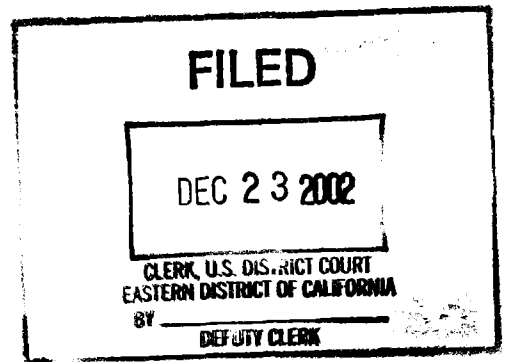




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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CATHOLIC SOCIAL SERVICES, INC.,
et al.,

NO. CIV. S-86-1343 LKK

Plaintiffs,

v.

O R D E R

JOHN ASHCROFT, Attorney General
of the United States, et al.,

Defendants.

_____/

The court is in receipt of the parties' respective briefs concerning the appropriate remedy in this case. The court had asked the parties to advise the court how to proceed on the matter of a remedy because the parties' counsel have the benefit of years of expertise in this area. It is clear from the cursory nature of the defendants' brief and proposed order, however, that defendants have essentially declined to participate. Defendants have given no explanation concerning most of their proposed provisions or their objections to

1 plaintiffs' provisions. Instead, they have relied on the
2 meritless argument that this court's authority to order
3 equitable relief is limited by Naranjo-Aguilera, 30 F.3d 1106,
4 1109 (9th Cir. 1994). Naranjo-Aguilera deals with a provision
5 of The Immigration Reform and Control Act (IRCA) that limits the
6 court's jurisdiction to review denials of applications. It is
7 by now well-established that IRCA's limitation on judicial
8 review does not limit this court's ability to require the
9 defendants to adjudicate the plaintiffs' applications. See Reno
10 v. Catholic Social Services, Inc., 509 U.S. 43, 67 n.29 (1993);
11 Catholic Social Services v. Reno, 232 F.3d 1139, 1150 (9th Cir.
12 2000). Further, the Ninth Circuit has made clear that the
13 judicial review provision does not prevent district courts from
14 addressing the procedures used by the INS in adjudicating
15 applications for adjustment of status. See Immigrant Assistance
16 Project of the Los Angeles County Federation of Labor v. INS,
17 306 F.3d 842, 862-63 (9th Cir. 2001) (citing Immigrant Assistance
18 Project v. INS, 976 F.2d 1198, 1209 (9th Cir. 1992) (district
19 court did not err when issuing injunctive relief that required
20 agency to use a particular procedure; district court had
21 discretion to structure equitable relief)). Thus, defendants'
22 objection on the basis of Naranjo-Aguilera is overruled.

23 In light of the limited guidance provided by the
24 defendants, the court adopts the plaintiffs' proposed order,
25 with the exception that it declines to impose on the defendants
26 a requirement that the INS provide for administrative appeals of

1 denials of class membership. Rather, the plaintiffs will be
2 entitled to judicial review only.

3 As to the defendants' concerns that the plaintiffs'
4 proposed order expands the class definitions, to the extent that
5 the class definitions, as written, reflect that the only
6 plaintiffs who are entitled to relief are those who actually
7 traveled outside the U.S., as opposed to plaintiffs whose
8 applications were denied because the INS concluded that they had
9 traveled outside the U.S., it is appropriate to modify the class
10 definitions to reflect what they sensibly were meant to reflect.
11 See West v. Capitol Fed'l Savings and Loan Ass'n, 558 F.2d 977,
12 982 (10th Cir. 1977) ("[c]lass determination is a preliminary,
13 interlocutory action subject to change before final disposition
14 of the case"); Fed. R. Civ. P. 23(c)(1).

15 Based on the foregoing, the court hereby ORDERS as follows:

16 1. The plaintiffs' proposed provisions set forth in the
17 plaintiff's brief filed on October 31, 2002 are adopted in full,
18 except insofar as paragraph 12(A) and 12(B) require the
19 defendants to provide for an administrative appeal of a denial
20 of class membership.

