

1 Plaintiffs' claims because the government has failed to provide sufficient evidence that Plaintiffs are in
2 privity with the Golden Rainbow limited partnership. The Court GRANTS Plaintiffs' Motion for
3 Partial Summary Judgment. The Ninth Circuit's recent decision in Chang v. United States, 327 F.3d
4 911 (9th Cir. 2003), prohibits retroactive application of certain precedent decisions (discussed below)
5 as a basis upon which to deny I-829 petitions when the immigrant investors' I-526 petitions were
6 approved before the precedent decisions were issued. Plaintiffs here are similarly situated as the
7 plaintiffs in Chang, and therefore, the same result is warranted. Consequently, Plaintiffs' remaining
8 claims (which are not the subject of this motion) are moot and final judgment in favor of Plaintiffs will
9 be entered. As a result of this ruling, the Court STRIKES the government's Alternative Motion for
10 Judgment on the Pleadings based on Rule 12(c). The government's motion is moot because it was
11 aimed at all of Plaintiffs' claims except the impermissible retroactive application claim.

12 As a separate matter, the Court finds that an order granting Plaintiffs' Motion for Partial
13 Summary Judgment is appropriate notwithstanding the government's failure to file a substantive brief
14 in opposition. In its one-page response to Plaintiffs' motion, the government argued that a response
15 would be premature given the government's motion to dismiss, but that if its motion were denied, it
16 requests 10 days to respond to Plaintiffs' motion. However, the dispositive motions deadline was June
17 14. More importantly, the government did not move for an extension or continuance of the summary
18 judgment motion. Rather, the government presumed, without leave of this Court, that it could file its
19 response later. A party may not unilaterally change deadlines established by the Court and the Local
20 Rules for the Western District of Washington. Because the government chose not to move for a
21 continuance of the summary judgment motion, the Court will rule on the Motion for Partial Summary
22 Judgment based on the pleadings filed to date.

23 BACKGROUND

24 The 19 individual Plaintiffs ("Investor-Plaintiffs") in this case are citizens of different Asian
25 countries who have been participating in the Immigrant Investment Program to obtain lawful

1 permanent resident status. 8 U.S.C. § 1153(b)(5). Together with their respective dependents, there
2 are a total of 62 Plaintiffs in this case.

3 Through the Immigrant Investment Program, immigrant investors may become lawful
4 permanent residents by investing \$1 million dollars in a U.S. commercial enterprise that creates at least
5 10 full-time jobs for U.S. citizens or lawful aliens. Alternatively, they may invest \$500,000 in a
6 “targeted employment area.” This is the fifth preference in an employment-based visa preference
7 category, and for this reason, the program is known as the EB-5 program.

8 To participate in the EB-5 program, an immigrant investor first files an “I-526” petition with
9 the Immigration and Naturalization Service (“INS”)¹ seeking approval of the immigrant investor’s
10 investment and business plan. Once the petition is approved, the immigrant investor and his or her
11 dependants may enter the country as conditional lawful permanent residents. 8 U.S.C. § 1186b. After
12 two years in the country, the immigrant investor must file within 90 days an “I-829” petition for
13 unconditional permanent resident status. The INS is required to make a determination on the I-829
14 petition within 90 days of it being filed. Regulations indicate that the INS is to approve the I-829
15 petition if the immigrant investor made no material misrepresentations in the I-526 petition and has
16 complied with the EB-5 requirements. 8 C.F.R. § 216.6

17 In this case, the INS approved all of the Investor-Plaintiffs’ I-526 petitions between 1996 and
18 early 1998. (Plfs’ Mot. for Partial Summ. J., Exs. A-S (hereinafter, all exhibits cited are those
19 attached to Plaintiffs’ motion unless otherwise noted). As a result, they were granted conditional
20 permanent residency. They invested in the Golden Rainbow Freedom Fund (“Golden Rainbow”),
21 which was a limited partnership created to provide a means for immigrant investors to invest their
22 money under the EB-5 program. The Golden Rainbow qualified for the \$500,000 investment

24 ¹ Because the relevant events in this case occurred prior to the federal government
25 reorganization, the Court refers to the INS rather than the newly-created Citizenship and Immigration
Service.

