

ASYLEE ADJUSTMENT (NGWANYIA) CLASS ACTION NOTICE OF PROPOSED SETTLEMENT AGREEMENT

Ngwanyia v. Gonzales, No. 02-502 (RHK) (D. Minn).

May 2005

IF YOU ARE A PERSON WHO WAS GRANTED ASYLUM IN THE UNITED STATES AND YOU HAVE APPLIED FOR YOUR “GREEN CARD,” THAT IS, ADJUSTMENT OF YOUR IMMIGRATION STATUS TO LAWFUL PERMANENT RESIDENCE, THIS NOTICE HAS IMPORTANT INFORMATION FOR YOU.

Q. What are these questions and answers about?

A. These questions and answers explain the proposed settlement agreement of a national class action lawsuit. A federal court soon will be deciding whether to approve a settlement agreement and dismiss the lawsuit. This notice explains the terms of the settlement agreement so the individuals affected by the lawsuit can decide if they object to any part of the agreement. If they do object, this notice gives instructions for what they should do.

This is a general summary of the settlement agreement. You may also review the entire settlement agreement. See the question “What if I want more information?” below for information on how to see the entire settlement agreement.

Q: What was this lawsuit about?

A: This was a lawsuit against the Immigration and Naturalization Service (“the INS”) brought by a number of individuals (“named plaintiffs”) on their behalf and on behalf of others who are similarly situated (“class members”). The named plaintiffs and class members were non-US citizens in the United States who had been granted asylum by the INS (“asylees”), and who filed for “adjustment of status” to lawful permanent resident (“LPR”) status.

The immigration law in recent years has allowed only 10,000 asylees each year to become LPRs. Each year there are many more than 10,000 people who are granted asylum. For that reason, there are a lot of asylees waiting to adjust their status to LPR status.

In the lawsuit, the plaintiffs complained that the defendants had not used all 10,000 numbers they were allowed to use, and that this contributed to a very long wait for asylees waiting to “adjust” their immigration status. We explain all of these words below.

Q: What do the terms “plaintiff,” “defendant,” “class action” and “class member” mean?

A: A plaintiff is a person who files a lawsuit against someone else – the defendant. A

class action is a court case on behalf of a lot of plaintiffs, all of whom have at least one fact or legal issue in common. The court may certify the case as a class action. After the court certifies the case as a class action, each one of plaintiffs – whether named in the papers or not -- is a “class member.” Class members do not have to be and usually are not specifically named in the legal papers. They also may not know they are class members.

Q: What does the term “adjustment of status” mean?

A: “Adjustment of status” or “adjustment” is when a person who is in some other immigration status (usually asylee status or undocumented or non-immigrant status) becomes a lawful permanent resident of the United States without having to leave the United States to process their papers abroad.

Q: Who is a “class member” in the *Ngwanyia* case?

Ngwanyia class members are asylees in the United States whose application for adjustment of status is pending with the government.

Q. What happened to the INS?

A. When the Department of Homeland Security was created, the INS was abolished. The part of the INS mostly involved in this case is now called the U.S. Citizenship and Immigration Service (USCIS). This summary just refers to “the government” but it is referring to all the defendants in the lawsuit, including what used to be the INS.

Q: What happened in the lawsuit?

A: The plaintiffs (the asylees) won at the trial court. The defendants (the government) appealed. While the appeal was pending, the lawyers for the plaintiffs and defendants negotiated a settlement agreement.

Q. What is the next step?

A. The settlement agreement resolves all of the issues in the lawsuit. If the trial court approves the settlement agreement, the settlement agreement will apply to and benefit all class members. The court then will dismiss the lawsuit.

Q. What are the main points of the settlement agreement?

A. The following is a summary of the major terms of the settlement agreement.

Asylee adjustment numbers: The parties agree that the government will make available 31,000 more asylee adjustment numbers during the next three years to adjust the status of asylees who have applied for permanent residence. As much as possible, asylees in the waiting list will be adjusted in chronological order by the date when they filed their

adjustment applications.

The government will use at least 8,000 of these 31,000 asylee adjustment numbers in the current “fiscal year” (which ends on September 30, 2005). The government also will use at least 8,000 of these 31,000 asylee adjustment numbers next fiscal year (which runs from October 1, 2005 to September 30, 2006). The government will use the remainder of the 31,000 asylee adjustment numbers in fiscal year 2007 (which runs from October 1, 2006 to September 30, 2007).

Q: How many asylees will adjust their status in the next three years?

A: The use of these 31,000 additional asylee adjustment numbers over the next three years will be *in addition* to the government’s use of the 10,000 annually that are expected to be available over the next three years.

The government agrees that it will use all 10,000 asylee adjustment numbers, or however many numbers may be available in the future, *in addition to* the 31,000 numbers from the *Ngwanyia* lawsuit.

