Final

District Judge Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KICHUL LEE et al, Plaintiffs, v. ALBERTO R. GONZALES, et al. Defendants.	Case No. C04-449-RSL

Plaintiffs and Defendants, by and through their undersigned counsel, hereby agree and stipulate as follows:

1. Class Definition

Members of the following class are covered by the terms of this Settlement Agreement:

> All persons who have applied or will apply for naturalization in the jurisdiction of the Seattle District Office, and who have been denied on or after May 4, 1998, on the basis of a lack of good moral character, excepting those who have been subsequently naturalized or those who are statutorily barred from naturalization.

2. Identification of Class Members

A. Within thirty (30) days of the Court's approval of this Settlement Agreement,

Defendant United States Citizenship and Immigration Services ("USCIS")[1] will use the CLAIMS 4 system to identify naturalization applicants in the Seattle District: (1) who were denied from February 1, 1999, to January 12, 2005; or (2) whose naturalization applications were pending on January 12, 2005, and thereafter were denied, up to the date the Court approves this settlement agreement.

B. Within sixty (60) days after the expiration of the period in Paragraph 2.A., USCIS shall review the applicants' files to determine whether the good moral character denials were based on permanent bars (i.e. 8 C.F.R. § 316.10(b)(1)) and/or other statutory bars (i.e. 8 U.S.C. § 1101(f), INA § 101(f), & 8 C.F.R. § 316.10(b)(2)). Of the applicants identified in Paragraph 2.A., USCIS shall not give individual notice under this paragraph to those who are permanently barred or statutorily barred from naturalization, pursuant to 8 C.F.R. § 316.10(b)(1); 8 U.S.C. § 1101(f); and/or 8 C.F.R. § 316.10(b)(2). In addition, all applicants whose applications were subsequently approved and/or naturalized shall not be given individual notice under this paragraph. All remaining Form N-400 (Application for Naturalization) denials for lack of good moral character, which involved the evaluation of evidence relevant to good moral character pursuant to 8 U.S.C. § 1101(f); 8 C.F.R. § 316.10(a)(2); 8 C.F.R. § 316.10(b)(3)(i) - (iii), shall be given individual notice.

C. Within thirty (30) days after the expiration of the period in Paragraph 2.B, if USCIS is not able to locate an applicant's file, then USCIS will provide class counsel with the identifying information of the applicant known to USCIS, as provided for by the Court in its Order of

[1] For purposes of this Settlement Agreement, USCIS refers only to the Seattle District USCIS office and the USCIS field offices located within the jurisdiction of the Seattle District Office.

Protection Regarding Privacy Act Information.

D. Within sixty (60) days after the expiration of the period in Paragraph 2.B., USCIS shall provide a list of the remaining identified potential class members, with most recent addresses, date of birth, Social Security Numbers, and A-numbers, to class counsel. USCIS shall release the applicants' information only as provided for by the Court in its Order of Protection Regarding Privacy Act Information.

3. General Notice to Potential Class Members

Within thirty (30) days of the Court's approval of this Settlement Agreement, USCIS shall provide general notice to potential class members as follows: Notice to Class Members (Notice A, attached hereto) shall be (1) posted on USCIS' official website for the duration of the reopening period; (2) posted in publicly accessible locations at USCIS' field offices in the jurisdiction of the Seattle District Office for the duration of the reopening period; (3) sent to the Washington State Bar Association and the Northwest Chapter of the American Immigration Lawyers Association for distribution to their members by e-mail or their other publications; (4) sent by e-mail or regular mail to USCIS' lists of Washington State community agencies and media; and (5) distributed to all naturalization examiners and supervisors and information officers in the Seattle District.

4. Reopening and Readjudication of Naturalization Proceedings for Class Members

A. Within one hundred and twenty (120) days after the expiration of the period in Paragraph 2.B., USCIS will reopen naturalization proceedings for applicants who are class members. USCIS shall notify the potential class members that their naturalization applications have been reopened and that they can submit a new Form N-400. Notice shall be given by

mailing Notice B, attached hereto, to the potential class member by certified mail, return receipt requested. If the notice is returned as undeliverable, then USCIS shall promptly notify class counsel and provide the applicant's name, last know address, Social Security Number, and date of birth, so that class counsel can make good faith efforts to locate the class member. USCIS shall release the applicants' information to class counsel only as provided for by the Court in its Order of Protection Regarding Privacy Act Information.

B. Potential class members may submit a request to have their naturalization application reopened and readjudicated. The request for reopening is made by filing a new Form N-400 at the Seattle District Office, without fee for filing or fingerprints, at any time after court approval of the Settlement agreement, but not more than twelve (12) months after the date on which USCIS mails the individual notices to identified class members, as described in Paragraph 4.A., or twelve (12) months after the date on which USCIS posts the General Notice, as described in Paragraph 3, whichever date is later.

C. Upon receipt of a new Form N-400, if USCIS gave the applicant individual notice pursuant to Paragraph 2, then USCIS will adjudicate the application in normal Seattle District Office processing time and in accordance with the procedures described in this Settlement Agreement. For persons who submitted a new Form N-400 and who were not given individual notice pursuant to Paragraph 2, USCIS will determine whether the applicant is a class member, and if so then the new Form N-400 application that has been submitted will be deemed to be a pending application for naturalization and will be adjudicated in normal Seattle District Office processing times and in accordance with the procedures described in this Settlement Agreement.

