



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Venantius Ngwanyia et al.,)
)
Plaintiffs)
)
v.)
United States Attorney General;)
Department of Homeland Security;)
Secretary of the Department of)
Homeland Security;)
U.S. Citizen and Immigration Services; and)
Director,)
U.S. Citizen and Immigration Services,)
)
Defendants)
)
_____)

No. 02-502 (RHK)

SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs and Defendants consider it in their best interests to resolve all the issues raised in this action through a stipulated settlement agreement;

NOW THEREFORE, plaintiffs and defendants (hereinafter “the parties”) enter into and do hereby stipulate to a Settlement Agreement (hereinafter “Agreement”) that imposes binding obligations upon the parties and their successors to the extent stated below. Plaintiffs acknowledge that this Agreement is fully dispositive of all claims in the Second Amended Complaint both as they relate to themselves and to all members of the class, except as specified in Sections C and I herein, against defendants in their official and individual capacities. The parties acknowledge that this Agreement is fully binding upon the parties, and on each of their successors and successor agencies, as defined below.

SECTION A. DEFINITIONS

As used throughout this Agreement, the following definitions shall apply:

1. The term “party” or “parties” shall apply to plaintiff class members and defendants. All named plaintiffs are listed in the Addendum, attached. The defendants are the Attorney General; the Secretary of the Department of Homeland Security; the Department of Homeland Security; Director of the United States Citizenship and Immigration Services (USCIS); and USCIS. As the term applies to defendants, it shall include all of their departments, agencies, successor agencies, agents, employees, contractors, and/or successors in office, that or who have a role in asylee

adjustment and employment authorization issues.

2. The term "adjust" or "adjustment of status" is defined as the adjustment of an asylee's status to that of a lawful permanent resident alien of the United States under section 209(b) of the Immigration and Nationality Act ("INA") of 1952, 8 U.S.C. § 1159(b), as amended.

3. The terms "adjustment cap," "asylum cap" or "cap" refer only to the subset of refugee admission numbers that may be made available annually for the adjustment of asylees in any fiscal year, pursuant to 8 U.S.C. § 1159(b).

4. The term "asylee" means any alien who has received a grant of asylum under section 208 of the INA, 8 U.S.C. § 1158, from either United States Citizenship and Immigration Services ("USCIS"), or its predecessor Immigration and Naturalization Service ("INS"), or the Executive Office of Immigration Review ("EOIR") from either an Immigration Judge ("IJ") or the Board of Immigration Appeals ("BIA").

5. The term "Employment Authorization Document" or "EAD" is defined as a Form I-766, I-688B or successor versions.

6. The term "District Court" refers to the United States District Court for the District of Minnesota, Judge Richard Kyle presiding.

7. The term "Court of Appeals" refers to the United States Court of Appeals for the Eighth Circuit.

8. As certified by the District Court, the class and subclasses are defined as:

All asylees in the United States who have applied for adjustment of status to lawful permanent residence and whose applications for adjustment remain pending;

Subclass I

All asylees who filed their adjustment of status applications with the INS on or before January 16, 1998;

Subclass II

All asylees who filed their adjustment of status applications after January 16, 1998, and on or before June 9, 1998;

Subclass III

All asylees who filed their adjustment of status applications after June 9, 1998;

Subclass IV

All asylees who applied for or applied to renew an Employment Authorization Document.

9. The term “effective date” refers to the date on which the District Court approves this Agreement or such later date as the District Court may designate as the effective date.

10. The term “notice to plaintiffs’ counsel” refers to actual delivery of notice to plaintiffs’ counsel of record by registered mail or to posting of such information on the USCIS website, unless the terms of this Agreement require notice to counsel prior to implementation, in which case actual delivery is required.

SECTION B. BACKGROUND

11. The United States District Court for the District of Minnesota issued a memorandum decision and order on February 12, 2004. The decision is reported at 302 F.Supp.2d 1076 (D. Minn 2004).

12. The District Court stayed enforcement of its order for 60 days after February 12, 2004, and directed the parties to negotiate a timely and expedient schedule for the enforcement of the District Court’s order.

