

KC

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

KC FILED

JUL 21 2005

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Maria Ramos and Nicolas Olivares )  
on behalf of themselves and others similarly )  
situated, )

Plaintiffs, )

v. )

Michael Chertoff, et al., )

Defendants. )


No. 02 C 8266  
Judge Mark Filip

**AGREED MOTION ADOPT THE PARTIES' PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

The parties, through their respective attorneys, respectfully request this Court to adopt their proposed findings of fact and conclusions of law on the issue of attorneys' fees and cost, Exhibit 1, which they filed with this Court on June 28, 2005.

WHEREFORE, Parties pray for entry of an Order adopting their proposed findings of fact and conclusions of law.

Respectfully submitted,

  
Attorney for one of the Parties

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U.S. DISTRICT COURT

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Maria Ramos and Nicolas Olivares,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

Thomas Ridge, et al.,

Defendants.

No. 02 C 8266  
Judge Mark Filip

RECEIVED JUN 27 2005  
UNITED STATES ATTORNEY  
NORTHERN DISTRICT  
CHICAGO, ILLINOIS  
REC'D BY [Signature]  
CONTENTS NOT VERIFIED

NOTICE OF FILING

To: See Attached Certificate

Please take notice that on Tuesday, June 28, 2005, the undersigned filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, the attached **Agreed Proposed Findings of Fact and Conclusions of Law on the Issue of Attorneys' Fees and Costs**, a true copy of which is hereby served upon you.

*Alonzo Rivas*  
One of the Attorneys for Plaintiffs

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CLERK  
U.S. DISTRICT COURT

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EXHIBIT  
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**CERTIFICATE OF SERVICE**

The undersigned states that a copy of the Notice of Filing and Agreed Proposed Findings of Fact and Conclusions of Law on the Issue of Attorneys' Fees and Costs, was served personally on counsel listed below on June 28, 2005.

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\_\_\_\_\_  
Alonzo Rivas, Staff Attorney, MALDEF



performed any given work, calculated the total hours for each year as 326.5 for 2002, 334.7 for 2003, and 347.7 for 2004. Under EAJA, the hourly rate for this case would have been \$145.87 in 2002, \$148.43 in 2003, and \$148.75 in 2004. If the Plaintiffs had sought compensation for actual hours expended and costs incurred, attorneys' fees would have amounted to \$147,986.21 for time spent, plus \$2,446 in costs incurred.

### Conclusions of Law

The Court is required under Federal Rule of Civil Procedure 23(e) "to make independent determination as to appropriate attorney fees upon approving settlement agreement providing for attorney fees." See *Montgomery v. Aetna Plywood, Inc.*, 231 F.3d 399, 413 (7th Cir. 2000)(citing *Strong v. BellSouth Telecomms. Inc.*, 137 F.3d 844, 849-50 (5th Cir.1998)(holding that "[e]ven when the district court finds the settlement agreement to be untainted by collusion, fraud, and other irregularities, the court must thoroughly review the attorneys' fees agreed to by the parties in the proposed settlement agreement.")) "The purpose of this salutary requirement is to protect the nonparty members of the class from unjust or unfair settlements affecting their rights." *Piambino v. Bailey*, 610 F.2d 1306, 1327-28 (5th Cir. 1980), *rehearing denied*, 618 F.2d 1390, *certiorari denied*, 101 S.Ct. 568, 449 U.S. 1011, 66 L.Ed.2d 469 (1980). Failure of a district court to conduct such assessment can result in a reversal of that court's approval of a settlement agreement. See *id.* at 1328.