1 requirement. A few of the Investor-Plaintiffs invested the required \$500,000 in one initial payment.
2 Most, however, invested either \$200,000 and \$300,000 initially and later paid the remaining amount
3 due, or in some instances, indicated that they would pay the remaining amount due at a later specified
4 date. (Id.).

5 In mid-1998, the INS established new rules for the EB-5 program through a set of “precedent
6 decisions” in which the INS rejected the same type of investment arrangement that these Investor-
7 Plaintiffs participated in with the Golden Rainbow Freedom Fund. See In re Soffici, 22 I&N Dec. 158
8 (1998); In re Izumii, 22 I&N Dec. 169 (1998); In re Hsuing, 22 I&N Dec. 201 (1998); In re Ho, 22
9 I&N Dec. 206 (1998). Pursuant to 8 C.F.R. § 103.3(c), these decisions were binding for the
10 subsequent administration of the EB-5 program. In these precedent decisions, the INS concluded that
11 these types of investment arrangements did not comply with the intent of the EB-5 program. As such,
12 the INS excluded them from satisfying the EB-5 requirements.

13 Importantly, in this case, all of the I-526 petitions were granted before mid-1998, when the
14 precedent decisions were issued. (Exs. A-S). In all but one case, the Investor-Plaintiffs filled out and
15 signed I-829 petitions; mostly between December, 1998 and August, 1999, with one apparently as late
16 as January, 2000. (Exs. B-M, O-S).² Only one of the I-829 petitions was filled out and signed before
17 the precedent decisions were issued. (Ex. K (filed January, 1998)). The Investor-Plaintiffs present
18 evidence of only one petition having been denied. (Ex. R).³ While nothing in the record indicates the
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20 ² The petition in Exhibit A is unsigned and undated. Exhibit N does not contain any evidence
21 of a petition. Additionally, except for four of the petitions (exhibits D, P, Q, and R), there is no
22 evidence that these petitions were actually filed and received by the INS. Exhibits D, P, and Q contain
23 notices from the INS that the petitions were pending. Exhibit R contains a May, 2002 letter from the
INS denying the petition. Nonetheless, the government does not dispute that all the Investor-Plaintiffs
and their dependents filed I-829 petitions.

24 ³ Plaintiffs assert in their motion that three petitions have been denied. However, the exhibits
25 for the other two Investor-Plaintiffs whose petitions they claim have been denied do not include any
evidence of this. (See Exs. A and I).

1 status of the remaining petitions, Plaintiffs assert that they are still pending. (Plfs' Mot. at 12). The
2 government does not contest this allegation.

3 In their complaint, Plaintiffs allege 1) improper retroactive application of the new rules, 2)
4 estoppel preventing the government from denying Plaintiffs' I-829 petitions, 3) violation of the
5 Administrative Procedures Act ("APA") for failing to issue the new rules through notice and comment
6 rulemaking procedures, 4) abuse of discretion in retroactively applying the new rules, 5) action
7 exceeding statutory authority, and 6) violation of due process and equal protection.

8 PROCEDURAL BACKGROUND

9 In May, 1999, the Golden Rainbow limited partnership filed suit against the United States,
10 challenging the implementation of the EB-5 program. The case was filed in this district. Judge
11 Coughenour granted summary judgment in favor of the government and denied it for the plaintiff. No.
12 CV-99-755C (W.D. Wash. September 18, 2000). He ruled that the precedent decisions were not
13 subject to the rulemaking notice and comment procedural requirements of the APA because the
14 decisions were merely interpretive. At the end of the order, he also concluded without analysis that
15 "the retroactive application of the [precedent] decisions, as applied to plaintiff, will not be disturbed."
16 *Id.* at 4.

17 Plaintiff Golden Rainbow appealed. The Ninth Circuit affirmed in a short unpublished
18 decision. Golden Rainbow Freedom Fund v. Ashcroft, 24 Fed. Appx. 698 (9th Cir. Nov. 26, 2001).
19 In addition to affirming the basis of Judge Coughenour's ruling, the court went on to discuss whether
20 the precedent decisions could be applied retroactively. The court concluded that they could. *Id.* at
21 700.

