IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
Civil No.02-CV-502 RHK/JMM

VENANTIUS NKAFOR NGWANYIA, et al., Plaintiffs, v. JOHN ASHCROFT, Attorney General, et al., Defendants.	MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION **ORAL ARGUMENT IS REQUESTED**

MARY KENNEY
NADINE K. WETTSTEIN
J. TRACI HONG
American Immigration Law Foundation
918 F Street, N.W.
Washington, D.C. 20004
Telephone: (202) 742-5600
Fax: (202) 783-7857

JAMES K. LANGDON II
Attorney Registration # 171931
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402
Telephone: (612) 340-8759
Fax: (612) 340-2868

IRIS GOMEZ
Massachusetts Law Reform Institute
99 Chauncy Street, Suite 500
Boston, MA 02111
Telephone: (617) 357-0700
Fax: (617) 357-0777

ATTORNEYS FOR PLAINTIFFS

INTRODUCTION

Plaintiffs, by and through counsel, pursuant to Fed. R. Civ. P. 23 and D. Minn. LR 7.1(b)(2), hereby submit Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Class Certification.

Plaintiffs and the proposed class challenge the Immigration and Naturalization Service's (INS) failure to allot, on a yearly basis, all 10,000 refugee admissions designated by Immigration and Nationality Act (INA) §209(b), 8 U.S.C. §1159(b), and by Presidential Decree specifically for individuals who have been granted asylum in the United States and who have applied to adjust their status to that of permanent resident.[1] Plaintiffs also challenge Defendants' failure to allocate the asylee adjustment numbers that it does issue "on a priority basis by the date the application was properly filed," 8 C.F.R. §209.2(a)(1), and to immediately adjust the status of all eligible asylee adjustment applicants who are exempt, under various public laws, from the cap on asylee admissions found in 8 U.S.C. §1159(b). *See, e.g.*, Pub. L. No. 105-277, Title I, §128; Pub. L. No.106-429, §586; and Pub. L. No.106-378. Finally, the suit challenges the INS' failure to automatically provide employment authorization endorsement to asylees incident to their status as asylees, for the entire period that they await adjustment to permanent residency. *See* INA §208(c)(1), 8 U.S.C. §1158(c)(1)(B).

Plaintiffs and the proposed class members are all asylees who have applied for adjustment to permanent residency and are currently on the waiting list for an asylee

[1] Individuals granted asylum in the United States will hereinafter be referred to as "asylees." The "refugee admissions" designated by statute for asylees will hereinafter be referred to as "asylee adjustments."

adjustment number. The majority of Plaintiffs and class members have also applied for or applied to renew their Employment Authorization Documents (EAD). As detailed in Plaintiffs' Complaint and attached Exhibits 1-26, Plaintiffs have been harmed by the challenged policies and practices.

Pursuant to Fed. R. Civ. P. 23, Plaintiffs seek to represent a class consisting of all asylees in the United States who have applied for adjustment of status to lawful permanent residence and whose applications for adjustment remain pending. The following subclasses fall within this class:

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 (EAD); and

Subclass V: All asylees who are exempt from the annual statutory cap of 10,000 asylee adjustment numbers set by INA §209(b), 8 U.S.C. §1159(b).

For the reasons set forth herein, Plaintiffs now move to certify the aforementioned class and subclasses I, II, III and IV.[2]

[2] At this time, Plaintiffs are not moving to certify subclass V – asylees exempt from the statutory cap. Plaintiffs anticipate amending the complaint in the near future to add additional subclass V plaintiffs. At that point, Plaintiffs will move to certify this final subclass. *Accord* Sondel v. Northwest Airlines, 1993 U.S. Dist. LEXIS 21252, *11 (D. Minn. 1993) citing FRCP 23(c)(1) and 23(c)(4) (Court may certify a class as to

DISCUSSION

I. Requirements of Fed. R. Civ. P. 23

To obtain class action certification, Plaintiffs must establish that all four requirements of Fed. R. Civ. P. 23(a) and at least one part of Rule 23(b) are met. Sondel v. Northwest Airlines, 1993 U.S. Dist. LEXIS 21252, *8, 63 Fair Empl. Prac. Cas. (BNA) 415 (D. Minn. 1993). Additionally, Plaintiffs must satisfy two "implicit requirements" for class certification: "(1) the existence of a precisely defined class; and (2) that the class representatives are members of the proposed class." Id.