This means that every year for the next three years, we expect that the government will adjust at least 18,000 asylees and as many as 25,000 in Fiscal Year 2007, in order to use all 31,000 additional numbers.

Q: Will asylees be able to tell when they will become LPRs?

A: Asylees will have more information than they did before. The government will post quarterly reports (that is, four times a year) on its Internet website (www.uscis.gov). These reports will include the filing date of the asylee adjustment applications currently being processed. They also will report the number of asylee adjustment applications approved during the prior quarter.

The government also will set up a way – probably by email -- for asylees whose adjustment applications were filed before the current processing date to inquire about the status of their particular applications.

Employment Authorization: The lawsuit also resolves complaints about the duration of asylees’ employment authorization documents (work permits). This is explained below:

Q: What does the settlement agreement say about employment authorization documents for asylees?

A: An asylee’s legal permission to work does not depend on the asylee having an employment authorization document (EAD) and does not end when the asylee’s EAD expires. The government does not charge for an asylee’s initial EAD, but asylees who want to renew their EADs must pay the appropriate fee.

Q. How will asylees renew their EADs? For how long will the renewal EAD be

valid?

A: Within 3 months of when the settlement agreement goes into effect, the government will give asylees who apply to renew EADs the option of applying for EADs that will be valid for multiple years, up to five years. In order to renew their EAD, asylees will be required to submit Form I-765 with the appropriate fee. Asylees will be told if they have to appear at a USCIS Application Support Center for the taking of a photograph and/or fingerprints.

To obtain a multiple year EAD, the asylee will have to prepay for the number of years requested. The government will subtract the estimated savings from its not having to produce the EAD every year. The cost of the multiple year EAD will be less than the cost of annual renewals by at least \$20 per year.

Q. Must asylees renew their EADs?

A. No. Asylees do not have to renew their EADs.

Q. What about fee waivers for asylees applying to renew EADs?

Fee waivers will be available for multi-year EADs on the same basis as they are available for one year EADs.

A. What about attorneys' fees?

Q. The plaintiffs and class members have not paid any attorneys fees and will not have to pay attorneys fees in connection with this case. The defendants and plaintiffs' lawyers have reached an agreement for the government to pay the plaintiffs' attorneys fees.

Q. What if I want more information?

A. This is just a summary of the agreement. If you would like to read the entire agreement, it should be attached to this document or available with this document. You also can obtain it from: 1) the USCIS's internet website, <http://uscis.gov/graphics/index.htm> 2) the Community Relations Office located within each USCIS District Office; 3) the website of the American Immigration Law Foundation, www.aifl.org; and 4) immigration assistance providers listed on the Roster of Recognized Organizations and Accredited Representatives maintained by the Executive Office for Immigration Review pursuant to 8 C.F.R. Part 292 (2002). <http://www.usdoj.gov/eoir>

Q. What if I am a class member and I agree with or object to the terms of the settlement agreement?

If you are a class member and you agree with the proposed settlement, you do not need to

do anything. You may but do not have to appear at the public hearing on the proposed settlement on June 15, 2005 at 9:30 a.m. central time (see below).

If you are a class member and you disagree with the proposed settlement, you have a right to object to it. Your objections will be considered by the court as it reviews the settlement. Objections to the proposed settlement will be considered only if you follow these procedures:

1. Objections must be in writing and must be sent to:

Clerk of the United States District Court
for the District of Minnesota
316 North Robert Street, Suite 700
St. Paul, MN, 55101.

2. All objections must include the following information:

- * Name, address and telephone number of the person filing the objection.
- * The case name and number, *Ngwanyia v. Gonzales*, No. 02-502 (RHK).
- * A statement of the reasons for the objection
- * A statement that you have sent copies of your objection to the lawyers listed at the end of the notice

3. The deadline for mailing your objections to the court and to the lawyers listed below is June 6, 2005. Objections must be postmarked on or before June 6, 2005 to be considered timely. Objections filed or mailed after that date will not be considered. Plaintiffs who fail to file objections on or before June 6, 2005 will not be permitted to testify at the settlement hearing.

4. A public hearing on the proposed settlement and any objections which have been filed will be held on June 15, 2005 at 9:30 a.m. at the following location. You may appear at that hearing.

United States District Court
for the District of Minnesota
316 North Robert Street, Suite 700
St. Paul, MN, 55101.

5. You must send copies of your objections to each of the lawyers listed below before the deadline.

Nadine Wettstein
American Immigration Law Foundation
918 F Street, NW
Washington, DC 20004

Nancy E. Friedman
Office of Immigration Litigation
Department of Justice
PO Box 878
Ben Franklin Station

Washington, D.C. 20044