22 A year and a half later, in an unrelated case, the Ninth Circuit reached the opposite conclusion,
23 holding that the precedent decisions could not be applied retroactively. Chang v. United States, 327
24 F.3d 911 (9th Cir. 2003). This decision was published.

1 The government now moves to dismiss on the grounds that all of Plaintiffs' claims are barred
2 by either the law of the case doctrine or res judicata, or in the alternative, for judgment on the
3 pleadings pursuant to Fed. R. Civ. P. 12(c). Plaintiffs move for partial summary judgment on their
4 impermissible retroactive application claim.

5 ANALYSIS

6 I. The Government's Motion to Dismiss

7 The government argues that Plaintiffs' claims are barred under either the doctrines of law of
8 the case or res judicata based on the Golden Rainbow district court and Ninth Circuit decisions.

9 A. Law of the Case Doctrine

10 The law of the case doctrine provides that "the decision of an appellate court on a legal issue
11 must be followed in all subsequent proceedings in the same case." Chevron, Inc. v. Bronster, 363
12 F.3d 846, 849 (9th Cir. 2004) (quoting Bernhardt v. Los Angeles County, 339 F.3d 920, 924 (9th Cir.
13 2003)). The doctrine applies to explicit decisions as well as those issues decided by necessary
14 implication. Id. Nonetheless, a court has discretion to depart from the doctrine if: 1) the decision is
15 clearly erroneous and its enforcement would work a manifest injustice, 2) intervening controlling
16 authority makes reconsideration appropriate, or 3) substantially different evidence was adduced at
17 trial. Id.

18 The doctrine is not applicable in this instance because this case is not the same case as Golden
19 Rainbow and the parties are not the same. The district court's final judgment was affirmed and the
20 case is now closed. Moreover, in Golden Rainbow, the plaintiff was the Golden Rainbow limited
21 partnership. Here, the plaintiffs are the Investor-Plaintiffs and their dependents. This was made clear
22 by the Ninth Circuit's opinion in Golden Rainbow. The court began by analyzing whether the Golden
23 Rainbow limited partnership had standing to assert its own claim for harm. 24 Fed. Appx. at 699. As
24 part of this analysis, the court noted that "[a]t argument, Golden Rainbow made it clear that it does
25

1 not purport to represent those parties [the immigrant investors] themselves on appeal.” Id. at 699 n.1.

2 The court concluded that the Golden Rainbow limited partnership had standing.

3 None of the cases cited by the government apply the law of the case doctrine to two different
4 cases where one of the parties is different from a party in the previous case. Likewise, the Court’s
5 research revealed no such cases. In all of the cases where the doctrine has been applied, it is applied at
6 a later stage in the litigation in the same case. This is highlighted by Second Circuit’s description of
7 the difference between the law of the case doctrine and res judicata:

8 The doctrine of law of the case is similar to the issue preclusion prong of res
9 judicata in that it limits relitigation of an issue once it has been decided. However,
10 law of the case is concerned with the extent to which law applied in a decision at
11 one stage of litigation becomes the governing principle in later stages of the same
12 litigation. Res judicata does not speak to direct attacks in the same case, but rather
13 has application in subsequent actions.

14 Rezzonico v. H & R Block, Inc., 182 F.3d 144, 148 (2d Cir. 1999).

15 Nonetheless, the government argues that the law of the case doctrine applies because the Ninth
16 Circuit in Golden Rainbow recognized that the alleged harm impacted the immigrant investors as well
17 as the Golden Rainbow limited partnership. In its retroactivity analysis, the court noted that even if
18 Golden Rainbow and the immigrant investors relied on the INS’s position before the precedential
19 decisions and may have suffered as a result of those decisions, they “had to know that any initial
20 approval was conditional.” Id. at 700. Consequently, applying the precedent decisions retroactively
21 was proper. Id. However, any comment on the impact to the immigrant investors is dicta, not the
22 holding of the case. This comment alone does not change the fact that the immigrant investors were
23 not parties to the Golden Rainbow case. Therefore, the law of the case doctrine does not apply to the
24 instant case.