Fed. R. Civ. P. 23(a) provides that one or more members of a class may sue as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

A court may only certify a proposed class if it falls under one of the three categories of classes described in Rule 23(b). Plaintiffs request certification under Rule 23(b)(2), which provides: "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole."

A principle purpose of class certification is "'efficiency and economy of litigation.'" Jenson v. Eveleth Taconite Co., 139 F.R.D. 657, 664 (D. Minn. 1991) (quoting American

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only some of the claims and may subsequently alter or amend the certification to reflect further developments in a case). In the interim, there is no reason to delay certification of the remainder of the class. *See, e.g.*, Paxton v. Union National Bank, 688 F.2d 552, 558 (8th Cir. 1982), cert. denied, 460 U.S. 1083 (1983)

Pipe and Construction Co. v. Utah, 414 U.S. 538, 553, 38 L.Ed. 2d 713, 94 S.Ct. 756 (1974)). In determining whether to certify a class, the court "shall not conduct a preliminary inquiry into the merits of plaintiffs' suit; rather, it must evaluate whether plaintiffs meet the requirements of Rule 23." Sondel, 1993 D.Ct. LEXIS 21252 at *10 (citing Eisen v. Carlisle & Jaquelin, 417 U.S. 156, 177-78, 94 S.Ct. 2140, 2152-53, 40 L.Ed. 2d 732 (1974)). Moreover, "[w]hen there is a question as to whether certification is appropriate, the Court should give the benefit of the doubt to approving the class." In re Workers Compensation, 130 F.R.D. 99, 104 (D. Minn. 1990) (citations omitted).

II. Implicit Requirements for Class Certification

Plaintiffs are all members of the clearly defined proposed class and subclasses I, II, III and IV, and therefore satisfy the implicit requirements for class certification. To be a member of the class, an individual need only demonstrate that he or she has been granted asylum, has filed an application to adjust status to that of a permanent resident, and is waiting for the adjustment application to be adjudicated. The subclasses are equally clear: the first three entail only a determination of the date that the individual filed an adjustment of status application and the fourth requires only a showing that the asylee has applied for or applied to renew an EAD. Each of these facts is "easily determined," and thus the class and subclasses are easily defined. In re Workers Compensation, 130 F.R.D. at 104 (class consisting of only those who purchased workers compensation insurance was clearly defined).

All Plaintiffs are asylees in the United States who have filed applications for adjustment of status, and who are currently awaiting an asylee adjustment number. *See*

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quoting FRCP 23(c)(1) (class should be certified "[a]s soon as practicable after commencement of the action").

Exhibits 1-25. There are also individual class representatives who fall within each of the four subclasses.

A. Subclass I.

Seventeen named Plaintiffs applied for adjustment of status prior to January 16, 1998 and their applications are still pending. These Plaintiffs are: Venantius Nkafor Ngwanyia; Wesene Ayele Gizaw; Merdekios Duressa; Salah Farah; Aloysius Tabue; Fakmi Hysenaj; Mat Dupuy; Solange Pierre; Dieuzeve Joseph; Akbar L. Ng; Zoila Margarita Castillo Ramirez; Luis Carballo-Manzanares; Maria Herrera; Marie Diogene; Graciela Martinez; Patrick Davies; and Fawzy Abdelsamad. The attached representative declarations demonstrate membership within subclass I: Exhibit 1 (Venantius Nkafor Ngwanyia); Exhibit 2 (Wesene Ayele Gizaw); Exhibit 3 (Merdekios Duressa); Exhibit 4 (Salah Farah); Exhibit 5 (Mat Dupuy); Exhibit 6 (Solange Pierre); Exhibit 7 (Zoila Margarita Castillo Ramirez); Exhibit 8 (Luis Carballo-Manzanares); Exhibit 9 (Maria Herrera); and Exhibit 10 (Fawzy Abdelsamad).