21 2. The plaintiffs shall lodge with the court an order
22 containing the provisions adopted in paragraph one (1) of this
23 order within fifteen (15) days of the effective date of this
24 order. The provisions of that order, as adopted herein, shall
25 not go into effect until the order is signed by the undersigned
26 and filed. Until that time, the preliminary injunction in this

1 case remains in effect.

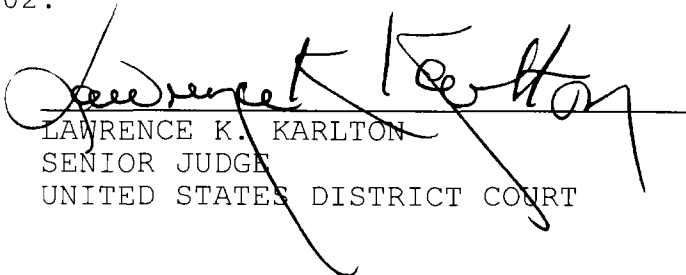
2 3. Pursuant to Fed. R. Civ. P. R. 23(c)(1), the class
3 definitions for subclasses one and two are modified as follows:

4 (1) All persons who were otherwise prima facie
5 eligible for legalization under section 245A of
6 the INA, and who tendered completed applications
7 for legalization under section 245A of the INA
8 and fees to an INS officer or agent acting on
9 behalf of the INS, including a QDE, during the
10 period from May 5, 1987 to May 4, 1988, and whose
11 applications were rejected for filing because the
12 INS officer or agent acting on behalf of the INS,
13 including a QDE, concluded the person had
14 traveled outside the United States after November
15 6, 1986 without advance parole.

16 (2) All persons who filed for class membership under
17 Catholic Social Services, Inc. v. Reno, CIV No. S-86-
18 1343 LKK (E.D. Cal.), and who were otherwise prima
19 facie eligible for legalization under section 245A of
20 the INA, who, because the INS officer or agent acting
21 on behalf of the INS, including a QDE, concluded they
22 had traveled outside the United States after November
23 6, 1986 without advance parole, were informed that
24 they were ineligible for legalization, or were
25 ineligible for legalization, or were refused by the
26 INS or its QDEs legalization forms, and for whom such
information, or inability to obtain the required
application forms, was a substantial cause of their
failure to timely file or complete a written
application.

IT IS SO ORDERED

DATED: December 20, 2002.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

United States District Court
for the
Eastern District of California
December 23, 2002

* * CERTIFICATE OF SERVICE * *

2:86-cv-01343

Catholic Social Svc

v.

Orantes

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on December 23, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Earle B Wilson SJ/LKK
Department of Justice Office of Litigation
PO Box 878
Ben Franklin Station
Washington, DC 20044

Andrew C MacLachlan
Department of Justice Office of Litigation
PO Box 878
Ben Franklin Station
Washington, DC 20044

Luis Alfonso Cespedes
Law Offices of Luis Alfonso Cespedes
701 E Street
Suite C
Sacramento, CA 95814

Robert H Gibbs
Gibbs Houston Pauw
1000 Second Avenue
Suite 1600
Seattle, WA 98104

Michael Rubin
Altshuler Berzon Nussbaum Rubin and Demain
177 Post Street
Suite 300
San Francisco, CA 94108

Peter A Schey
Center for Human Rights and Constitutional Law
256 South Occidental Boulevard
Los Angeles, CA 90057

Carlos Holguin
Center for Human Rights and Constitutional Law
256 South Occidental Boulevard
Los Angeles, CA 90057

Stephen Allen Rosenbaum
Protection and Advocacy Inc
433 Hegenberger Road
Suite 220
Oakland, CA 94621

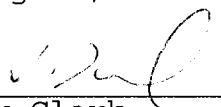
Robert Pauw
Gibbs Houston Pauw
1111 Third Avenue
Suite 1210
Seattle, WA 98101

Miriam Hayward
NOT ED/CA ADMITTED
International Institute of the East Bay
297 Lee Street
Oakland, CA 94610

Ralph Santiago Abascal
California Rural Legal Assistance
631 Howard Street
Suite 300
San Francisco, CA 94105-3907

Glyndell E Williams
United States Attorney
501 I Street
Suite 10-100
Sacramento, CA 95814

Jack L. Wagner, Clerk

BY: 
Deputy Clerk