25 B. Res Judicata

The government argues that all of Plaintiffs’ claims are barred by res judicata because the
claims were rejected by the district court and Ninth Circuit in Golden Rainbow. The res judicata

1 doctrine provides that “a final judgment on the merits bars further claims by parties or their privies
2 based on the same cause of action.” Tahoe Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning
3 Agency, 322 F.3d 1064, 1077 (9th Cir. 2003). To establish a res judicata defense, the moving party
4 must show that there is “(1) an identity of claims, (2) a final judgment on the merits, and (3) privity
5 between parties.” Id.

6 Taking the third prong first, “[e]ven when the parties are not identical, privity may exist if there
7 is substantial identity between parties, that is, a sufficient commonality of interest.” Id. at 1081.
8 Privity exists when the interests of the non-party were adequately represented in the prior suit or when
9 the interests of the non-party and the party in the previous case are so closely aligned that the party is
10 a “virtually representative” of the non-party. Id. at 1082. In a recent Ninth Circuit case, the court
11 found that there was privity between the parties because their interests were identical, the relief they
12 sought was identical, and neither party sought “any interest peculiar to themselves but rather a
13 vindication of the public right.” Headwaters Inc. v. U.S. Forest Serv., 382 F.3d 1025, 1031 (9th Cir.
14 2004).

15 The government argues that there is privity here because Plaintiffs acknowledge that they are
16 investors in the Golden Rainbow limited partnership and, according to the government, “they are really
17 the same parties,” even if they have different names. (Def’s Mot. at 7). This argument is not
18 persuasive. Merely asserting that they are “really the same parties” and that their interests are identical
19 is not sufficient. While some of the relief that Plaintiffs seek overlaps with the relief Golden Rainbow
20 sought, unlike Headwaters, the relief sought is not identical. Likewise, neither party here is seeking to
21 vindicate public rights. Further, it is entirely possible that the limited partnership and the limited
22 partners could have divergent interests. Because the government is asserting res judicata as a defense,
23 the government bears the burden of proving the existence of privity between the Plaintiffs and Golden
24 Rainbow limited partnership. Because the government has failed to do so, this prong has not been
25 satisfied. Consequently, res judicata does not bar Plaintiffs’ claims.

1 II. Plaintiffs’ Motion for Partial Summary Judgment

2 Summary judgment is not warranted if a material issue of fact exists for trial. Warren v. City
3 of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), cert. denied, 516 U.S. 1171 (1996). The underlying
4 facts are viewed in the light most favorable to the party opposing the motion. Matsushita Elec. Indus.
5 Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). “Summary judgment will not lie if . . . the
6 evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v.
7 Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The party moving for summary judgment has the
8 burden to show initially the absence of a genuine issue concerning any material fact. Adickes v. S.H.
9 Kress & Co., 398 U.S. 144, 159 (1970). However, once the moving party has met its initial burden,
10 the burden shifts to the nonmoving party to establish the existence of an issue of fact regarding an
11 element essential to that party’s case, and on which that party will bear the burden of proof at trial.
12 Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). To discharge this burden, the nonmoving
13 party cannot rely on its pleadings, but instead must have evidence showing that there is a genuine issue
14 for trial. Id. at 324.

15 Plaintiffs argue that Chang v. United States, 327 F.3d 911 (9th Cir. 2003), compels summary
16 judgment on their improper retroactive application claim. In Chang, the Ninth Circuit held that the
17 government could not retroactively apply the precedent decisions to evaluate and deny I-829 petitions
18 when the immigrant investors had their I-526 petitions approved before the precedent decisions and
19 had made significant commitments in reliance on the reasonable expectation that their I-829
20 applications would be approved so long as they did not make any material misrepresentations in their
21 I-526 petitions. Plaintiffs contend that they are in same position as the plaintiffs in Chang, and
22 therefore Chang’s reasoning and holding apply to their case.

23 In Chang, the immigrant investors had filed I-526 petitions and the INS had approved them
24 well before mid-1998, when the precedent decisions were issued. They all filed their I-829 petitions
25 before mid-1998. They all invested in the type of investment arrangement that the INS later rejected

1 in the mid-1998 precedent decisions. As a result, the INS denied some of the plaintiffs' I-829 petitions
2 on the grounds that they had not complied with EB-5 requirements. The INS put the other petitions
3 on administrative hold. Among other things, the Ninth Circuit held that the claims of the immigrant
4 investors whose petitions had not yet been denied were nonetheless ripe because denial was certain;
5 there was no need to await what was inevitable. Id. at 922.