B. Subclass II.

Six named Plaintiffs applied for adjustment of status after January 16, 1998 but before June 9, 1998, and their applications remain pending. These Plaintiffs are: Stella Emuwahen Erhabor; Murad Fakhouri; Arslan Durrani; Faisal Usman; Sherman Brown; and Laura Tabue. The attached representative declarations demonstrate membership in this subclass: Exhibit 11 (Faisal Usman) and Exhibit 12 (Sherman Brown).

C. Subclass III

Eighteen named Plaintiffs applied for adjustment of status after June 9, 1998, and their applications remain pending. These Plaintiffs are: Oleksander Zinkovsky;

Unsheju Mbu Izampuye; Joseph Coleman; Adrienne Kazarwa; Amondieu Milfort; Dragon Cvetkovic; Aman Yakob; Nina Ionescu; Santiago Ruano Oliva; Abdiaziz Hassan; Patricia Muendo; Ali Murtaza; Pierre Boumtje; Martine Ernestine Boumtje; Rosemary Ekeada; Iltam S. Jean-Caidor; Bassem El-Khatib; and Bekana Huluka.

The attached representative declarations demonstrate membership in this subclass: Exhibit 13 (Aman Yakob); Exhibit 14 (Nina Ionescu); Exhibit 15 (Santiago Ruano Oliva); Exhibit 16 (Patricia Muendo); Exhibit 17 (Rosemary Ekeada); Exhibit 18 (Iltam S. Jean-Caidor); Exhibit 19 (Bassem El-Khatib); Exhibit 20 (Dragon Cvetkovic); Exhibit 21 (Pierre Boumtje); Exhibit 22 (Bekana Huluka); Exhibit 23 (Unsheju Mbu Izampuye); Exhibit 24 (Amondieu Milfort); and Exhibit 25 (Oleksander Zinkovsky).

D. Subclass IV

Forty Plaintiffs have applied for an EAD or a renewal of an EAD. These plaintiffs are: Ngwanyia; Gizaw; Duressa; Mohamad Farah; Mary Kariuki; S. Farah; A. Tabue; Hysenaj; Dupuy; Pierre; Joseph; Ng; Z. Castillo; Carballo-Manzanares; Herrera; Diogene; Martinez; Davies; Abdelsamad; Fakhouri; Durrani; Usman; L. Tabue; Oleksander Zinkovsky; Unsheju Mbu Izampuye; Joseph Coleman; Adrienne Kazarwa; Amondieu Milfort; Aman Yakob; Nina Ionescu; Santiago Ruano Oliva; Abdiaziz Hassan; Patricia Muendo; Ali Murtaza; Pierre Boumtje; Martine Ernestine Boumtje; Rosemary Ekeada; Iltam S. Jean-Caidor; Bassem El-Khatib; and Bekana Hulaka.[3]

The attached representative declarations demonstrate membership in this subclass: Exhibit 1 (Ngwanyia); Exhibit 2 (Gizaw); Exhibit 3 (Duressa); Exhibit 4 (S. Farah); Exhibit 5 (Dupuy); Exhibit 6 (Pierre); Exhibit 7 (Z. Castillo); Exhibit 8 (Carballo-

Manzanares); Exhibit 9 (Herrera); Exhibit 10 (Abdelsamad); Exhibit 11 (Usman); Exhibit 13 (Aman Yakob); Exhibit 14 (Nina Ionescu); Exhibit 15 (Santiago Ruano Oliva); Exhibit 16 (Patricia Muendo); Exhibit 17 (Rosemary Ekeada); Exhibit 18 (Iltam S. Jean-Caidor); and Exhibit 19 (Bassem El-Khatib).

III. Application of Fed. R. Civ. P. 23(a)

A. Numerosity

Under Fed. R. Civ. P. 23(a)(1), a class must be "so numerous that joinder of all members is impracticable." Joinder need not be impossible; all that is required is that "joining all class members would be inconvenient or difficult." Sondel, 1993 D.Ct. LEXIS 21252 at * 21. Rule 23(a)(1) "imposes no absolute limitations;" instead, a court must make "a practical judgment based on the specific facts of each case." Id. at 20. Moreover, where a court may reasonably infer from the facts that numerosity is met, it is not necessary for plaintiffs to identify each member or the exact size of the class. Id. at * 21. In fact, "[t]he cases are legion suggesting that there is no absolute number which will satisfy the numerosity requirement." Jenson, 139 F.R.D. at 664 (citing Paxton v. Union National Bank, 688 F.2d 552, 559-60 (8th Cir. 1982), cert. denied, 460 U.S. 1083 (1983)); Boyd v. Ozark Airlines, Inc., 568 F.2d 50, 54 (8th Cir. 1977). The Eighth Circuit has upheld certification of a class as small as 20 persons. Arkansas Ed. Ass'n v. Board of Education, 446 F.2d 763, 765-66 (8th Cir. 1971).