13. Defendants appealed the District Court’s order to the United States Court of Appeals for the Eighth Circuit, and this appeal triggered the District Court’s stay of enforcement of its order pending appeal.

SECTION C. DISPOSITION AND RETAINED JURISDICTION

14. The parties agree to jointly move the Court of Appeals for an order:

a) effecting a limited remand of the case to the District Court with instructions that the District Court review the parties’ stipulated settlement Agreement, hold a fairness hearing pursuant to FRCP 23(e), and determine whether to approve the stipulated settlement Agreement;

b) holding defendants/appellants’ appeal in abeyance pending the District Court’s decision whether to approve the stipulated settlement Agreement.

A copy of this joint motion and proposed order are attached as Exhibits 1 and 2. This settlement Agreement will be appended to the proposed remand order.

15. If, upon the limited remand and following the fairness hearing, the District Court:

a) approves the parties’ stipulated settlement Agreement, the parties will jointly move the District Court to dismiss the case with prejudice, (except as to those matters that will remain the subject of the District Court’s retained jurisdiction under paragraphs 16 and 17 of this Agreement, but only for the life of this Agreement pursuant to Section H), and to enter an order vacating its decision and Order filed on February 12, 2004. Neither party shall seek to remove the February 12, 2004 District Court decision from publication, but any party may seek to ensure that record of the vacatur of the decision is published. Following the District Court’s entry of the

latest of an order or orders approving the settlement Agreement, dismissing the case with prejudice (except as to those matters that will remain the subject of the District Court's retained jurisdiction under paragraphs 16 and 17 of this Agreement, but only for the life of this Agreement pursuant to Section H), and vacating its decision and Order filed on February 12, 2004, defendants will withdraw the appeal in the Court of Appeals within 30 days.

b) does not approve the stipulated settlement Agreement, does not dismiss the case with prejudice (except as to those matters that will remain the subject of the District Court's retained jurisdiction under paragraphs 16 and 17 of this Agreement, but only for the life of this Agreement pursuant to Section H), or does not vacate its decision and Order filed on February 12, 2004, the settlement Agreement will be null and void and the defendants will have the right to make an appropriate motion with the Court of Appeals within 30 days of the District Court's decision not to approve the settlement Agreement, not to dismiss the case with prejudice (except as to those matters that will remain the subject of the District Court's retained jurisdiction under paragraphs 16 and 17 of this Agreement), or not to vacate its decision and Order filed on February 12, 2004, whichever comes last.

16. Retention of Jurisdiction by the District Court. Following final approval of this Agreement and dismissal by the District Court and until this Agreement is no longer in effect, the District Court will retain jurisdiction through this action over only the following matters:

- a) claims by any party hereto that any other party has committed a significant violation of this Agreement;
- b) the express repudiation of any of the terms of this Agreement by any party;
- c) any applications for attorneys fees and costs under the Equal Access to Justice Act related to enforcement of this Agreement, including monitoring that results in an enforcement action, filed by or on behalf of a class member.

17. Exercise of retained jurisdiction by the District Court. The parties agree that, except as to paragraph 16(c), no party will seek to invoke the District Court's jurisdiction under this Section with respect to any violation unless and until the party has complied with the provisions of section D with respect to that violation.

SECTION D. DISPUTE RESOLUTION

18. A significant purpose of this Agreement is to eliminate or reduce the need for further complex litigation in court. In order to effectuate this purpose the parties agree to the following dispute resolution mechanism:

- (a) Upon learning of any fact or facts that constitute the basis for asserting that a party has expressly repudiated or committed a significant violation of this

Agreement, the aggrieved party shall notify the other party hereto of that fact or facts and request a report on what remedial action has been taken with respect to such alleged facts prior to invoking the enforcement provisions of this Agreement.

- (b) Within thirty (30) days after receipt of such notice, the other party shall notify the first party of the results of its investigation of the facts and any remedial action it has taken or intends to take in connection therewith.
- (c) Thereafter the parties shall initiate negotiations in good faith within 30 days in an effort to resolve any disputes remaining after the undertaking set forth in subparagraphs (a) and (b) above have been completed.