6 The court also held that the INS could not apply the precedent decisions retroactively to
7 immigrant investors who had filed their I-526 petitions before the precedent decisions were issued in
8 mid-1998. Id. at 928-29. First, the court concluded that the new rules were "an abrupt departure"
9 from a "well established practice" of approving I-829 petitions without respect to the type of
10 investment arrangements that it rejected in the precedent decisions. Second, the court concluded that
11 the balance of the burdens weighed significantly on the immigrant investors who had sold their homes
12 and businesses in their native countries, moved with their dependents to this country and lived here for
13 at least two years, and invested a significant amount of money in the investment arrangement at issue.
14 The court rejected the argument that the immigrant investors could ask for their money back from the
15 limited partnerships in which they had invested. The court noted that the immigrant investors' reliance
16 was not just the money invested, but also included the time and expense put into obtaining legal
17 permanent residence status, as well as the other facts just outlined. Id. In sum, the court held that the
18 immigrant investors had relied on the previous practice of approving I-829 petitions based on such
19 investment arrangements and that "[t]he INS may not apply the rules established in the 1998 precedent
20 decisions in reviewing the I-829 petitions of those whose I-526 petitions had been approved before
21 those new rules were promulgated." Id. at 930.

22 Chang distinguished R.L. Investment Limited Partners v. INS, 273 F.3d 874 (9th Cir. 2001)
23 ("RLILP"), a previous Ninth Circuit case that reached a contrary conclusion regarding retroactivity.
24 Chang, 327 F.3d at 926. In RLILP, the plaintiffs had filed but the INS had not approved their I-526
25 petitions. Therefore, they did not have a similar reliance interest as the plaintiffs in Chang had.

1 As discussed above, the Ninth Circuit addressed this issue in the earlier unpublished decision in
2 Golden Rainbow Freedom Fund v. Ashcroft, 24 Fed. Appx. 698 (9th Cir. Nov. 26, 2001). In an
3 extremely brief opinion, the Ninth Circuit held that it was not impermissible to apply the new rules
4 retroactively because the INS had not established a precedential position prior to the mid-1998 cases.
5 Id. at 700. However, Golden Rainbow is an unpublished decision. Because Chang is a published
6 decisions, it is the binding precedent that this Court must follow.

7 Here, all but one of the Investor-Plaintiffs are similarly situated as the plaintiffs in Chang. Like
8 the plaintiffs there, the Investor-Plaintiffs filed and the INS approved their I-526 petitions before the
9 precedent decisions. They left their home countries, moved with their families to the United States,
10 and invested significant amounts of money in the Golden Rainbow limited partnership, all before the
11 precedent decisions were issued. (See Ex. A-B, E-L, O, and R-S). However, it appears that one of
12 the Investor-Plaintiffs, Yueh-Tsun Chuang, made his initial investment in November, 1998, which was
13 after the precedent decisions were issued. (Ex. C). The government might argue that his and his
14 family's reliance is perhaps not as justified, and therefore retroactive application of the precedent
15 decisions to his petition is not necessarily improper. However, Chang made clear that reliance is not
16 based on the money invested alone, but includes the time invested in participating in the EB-5
17 program, as well as the fact that they uprooted their homes and families, selling businesses and homes
18 in their home countries and moving to the United States. Because these factors apply to Yueh-Tsun
19 Chuang's case, Chang's holding applies to his petition as well. Additionally, there is no evidence in
20 the record regarding when five of the Investor-Plaintiffs⁴ invested in the Golden Rainbow limited
21 partnership. (Exs. D, M, N, P, and Q respectively). However, there is evidence that their I-526
22 petitions were approved and, for some of them, that they filed I-829 petitions before the precedent
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25 ⁴ Shih P. Huang, Akemi Tonoike, Pei-Chen Tsai, Hsiao-Yun Wang (Liu), and Tsui-Mei Weng (Lin).

1 decisions were issued. Based on the same reasoning as above, it appears that these same factors apply
2 to these five Investor-Plaintiffs as well.