D. If USCIS determines that the applicant is not a class member, then it shall provide

written notice to the applicant, with a copy to class counsel, stating the reasons why the applicant has been determined not to be a class member, and notifying the individual of the name and address of class counsel.

5. Notice to Applicants with Pending Naturalization Cases

This paragraph applies to all individuals who have submitted a naturalization application that will be adjudicated by USCIS in the Seattle District, whether the application has been filed with fee pursuant to standard filing procedures or filed without fee pursuant to Paragraph 4. In adjudicating any pending application for naturalization, if USCIS issues to the applicant either an N-14B (Request for Additional Evidence) requesting evidence that is relevant to the issue of good moral character or a Notice of Continuance notifying the applicant that a decision on the application will be continued, then USCIS shall advise the applicant as follows:

"You may provide evidence of good moral character. If you have questions regarding what is good moral character, then you may refer to the "Guide to Naturalization" at www.uscis.gov or seek the advice of an immigration attorney or an immigration assistance organization. *See* INA 101(f); 8 C.F.R. § 316.10."

6. Adjudication of "Good Moral Character" Issues

A. Pursuant to 8 C.F.R. § 316.10, the decision concerning whether an applicant for naturalization has established good moral character for the relevant period will be made on a case-by-case basis. In deciding whether the applicant has good moral character, USCIS will consider both evidence of negative and positive factors, to the extent that such evidence relates to the applicant's moral character. Evidence of negative factors may include, but is not limited to: prior criminal record; the number of convictions; the seriousness of the criminal conduct; and

whether the applicant has committed other violations of the law which are morally turpitudinous. Evidence demonstrating positive moral character may include, but is not limited to: evidence of rehabilitation; evidence of family ties and relationships in the United States, including evidence of efforts to support a spouse and children, evidence of volunteer work or other work in the community; evidence of stable and responsible employment; character reference letters; employer letters; educational certificates; evidence of community or religious activities; payment of taxes; military service.

B. In making the decision concerning good moral character, USCIS shall not require perfect moral character. Instead, USCIS will make a determination, based on a consideration of all the evidence in the record, whether or not the applicant has good moral character. If USCIS determines that the applicant does not have good moral character, then USCIS will issue a written decision that comports with 8 C.F.R. § 336.1(b), and lists the pertinent facts upon which the determination was based, the specific legal sections applicable to a finding of ineligibility, and any other conclusions of law reached by the examining officer in rendering the decision.

7. Review of Naturalization Adjudications

USCIS will provide for review by a supervisory officer or a journeyman level district adjudications officer before any final denial of a class member's naturalization application.

8. Reporting on Implementation of This Agreement

USCIS shall provide to class counsel the following reports describing its compliance with this Settlement Agreement. First, pursuant to Paragraph 2.D., USCIS shall provide class counsel with the name, current address, date of birth, SSN and A-number, of all applicants identified for individual notice pursuant to Paragraph 2 and individuals who have submitted an N-400 seeking

reconsideration pursuant to Paragraph 4. Second, USCIS shall on a quarterly basis thereafter, provide class counsel with updated status reports in the form attached hereto as Attachment C. USCIS shall release the applicants' information to class counsel only as provided for by the Court in its Order of Protection Regarding Privacy Act Information.

9. Costs and Attorneys Fees

Defendants will pay plaintiffs reasonable attorneys fees and costs, as allowed by the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, and as determined by a separate agreement, which will be incorporated by agreement into this Settlement Agreement.

10. Duration of Agreement

The parties agree that this Settlement Agreement will become effective on the date it is approved by the Court. The provisions of this agreement shall remain in effect until the last application filed by a class member is fully adjudicated by USCIS.

11. Dismissal of Complaint

Upon District Court approval of this Settlement Agreement, Plaintiffs agree to promptly move the Court for dismissal of the complaint with prejudice.

12. Continuing Jurisdiction

The Parties agree that notwithstanding the filing and granting of any motion to dismiss pursuant to Paragraph 12, the District Court will retain jurisdiction in this action over the matters described immediately below.

A. Claims by plaintiffs that Defendants have engaged in a pattern and practice of refusing to implement any of the relief set forth in this Agreement.

B. Claims by plaintiffs that Defendants have expressly repudiated this Agreement.

C. At least sixty (60) days prior to bringing any action regarding this Settlement Agreement, the parties shall meet and confer in a good faith effort to resolve any of their differences.

13. Class Counsel

Class Counsel for the purposes of this Settlement Agreement are Robert H. Gibbs, Robert Pauw, and Christopher Strawn, Gibbs Houston and Pauw, 1000 Second Avenue, Suite 1600, Seattle, WA 98104 (206) 682-1080.

14. Approval of Agreement

This agreement is subject to approval by the United States District Court pursuant to Federal Rule of Civil Procedure 23.

The parties have tentatively reached this settlement agreement pending resolution of: EAJA fees, naturalization orders for two previously administratively naturalized Plaintiffs, the privacy notice, the general notice (Notice A), and the reporting notice (Attachment C).

Dated this 10th day of June, 2005.

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Dated this 10th day of ~~June,~~ July 2005.

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Dated this 10 day of ~~June,~~ July 2005.

/S/
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