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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KICHUL LEE, et al.,

Plaintiffs,

v.

JOHN ASHCROFT, Attorney General, et al.,

Defendants

NO. C04-00449RSL

STIPULATION AND ORDER
OF PROTECTION
REGARDING PRIVACY ACT
INFORMATION

Plaintiffs, by and through their attorney, Robert Gibbs, and Defendants, by and through their attorneys, John McKay, United States Attorney for the Western District of Washington and Kristin B. Johnson, Assistant United States Attorney for said District, stipulate and agree to the following:

1. This Stipulation and Order is agreed to and entered pursuant to Fed.R.Civ.P. 26(c), which provides for the issuance of protective orders limiting the disclosure of privileged and confidential documents and information in appropriate circumstances, and 5 U.S.C. § 552a(b)(11) and (g)(1), which provide an exception to the Privacy Act of 1974 for documents and information released pursuant to a court order.

2. This Stipulation and Order relates to a class action brought pursuant to INA

1 § 310(c), 8 U.S.C. § 1421(c) (jurisdiction to hear de novo denials of applications for naturalization); 28
2 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2201 (the Declaratory Judgment Act); and 5
3 U.S.C. § 701 (the Administrative Procedures Act). The class action challenges way the Seattle District
4 Office of the United States Citizenship and Immigration Services (“USCIS”), applies the good moral
5 character standard, when adjudicating applications for naturalization.

6 3. The parties have entered into a Settlement Agreement dated August 10, 2005, which
7 contemplates the disclosure of documents and information that may be protected from release by the
8 Privacy Act of 1974, 5 U.S.C. § 552(a). Specifically, the Settlement Agreement provides that the
9 USCIS will provide class counsel with identifying information of naturalization applicants that fall
10 within the class, but whose files cannot be located by the USCIS. (Paragraph 2C). The USCIS will
11 provide class counsel with the most recent addresses, dates of birth, Social Security Numbers, and A-
12 numbers of identified class members. (Paragraph 2D). The USCIS will provide class counsel the last
13 known addresses, Social Security Numbers, and dates of birth of applicants whose Individual Notice to
14 Class Members is returned as undeliverable. (Paragraph 4A). The USCIS will provide the names,
15 current addresses, dates of birth, Social Security Numbers, and A-numbers of all applicants identified
16 for individual notice under the Settlement Agreement and applicants who have submitted an N-400
17 application for naturalization seeking reconsideration under the Settlement Agreement. (Paragraph 8).

18 4. While disclosure of such information ordinarily is prohibited in civil litigation, the
19 Privacy Act provides, as an exception, that such records may be released “pursuant to the order of a
20 court of competent jurisdiction.” 5 U.S.C. § 552a(b)(11). An order of this Court, therefore, would
21 provide a basis for release of the requested information pursuant to the Privacy Act and Fed.R.Civ.Pro.
22 26(c), as well as insulate Defendants from potential liability for improper disclosure. See 5 U.S.C. §
23 552a(g)(1).

24 5. The purposes of this Stipulation and Order include protecting the confidentiality of
25 certain information while ensuring that the parties are able to quickly and accurately identify potential
26 class members and provide them the relief they may be entitled to under the Settlement Agreement.
27 Accordingly, the parties, subject to the Court’s approval, stipulate and agree that the procedures set out
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1 in the ensuing paragraphs shall be followed with respect to information provided by Defendants pursuant
2 to the Settlement Agreement and this Stipulation and Order.

3 6. All information provided pursuant to the Settlement Agreement and this Stipulation and
4 Order shall be used solely in connection with this lawsuit. No information may be released or disclosed
5 to any person other than:

- 6 a. the potential class member the information relates to or Class Counsel in
7 this action;
- 8 b. secretaries, paralegal assistants, and other employees and agents of Class Counsel who
9 are engaged in assisting Class Counsel in the preparation of this action;
- 10 c. outside consultants and experts consulted or retained for the purpose of assisting in the
11 preparation of this action, upon condition that, before making disclosure, Class Counsel
12 must obtain and retain an agreement in writing from the outside expert or consultant
13 reciting that he or she has read a copy of this Stipulation and Order and agrees to be
14 bound by its provisions; and
- 15 d. any other person mutually authorized by all counsel to examine such
16 information and materials.

17 7. Any person having access to the information disclosed by Defendants pursuant to the
18 Settlement Agreement and this Stipulation and Order shall be informed that it is confidential and subject
19 to a non-disclosure Order of the Court. No such person shall release or disclose the information to any
20 person other than those specifically identified in paragraph 6, above, without further order of the Court
21 or stipulation of the parties.

22 8. If Class Counsel intends to file any motion, opposition, reply or any other filing with the
23 Court and attach thereto or set forth therein any document or information that Defendants have provided
24 pursuant to the Settlement Agreement or this Stipulation and Order, Class Counsel shall file the
25 document under seal.

26 9. Within sixty days of the conclusion of this litigation, including any appeals therefrom,
27 any originals or reproductions of any the information provided by Defendants under the Settlement
28 Agreement and this Stipulation and Order shall be destroyed by Class Counsel or returned to the custody
of counsel for the Defendants. If the documents are destroyed, Class Counsel shall so notify
Defendants' counsel in writing.

10. Any specific part or parts of the restrictions imposed by this Stipulation and Order may
be terminated at any time by a letter from counsel for Defendants to Class Counsel or by an order of the

1 Court.

3 JOHN McKAY
4 United States Attorney

5 /s/ Robert H. Gibbs
6 ROBERT H. GIBBS
7 Robert Pauw
8 Christopher Strawn
9 1000 Second Avenue, Suite 1600
10 Seattle, WA 98104
11 (206) 224-8790
12 Counsel for Plaintiffs

5 /s/Kristin B. Johnson
6 KRISTIN B. JOHNSON
7 Assistant United States Attorney
8 700 Stewart Street, Suite 5220
9 Seattle, WA 98101-1271
10 Counsel for Defendants

11 The parties having stipulated, it is hereby **ORDERED** as follows:

13 1. Notwithstanding any other provision of the Privacy Act, 5 U.S.C.
14 § 552a, et seq., the USCIS, its officers, agents, employees and representatives (including,
15 but not limited to, the United States Attorney's Office for the Western District of
16 Washington) are hereby authorized under 5 U.S.C. § 552a(b)(11) to release to Class
17 Counsel the information identified in paragraphs 2C, 2D, 4A, and 8 of the Settlement
18 Agreement dated August 10, 2005.

19 2. Class Counsel shall utilize such information only for the purpose of locating
20 potential class members in order to notify them of their rights under the Settlement
21 Agreement, and to monitor compliance with the Settlement Agreement, and shall make no
22 further disclosure of such information beyond what is necessary to accomplish this
23 purpose.

24 3. The USCIS, its officers, agents, employees and representatives are hereby
25 relieved of any obligation under 5 U.S.C. § 552a(c) to make or keep any accounting of any
26 disclosure or, under 5 U.S.C. § 552a(e)(8), to provide notice of any disclosure to any
27 individual, made under the authority of this order.
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