SECTION E. PROCESSING OF APPLICATIONS FOR ADJUSTMENT OF STATUS

19. **Unused Asylee Adjustment Numbers** - Defendants agree that asylee adjustment cap numbers made available in a given fiscal year remain available to adjust an asylee's status beyond the end of the fiscal year. Defendants will make use of all past unused or misapplied numbers, as described in this section, within the time frame set out in this Agreement. Defendants further agree that, in the event any numbers made available for Fiscal Year 2005 and subsequent fiscal years are not utilized for asylee adjustments subject to the adjustment cap, they will continue to treat those numbers as available for use in subsequent fiscal years. This Agreement affects only the adjustment of status for asylees pursuant to section 209(b) of the INA, 8 U.S.C. 1159(b) and in no way affects the use or allocation of refugee admission numbers pursuant to section 207(a) of the INA, 8 U.S.C. 1157(a).

20. The parties agree that an accounting of unused asylee adjustment numbers is no longer necessary and will divert critical resources needed for the adjudication of applications. Instead, based upon a careful review of the evidence and findings of the District Court, the government statistics relating to the administration of asylee adjustment numbers since 1994, and the limited specific evidence relating to the use of asylee adjustment numbers from 1991 to 1994, the parties agree that a reasonable estimate of the asylee adjustment numbers made available in prior years that remain available for use at this time is 31,000. Thus, in lieu of specific accounting, the parties estimate and agree that defendants' policies and practices have resulted in approximately 31,000 unused or misapplied asylee adjustment numbers. The parties agree to be bound by this estimate as if a full accounting had been made. These numbers are now available to adjust the status of asylees, in addition to any numbers made available for asylee adjustment by the President in this or any subsequent fiscal year.

21. **Tracking of Asylee Adjustment Applications**--Defendants shall maintain a database that identifies all pending asylee adjustment applications organized in chronological order by date of filing of the adjustment application. Defendants shall process asylee adjustments in the order of filing to the maximum degree possible. Defendants will treat all available asylee adjustment

numbers, including those additional numbers agreed to in this section, as one pool of numbers from which eligible applicants may be adjusted.

22. **Distribution of Unused Asylee Adjustment Numbers** - Defendants will increase the number of asylee adjustments processed in this and subsequent fiscal years in order to adjust the status of an additional 31,000 asylees within the next three fiscal years beginning with the fiscal year of the effective date of the Agreement. Defendants agree to implement this process as soon as possible following the signing of this Agreement by the parties. Any additional adjustments made during the time period between signature of the Agreement and approval by the District Court will be counted toward the 31,000 total. At a minimum, defendants will process and adjust at least 8,000 additional applications in the first fiscal year beginning with the fiscal year of the effective date of the Agreement; 8,000 additional adjustments during the second fiscal year following the effective date of the Agreement; and the remainder of the additional adjustments during the third fiscal year following the effective date of the Agreement. The processing of these additional 31,000 cases shall be in addition to the processing of the annual authorization of numbers under the asylum cap, as defined in Section A.

23. **Quarterly and Annual Reports** - Defendants agree to produce quarterly reports, and post them on the Internet website of defendant USCIS. The content of the quarterly reports shall reflect the filing date of asylee adjustment applications currently being processed and shall report on the number of asylee adjustment applications that were approved during the prior quarter. Defendants also shall produce annual reports and post them on the internet website of defendant USCIS. The annual reports shall set forth USCIS' reasonable estimates of the dates by which groups of asylees are expected to be able to complete adjustment processing, based on date of filing of the application for adjustment in light of the effect of the annual cap. Such annual reports shall be provided only as a general planning tool and shall not bind any of the defendants in any way. The quarterly and annual reports shall not include information about any specific application for adjustment of status, other than that enumerated in this paragraph.

24. **Adjustment Processing Contact Person** - Defendants will identify a method of contact by which class members may direct inquiries concerning the adjudication of asylee adjustment applications filed before the processing date reflected in the most recent quarterly report. Defendants will determine the status of the application, and the cause for any delay in processing the application, including any delays due to security issues, and will take immediate steps to resolve any problems. Defendants will notify plaintiffs' counsel of the method of contact and provide written contact information, upon approval of the settlement Agreement.

