

The Honorable James L. Robart

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY
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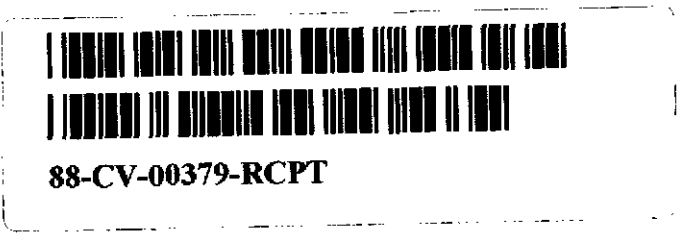
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS) Case No. 88-379R
PROJECT, ET AL.)
PLAINTIFFS,) ~~PROPOSED~~ ORDER OF
vs.) FINAL JUDGMENT
U.S. CITIZENSHIP AND IMMIGRATION) (Exhibit 5)
SERVICES, ET AL.)
DEFENDANTS.)
_____)
_____)

JLR

///



1 Rule 23(e) of the Federal Rules of Civil Procedure provides:

2 A class action shall not be dismissed or compromised without the approval of the
3 court, and notice of the proposed dismissal or compromise shall be given to all
4 members of the class in such manner as the court directs.

5 With respect to the merits of the settlement, Rule 23(e) requires the Court to
6 determine whether a proposed settlement in a class action is fundamentally fair,
7 adequate, and reasonable. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir.
8 1992). It is the settlement taken as a whole, rather than the individual component parts,
9 that must be examined for overall fairness. Officers for Justice v. Civil Serv. Comm'n of San
10 Francisco, 688 F.2d 615, 628 (9th Cir. 1982). The decision to approve or reject a settlement
11 is committed to the sound discretion of the trial judge because he is "exposed to the
12 litigants, and their strategies, positions and proof." Officers for Justice, 688 F.2d at 626
13 (internal quotation omitted).
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17 For the reasons set out in the parties' Joint Statement re Final Approval of Settlement,
18 the Court finds that the settlement is fundamentally fair, adequate and reasonable.

19 Accordingly,

as amended by Dkt 543

20
21 IT IS HEREBY ORDERED that the proposed settlement is approved, and each and
22 every claim of the Complaint, as amended, is dismissed with prejudice, and any
23 injunctive orders and decisions of this Court are dissolved.
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25 IT IS FURTHER ORDERED that the settlement class be certified pursuant to Rule 23
26 of the Federal Rules of Civil Procedure as follows:
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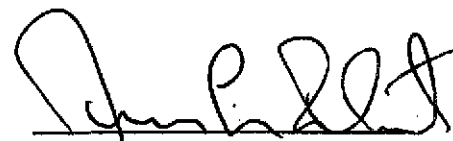
1 All persons who entered the United States in a non-immigrant status prior to
2 January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A
3 of the INA, 8 U.S.C. § 1255a, who are within one or more of the Enumerated
4 Categories described below in paragraph 2, and who —

- 5 A) between May 5, 1987 and May 4, 1988, attempted to file a complete
6 application for legalization under § 245A of the INA and fees to an INS
7 officer or agent acting on behalf of the INS, including a Qualified Designated
8 Agency (“QDE”), and whose applications were rejected for filing
9 (hereinafter referred to as “Sub-class A members”); or
- 10 B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization
11 with an INS officer, or agent acting on behalf of the INS, including a QDE,
12 under § 245A of the INA, but were advised that they were ineligible for
13 legalization, or were refused legalization application forms, and for whom
14 such information, or inability to obtain the required application forms, was a
15 substantial cause of their failure to file or complete a timely written
16 application (hereinafter referred to as “Sub-class B” members); or
- 17 C) filed a legalization application under INA § 245A and fees with an INS
18 officer or agent acting on behalf of the INS, including a QDE, and whose
19 application
- 20 i. has not been finally adjudicated or whose temporary resident
21 status has been proposed for termination (hereinafter referred to
22 as “Sub-class C.i. members”),
- 23 ii. was denied or whose temporary resident status was terminated,
24 where the INS or CIS action or inaction was because INS or CIS
25 believed the applicant had failed to meet the “known to the
26 government” requirement, or the requirement that s/he demonstrate
27 that his/her unlawful residence was continuous (hereinafter referred
28 to as “Sub-class C.ii. members”).

1 **2. Enumerated Categories**

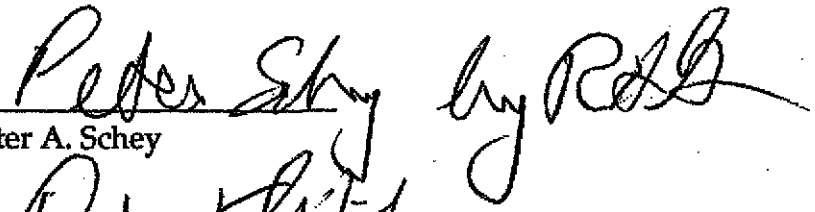
- 2 (1) Persons who violated the terms of their nonimmigrant status prior to
3 January 1, 1982 in a manner known to the government because
4 documentation or the absence thereof (including, but not limited to, the
5 absence of quarterly or annual address reports required on or before
6 December 31, 1981) existed in the records of one or more government
7 agencies which, taken as a whole, warrants a finding that the applicant was
8 in an unlawful status prior to January 1, 1982 in a manner known to the
9 government.
- 10 (2) Persons who violated the terms of their nonimmigrant visas before January
11 1, 1982, for whom INS/DHS records for the relevant period (including
12 required school and employer reports of status violations) are not contained
13 in the alien's A-file, and who are unable to meet the requirements of 8 C.F.R.
14 §§ 245a.1(d) and 245a.2(d) without such records.
- 15 (3) Persons whose facially valid "lawful status" on or after January 1, 1982 was
16 obtained by fraud or mistake, whether such "lawful status" was the result of
17 (a) reinstatement to nonimmigrant status;
18 (b) change of nonimmigrant status pursuant to INA § 248;
19 (c) adjustment of status pursuant to INA § 245; or
20 (d) grant of some other immigration benefit deemed to interrupt the
21 continuous unlawful residence or continuous physical presence
22 requirements of INA § 245A.

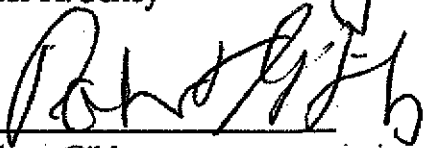
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25 Dated: Sept 9, 2008

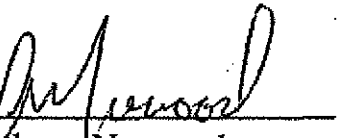

Honorable James L. Robart
United States District Judge

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28 Presented by:
Settlement

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