

Catholic Soc. Servs. v. Reno

United States District Court for the Eastern District of California

June 12, 1998, Decided ; June 12, 1998, Filed

NO. CIV. S-98-629 LKK/JFM

Reporter: 1998 U.S. Dist. LEXIS 10430

CATHOLIC SOCIAL SERVICES, INC., IMMIGRATION PROGRAM, et al., Plaintiffs, v. JANET RENO, Attorney General of the United States of America, et al., Defendants.

Counsel: [*1] For CATHOLIC SOCIAL SERVICES INC, IMMIGRATION PROGRAM, UNITED FARMWORKERS, AFL-CIO, ESAUL DELGADILLO-URIBE, GUSTAVO RODRIGUEZ, ANIL K URMIL, ISMAEL DE LA CRUZ, MIGUEL GALVEZ MORAN, ELMA BARBOSA, JESUS REYNA REYNA QUTB-E-ALAM KHAN, MOHAMMED HAQ, plaintiffs: Peter A Schey, Carlos Holguin, Center for Human Rights and Constitutional Law, Los Angeles, CA.

For CATHOLIC SOCIAL SERVICES INC, IMMIGRATION PROGRAM, UNITED FARMWORKERS, AFL-CIO, ESAUL DELGADILLO-URIBE, GUSTAVO RODRIGUEZ, ANIL K URMIL, ISMAEL DE LA CRUZ, MIGUEL GALVEZ MORAN, ELMA BARBOSA, JESUS REYNA REYNA QUTB-E-ALAM KHAN, MOHAMMED HAQ, plaintiffs: Michael S Rubin, Altshuler Berzon Nussbaum Berzon and Rubin, San Francisco, CA.

For JANET RENO, defendant: Donald E Keener, Stephen W Funk, Keisha Dawn Bell, United States Department of Justice, Office of Immigration Litigation, Washington, DC.

Judges: LAWRENCE K. KARLTON, CHIEF JUDGE EMERITUS, UNITED STATES DISTRICT COURT.

Opinion by: LAWRENCE K. KARLTON

Opinion

ORDER

On June 5, 1998, a telephonic hearing was held on plaintiffs' motion for a temporary restraining order in the above-captioned case. PETER SCHEY and CARLOS HOLGUIN appeared for plaintiffs; KEISHA BELL and GLYNDELL WILLIAMS [*2] appeared for defendants. Based on the papers and pleadings on file and on argument at the hearing, the court concluded that serious legal questions were tendered and that the balance of hardship favored plaintiffs. Accordingly, in order to preserve the

status quo ante, a temporary restraining order was granted. On June 11, 1998, the court learned that the government had represented in their brief to the Ninth Circuit Court of Appeals that the order was considerably broader than the court intended. Accordingly, in order to avoid confusion, the court hereby VACATES the previous order and enters the following temporary restraining order. This relief shall remain in effect through June 19, 1998, at which time the court will hold a hearing on plaintiffs' motion for a preliminary injunction.

A. COVERED INDIVIDUALS

With respect to any individual alien prima facie eligible for legalization under Immigration and Nationality Act § 245A (as defined at [8 C.F.R. § 245a.1\(n\)](#)) who timely filed for class membership under *Catholic Social Services v. Reno*, CIV No. S-86-1343 (E.D. Cal.) and who:

(i) filed an application for legalization under § 245A of the Immigration Reform and Control [*3] Act of 1986 within the period specified by subsection (a) (1) and was denied adjustment of status based on the Immigration and Nationalization Service's advance parole procedures, 52 Fed. Reg. 16206 (1987) (codified at [8 C.F.R. § 245a.1\(g\)](#)), or

(ii) attempted to file a complete application and application fee with an authorized legalization officer, including with a Qualified Designated Entity, within the period specified in subsection (a) (1) but had the application and fee refused or was denied an application based on the Immigration and Nationalization Service's advance parole procedures, 52 Fed. Reg. 16206 (1987) (codified at [8 C.F.R. § 245a.1\(g\)](#)),

and against whom proceedings under Chapter 4 of Title II of the Immigration and Nationality Act as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 have been initiated (except that with respect to work authorization, this relief is not limited to persons against whom proceedings under Chapter 4 of Title II have been initiated), unless defendants have reasonable grounds for believing that the applicant is otherwise excludable, removable or subject to detention on grounds not subject to waiver [*4] under INA § 245A, the court ORDERS that:

B. TEMPORARY INJUNCTIVE RELIEF

1. Defendants are ENJOINED from executing final removal orders with respect to any covered individual during the effective period of this order. Defendants shall not, however, be required to admit any individual into the United States as a result of this order.

2. Defendants are ENJOINED from detaining any covered individual during the effective period of this order unless the individual is a danger to the public or there is a good faith belief that the individual is a flight risk. Defendants shall not be required by virtue of this order to release any covered individual who was in detention prior to issuance of this order.

3. Defendants are ENJOINED from revoking the work authorization of any covered individual during the effective period of this order. Defendants shall also not be required by virtue of this order to affirmatively grant or renew work authorization.

4. Defendants are ENJOINED from destroying or otherwise disposing of pending applications and supporting documents tendered by individuals who filed for class membership under *Catholic Social Services v. Reno*, CIV No. S-86-1343 (E.D. [*5] Cal.).

C. BOND

Plaintiffs are directed to pay to the Clerk of the Court a bond in the amount of one hundred dollars (\$ 100).

D. PRELIMINARY INJUNCTION AND CLASS CERTIFICATION

A hearing on plaintiffs' motion for a preliminary injunction is SET for June 19, 1998 at 9:30 a.m. in

Courtroom No. 1. Plaintiffs are directed to submit any additional briefing not later than June 11, 1998. Defendants shall submit any additional opposition not later than June 16, 1998.

In addition to any other matters that the parties wish to address, the parties are directed to brief or be prepared to address at hearing the following issues:

1. Plaintiffs are directed to brief or be prepared to address the implications of an asserted Congressional intent to end this litigation and to address on what basis individuals who did not make an application because they were refused a form may obtain relief in light of the language Congress employed in § 377;

2. Defendants are directed to brief on what basis § 377 can be viewed as rational, if it is interpreted to exclude persons who actually attempted to apply but were refused an application by an INS employee or agent.

A hearing is also [*6] set on for June 19, 1998 at 9:30 a.m. on plaintiffs' motion for class certification. Any additional briefing shall be filed on the same schedule.

IT IS SO ORDERED.

DATED: June 12, 1998.

LAWRENCE K. KARLTON

CHIEF JUDGE EMERITUS

UNITED STATES DISTRICT COURT