25. **Continued Use of Numbers Made Available in Current and Future Fiscal Years** Defendants' use of the unused and misapplied numbers described in paragraphs 20 and 22 above is to be in addition to the use of the ten thousand asylee adjustment numbers that have been made available in fiscal year 2005 and all asylee adjustment numbers that will be made available in subsequent fiscal years. Defendants will continue to use all asylee adjustment numbers made available in any fiscal year to the maximum extent.

SECTION F. ENDORSEMENT AND DURATION OF AUTHORIZATION TO WORK

26. Persons granted asylum in the United States are authorized to work incident to status. An asylee's right to engage in employment does not terminate at the expiration of the asylee's employment authorization document. Defendants agree to provide asylees with EADs as set forth in this section for so long as their asylee status has not been terminated. Defendants agree to provide plaintiffs' counsel with copies of instructions to defendants' staff regarding implementation of this Agreement.

27. Defendants have an interest in an EAD that has integrity and reliability, and withstands fraud by its holder or persons who are not authorized to hold the EAD. Plaintiffs have an interest in an EAD that is effective for immediate and continuous employment while they are in asylee status.

28. The parties agree that defendants will provide notice to plaintiffs' counsel prior to the initial implementation of this Agreement and make reasonable efforts to provide notice to plaintiffs' counsel of changes in the EAD process affecting the class members. Such changes may include, for example, the replacement of Form I-688B with Form I-766 for initial cards, the reduction or elimination of need for some or all asylum grantees or EAD renewal applicants to present themselves for further biometric processing, the availability of multi-year cards for initial grantees, or the reduction of fees for certain multi-year cards.

29. Within 3 months of the effective date of this Agreement, and at a minimum, throughout the duration of this Agreement, defendants will provide asylees seeking renewal of their EADs the option to obtain EADs valid for multiple year periods, up to 5 years. To exercise such option, asylees will prepay for the number of years requested. The fee for multiple years will be adjusted to reflect estimated costs of producing the EAD and savings to defendants resulting from not producing additional EADs, which will not be less than \$20 per year.

30. Although regulations may apply future increases or decreases in fees for EADs to asylees, no change in fees for EADs will be applied to the detriment of class members within two years of the effective date of this Agreement. A request for an EAD of longer duration will not adversely affect the adjudication of fee waivers pursuant to 8 C.F.R. § 103.7(c).

31. The parties agree that class members wishing to renew their EADs shall submit a Form I-765, or other form required by defendants by regulation for EAD processing with any lawfully required fee. Upon receipt of a properly signed Form I-765 and appropriate fee, defendant USCIS will generate a notice that will be mailed to the class member's address indicated on the Form I-765. The notice will be generated within 5 business days of receipt and will acknowledge receipt of the application and fee as of a specific date. The notice will provide further instructions, as necessary. If biometrics are necessary, such instructions will include an appointment time and place or how to schedule an appointment at a convenient time and place at a USCIS Application Support Center for the taking of the class member's biometrics for the generation of a new card and/or the initiation of an FBI fingerprint check. Within 100 days of receipt of a completed application, CIS will issue an EAD to the class member, except in those

cases described in paragraph 34 and in cases where an applicant fails to comply with or delays complying with instructions for necessary biometric processing. This procedure is in addition to and does not eliminate, replace or restrict an asylee's rights under 8 C.F.R. § 274a.13(d), including the right to an interim EAD if defendants fail to adjudicate an EAD application within 90 days.

32. Defendants will provide asylees who follow the steps described in paragraph 31 above with a renewal EAD by mailing the new EAD to the address the asylee provided on the renewal form or to such other address as the asylee provides defendants for such purpose.

33. Defendants agree to provide a dedicated e-mail address by which class members may bring to the attention of the defendants cases in which an asylee who applied for a renewal of an EAD which has been pending for 80 days or longer has not received a new EAD in the mail within 80 days of application. In establishing such procedure, defendants shall establish a point of contact and will notify plaintiffs' counsel of the name of the point of contact, and provide contact information, upon approval of this Agreement. Once such cases are brought to the attention of the point of contact, the point of contact will determine the cause for the delay in issuing the renewal EAD and take immediate steps to expedite and resolve any problems. If the problem cannot be resolved within ten days, the point of contact will so notify the complainant as soon as necessary to avoid any gap between the expiration of the old EAD and receipt of the renewal or an interim EAD.