3 In short, this Court reaches the same result that the court in Chang reached. Namely, that
4 “[t]he INS may not apply the rules established in the 1998 precedent decisions in reviewing the I-829
5 petitions of those whose I-526 petitions had been approved before those new rules were
6 promulgated.” Id. at 930.

7 Because Chang applies to all of the Plaintiffs, their remaining claims are moot. In Chang, the
8 plaintiffs had also brought estoppel and APA claims. The Ninth Circuit stated that it need not reach
9 those claims in light of its holding prohibiting retroactive application of the precedent decisions. Id. at
10 929. Even though Plaintiffs’ motion is one for partial summary judgment, granting their motion
11 disposes of the entire case and final judgment will be entered.

12 III. The Government’s Motion for Judgment on the Pleadings Under Rule 12(c)

13 Under Fed. R. Civ. P. 12(c), a party may move for judgment on the pleadings “after the
14 pleadings are closed, but within such time as not to delay the trial.” A Rule 12(c) motion is similar to
15 a Rule 12(b)(6) motion except for the timing; the Rule 12(c) motion is brought after the pleadings are
16 closed. Here, the dispositive motions deadline was June 14, which is the same day that the
17 government filed this motion. Therefore, the timing is proper. The standard applied on a Rule 12(c)
18 motion is essentially the same as that applied on a Rule 12(b)(6) motion. Even if all material facts
19 alleged by the non-moving party are true, “[j]udgment on the pleadings is proper when the moving
20 party clearly establishes on the face of the pleadings that no material issue of fact remains to be
21 resolved and that it is entitled to judgment as a matter of law.” Hal Roach Studios, Inc. v. Richard
22 Feiner and Co., Inc., 896 F.2d 1542, 1550 (9th Cir. 1990).

23 The government contends that judgment on the pleadings is appropriate for all but one of
24 Plaintiffs’ claims, namely the estoppel, APA, abuse of discretion, exceeding statutory authority, and
25 due process claims. The government did not argue that judgment on the pleadings is warranted for

1 Plaintiffs' improper retroactive application claim. Because the Court concludes that summary
2 judgment in favor of Plaintiffs is warranted on their improper retroactive application claim, the Court
3 need not reach the government's argument regarding these other claims because they are moot.

4 CONCLUSION

5 The Court DENIES the government's Motion to Dismiss. The law of the case doctrine does
6 not apply because this is not the same case as Golden Rainbow. Likewise, res judicata does not bar
7 Plaintiffs' claims because the government has failed to provide sufficient evidence that Plaintiffs are in
8 privity with the Golden Rainbow limited partnership. The Court GRANTS Plaintiffs' Motion for
9 Partial Summary Judgment. The Ninth Circuit's recent decision in Chang prohibits retroactive
10 application of the precedent decisions as a basis upon which to deny I-829 petitions when the
11 immigrant investors' I-526 petitions were approved before the precedent decisions were issued.
12 Plaintiffs here are similarly situated as the plaintiffs in Chang, and therefore, the same result is
13 warranted. As a result of this ruling, the Court STRIKES the government's Alternative Motion for
14 Judgment on the Pleadings based on Rule 12(c) as moot.

15 The clerk is directed to provide copies of this order to all counsel of record.

16 Dated: November 1, 2004

17
18 /s/ Marsha J. Pechman
19 Marsha J. Pechman
20 United States District Judge
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United States District Court

WESTERN DISTRICT OF WASHINGTON

SANG GEUN AN, et al.,

Plaintiffs

v.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT IN A CIVIL CASE

CASE NO. C03-3184P

____ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

XX **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

Pursuant to Rule 56, summary judgment is granted on Plaintiffs' claim for improper retroactive application of In re Izumii, 22 I&N Dec. 169 (1998) and related precedent decisions. Defendant may not retroactively apply these precedent decisions as a basis upon which to deny Plaintiffs' I-829 petitions when their I-526 petitions were approved before the precedent decisions were issued. Plaintiffs' remaining claims are rendered moot by the Court's order. Therefore, entry of final judgment is appropriate.

Dated: November 1, 2004

BRUCE RIFKIN, Clerk of Court

/s/ Mary Duett
By, Deputy Clerk