The parties in this case agreed to an attorneys' fees and costs award based on EAJA rates, and Defendants agree that the Plaintiffs meet the requirements to recover fees and costs under EAJA. See 28 USC § 2412(d)(1)(B) (2005). However, the Court

must still determine whether the amount of the fees award to which the parties agreed is reasonable. The reasonableness of a request for attorneys' fees is determined by following the standards of *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir., 1974). The Fifth Circuit established in *Johnson* 12 factors to determine the reasonableness of fee awards: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson*, 488 F.2d at 717-19. The Court does not need to discuss every single one of the *Johnson* factors in reaching a determination of reasonableness, "so long as the record clearly indicates that ... [it] ...has utilized the *Johnson* framework as the basis of its analysis, has not proceeded in a summary fashion, and has arrived at an amount that can be said to be just compensation." See *Cobb v. Miller*, 818 F.2d 1227, 1232 (5th Cir. 1987).

The parties in this case can establish the reasonableness of their agreed attorneys' fees under the *Johnson* factors. While there is no evidence that attorneys for the class were precluded from taking other cases because of their participation in this case, the information they submitted to this Court shows that they spent a considerable amount of time litigating this case. The attorneys spent a total of 326.5 in 2002, 334.7 in 2003, and 347.7 in 2004 (a grand total of 1008.9 combined hours) working in this case. The

documents submitted by the attorneys detail that the majority of their time was spent doing substantive work, such as legal research, drafting pleadings, motions, discovery requests, and other legal documents on a variety of difficult constitutional and statutory questions.

The issues raised in this case were so complex, that there was a need to recruit the legal expertise of Steven Saltzman. Despite the combined knowledge and expertise of the attorneys for the Midwest Immigrant and Human Rights Center (MIHRC), who had worked in the previous incarnation of this case and were representing class members in their individual cases through the immigration courts, and the Mexican American Legal Defense and Educational Fund (MALDEF), whose attorneys specialize in high-impact civil rights litigation and had filed actions against the former Immigration and Naturalization Service in the past, Mr. Saltzman's civil rights expertise was needed to lead the Plaintiffs' legal team.

Given the amount of work and the complexity of the legal issues involved in this case, the fee award to which Plaintiffs agreed is indeed reasonable. The hourly rate they requested, as provided by EAJA, was \$145.87 for 2002, \$148.43 for 2003, and \$148.75 for 2004. Had the Plaintiffs sought compensation for actual hours expended they may have been entitled to \$147,986.21. Such rates are, for most of the attorneys involved, less than half of their market rate. However, the Plaintiffs agreed to further reduce their rates and agreed to a \$90,000 award for their attorneys' fees and costs combined in the interest of settling this case expeditiously to save as many class members as possible from receiving final orders of deportation. While there are no similar cases to which we can



compare this action, an award of \$90,000 for attorneys' fees and costs for close to three years of litigation cannot be considered excessive, unfair, or unreasonable.

Finally, *there* is no doubt that the results obtained through this settlement are substantial and have the potential of helping thousands of people. Under the terms of their settlement agreement with the Government, Plaintiffs stand to benefit in four major ways: First, by having the Government not begin deportation proceedings against those class members who have not received any notification of a deportation hearing; second, by terminating the deportation hearings of those class members who are currently going through deportation proceedings; third, by allowing all class members to apply for a credit of the fees they paid with their application; and fourth, by allowing class members to re-file their applications for Adjustment of Status under Section 245(i) once a visa number becomes available for them.

The settlement sufficiently favors the Plaintiffs in this case. The terms of the settlement are very much in line with what the Plaintiffs were trying to achieve through their lawsuit. A brief review of the Plaintiffs' Prayer for Relief in their pleadings shows that one of the Plaintiffs' *main* goals in this action was to have the Court enter an order enjoining the Government from using the information Plaintiffs provided in their applications for adjustment of status to start or continue deportation proceedings against them, and from retaining the fees paid by the Plaintiffs when they filed those applications. This has been accomplished, to a great extent, by the settlement agreement.

Conclusion

For the reasons stated above, this Court should adopt the Parties Proposed Findings of Fact and Conclusions of Law.

  
One of the Attorneys for Plaintiffs

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