34. The parties agree that the provisions of this section shall not apply to EAD renewal requests properly governed by 8 C.F.R. § 103.2(b)(18), including but not limited to situations in which USCIS is investigating an alien's inadmissibility under 8 U.S.C. 1182(a)(3) or deportability under 8 U.S.C. 1227(a)(4) and has invoked 8 C.F.R. § 103.2(b)(18).

35. Where an asylee applies for an EAD that is of longer duration than one year, and where 8 C.F.R. § 103.2(b)(18) is not properly invoked by defendants, defendants shall issue the EAD for the multiple year period for which the asylee applied. Where an asylee applies for an EAD of one-year duration, and the defendants issue an EAD for a shorter duration, defendants will not charge for renewals of the card that are occasioned by the shorter duration.

36. Defendants agree to use reasonable and good faith efforts to implement the procedures described in this Agreement in a manner that avoids interruption of asylees' employment authorization endorsement throughout the duration of their asylum status, and that facilitates all asylees' ability to comply with the requirements of 8 U.S.C. § 1324a(b) and 8 C.F.R. §274a.2.

SECTION G. NOTICE TO THE CLASS

37. This Agreement shall be binding upon the class certified by the District Court on October 17, 2003.

38. The parties will jointly seek approval from the District Court of a notice sufficient to satisfy Fed. Rule Civ. Proc. 23(e). Upon the District Court's approval of the notice,

Defendants shall:

- a. place the notice and the Agreement on the USCIS website and on the EOIR website;
- b. distribute the notice and Agreement to the Community Relations Office located within each USCIS District Office; and
- c. distribute the notice and Agreement to all 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. §292.

SECTION H. DURATION AND SCOPE OF THIS AGREEMENT

39. This settlement Agreement shall remain in full force and effect for three years from its effective date or until the defendants complete the following, whichever period is longer:

- a. Completion of the processing of the 31,000 adjustment applications as described in paragraph 21 above; and
- b. Implementation of procedures to issue EADs valid for multiple years to all asylees, consistent with this Agreement.

40. No later than 30 days prior to the three-year anniversary of the effective date of this Agreement, defendants will report to the plaintiffs' counsel and to the District Court in writing that the defendants have or have not met the obligations described in this Section. If defendants have not met the obligations, defendants will appear before the District Court to discuss the status of compliance and appropriate action.

41. The termination of this Agreement shall not extinguish or diminish the District Court's authority to resolve claims pending during the effective period of the Agreement pursuant to the District Court's retained jurisdiction under Section C regarding the violation of the terms of the Agreement; nor shall the termination of the Agreement extinguish or diminish the rights of any party with such pending claims to obtain relief based on the terms of the Agreement.

SECTION I. RESERVATION OF RIGHTS AND INTERESTS

42. By entering into this Agreement, the defendants do not waive, reduce or otherwise diminish their authority to enforce the laws of the United States against class members notwithstanding the terms of this Agreement, consistent with the Constitution and laws of the United States.

43. Nothing in this Agreement shall limit the right of a class member to preserve issues for judicial review in the appeal of an individual case pursuant to 8 U.S.C. § 1252; or to exercise any independent statutory or regulatory rights they may have, outside the scope of this Agreement,

under the Immigration and Nationality Act, including rights under 8 C.F.R. §274a.13(d).

44. By entering into this Agreement, defendants do not admit to any violations of, or failure to comply with, the Constitution, laws or regulations.

45. Defendants represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the named defendants and all defendants and successors as defined in Section A of this Agreement. The undersigned who sign on behalf of other defendants warrant and declare that they have all the required authorization to execute this Agreement and that upon execution of the Agreement in their representative capacities, their principals and the successors of such principals shall be bound hereunder to the full extent authorized by law.

THE PLAINTIFFS

BY: _____
original signed by Nadine Wettstein
Dated: on January 31, 2005

THE DEFENDANTS

BY: _____ []
[original signed by Nancy Friedman
Dated: on January 31, 2005