiences with mandamus:** what has worked and what has not worked? When have the courts granted your mandamus petition? How has the government responded to the complaint? What has and has not been found to be a reasonable period of delay? Please email us at clearinghouse@ailf.org. If you have pleadings, government responses or decisions you would like to share please attach them to your e-mail.

RESOURCE: REPRESENTING CLIENTS WITH DRUG POSSESSION CHARGES

The New York State Defenders Association Immigrant Defense Project has produced advisories for attorneys representing noncitizens with drug possession convictions. The Supreme Court, in *Lopez v. Gonzales*, which was argued October 3, 2006, is considering whether drug possession can qualify as an aggravated felony. The advisories provide

background and an overview of the issue, a review of arguments before the Supreme Court, and practice tips to help preserve claims pending the Supreme Court's decision. These advisories are posted at www.nysda.org/idp/webPages/LvGPressroom.htm.

CLEARINGHOUSE HIGHLIGHT

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

Second Circuit Finds Government Breached Asylum Applicant's Confidentiality Under 8 C.F.R. § 208.6.

Lin v. U.S. Dep't of Justice, 459 F.3d 255 (2nd Cir. 2006). In this petition for review, the court considered whether the State Department and INS violated a Chinese asylum applicant's right to confidentiality under 8 C.F.R. § 208.6 when they asked the Chinese government to authenticate a document submitted by the petitioner. Under 8 C.F.R. § 208.6, "Information contained in or pertaining to any asylum application . . . shall not be disclosed without the written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General." The government argued that it did not violate this regulation because (1) no sensitive information was disclosed, (2) as a matter of policy, the government needed to authenticate documents, (3) the petitioner waived any objection to the disclosure.

The court rejected the government's arguments. First, the court found that 8 C.F.R. § 208.6 does not limit disclosure of information to only "sensitive" information." Such a limitation would be inconsistent with the plain language of the regulation and conflicts with prior statements made by INS, DOJ and DOS. Second, the court found that "many aspects of the asylum claim . . . could be verified or disproved without disclosing the identity of the applicant or any details of his or her claim to anyone." The court also ruled that section 208.6 requires a written waiver and thus petitioner's alleged oral waiver did not excuse the disclosure of confidential information. On remand, the court directed the BIA to consider whether the regulation violation has exposed the petitioner to additional risks and therefore changed his asylum claim.

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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.