The proposed class contains tens of thousands of asylees. INS has estimated that the waiting list for adjustment numbers for asylees who have applied for adjustment of status is well over 50,000. In November 2000, the Nebraska Service Center estimated the backlog at 44,000. Exhibit 26 ("American Immigration Lawyers' Association – INS

[3] A number of subclass IV plaintiffs also fall within subclass I, II or III.

Nebraska Service Center Annual Liaison Questions"). By May, 2001, that number had increased to 51,000. Exhibit 27 ("INS Responses to Questions from Rep. Conyers," Section 6). At that time INS also estimated that the backlog would continue to grow by 22,000 cases annually. Exhibit 28 ("AILA-NSC Teleconference," Answer to Question 19). Further, in May 2001, there were an additional 12,000 to 21,000 cases pending at INS District Offices. Exhibit 27 (estimating 12,000); Exhibit 28 (estimating 21,000). By early 2002, approximately 9,000 of these cases remained at District Offices. Exhibit 29 (AILA DC Newsletter, Jan-Feb. 2002, p.29). The number of potential class members clearly makes joinder of all of their claims impracticable.

These large numbers are not the sole reason joinder is impracticable here. Other factors relevant to the joinder analysis include: the nature of the suit; the ease of identifying class members; their geographical dispersion; the inconvenience of conducting individual lawsuits; and whether the size of individual claims is so small as to inhibit individuals from separately pursuing claims. *See, e.g.*, Paxton, 688 F.2d at 559-60; Beckman v. CBS, Inc., 192 F.R.D. 608, 613 (D. Minn. 2000).

Plaintiffs and proposed class members live throughout the United States. This geographical dispersion makes joinder impracticable. *See, e.g.*, Sondel, 1993 U.S. Dist. LEXIS 21252 at *22 ("Plaintiffs have also offered evidence that the members of the class are geographically dispersed, making joinder difficult"); Hewlitt v. Premier Salons, Inc., 185 F.R.D. 211, 215 (D. Md. 1997) (certifying class of African Americans refused services at salons in all 50 states). While five Plaintiffs live in Minnesota,[4] others live in such disperse locales as, for example, California (Plaintiff El Khatib, Exh.19); Massachusetts

[4] They are Ngwanyia, Gizaw, Duressa, Mohamad Farah and Mary Kariuki.

(Jean-Caidor, Exh. 18); Nebraska (Ruano-Oliva, Exh. 15); New York (Ionescu, Exh. 14); Texas (Muendo, Exh. 16); and Virginia (Yakob, Exh. 13).

Additionally, as a direct result of the challenged practices – Defendants' failure to properly maintain a waiting list of all non-exempt adjustment applicants based upon the date of their application – members of the class and subclasses are not all known or identified at this point in time. For instance, recent memorandum of Defendant INS to its District Offices indicates that there is not a complete list of all asylees who applied for adjustment prior to June 9, 1998, and also that the location of some of these files may not be known. See Exhibit 30 and 31.

A court may "reasonably infer that numerosity is satisfied from the facts of the case." Sondel, 1993 D.Ct. LEXIS 21252 at * 21. A combination of factors demonstrate that joinder of all class members is impracticable in this case: the size of the classes and subclasses; the fact that, at this point, Defendants have not yet identified all members of the subclasses; the geographical spread of the class members, and the burden which individual suits would place on class members and the courts. Finally, joinder is impracticable "because none of [the class members], individually, could obtain the broad-based declaratory and injunctive relief the class representatives [seek]." Paxton, 688 F.2d at 561 (citations omitted).

B. Commonality

Fed. R. Civ. P. 23(a)(2) requires that "there [be] questions of law or fact common to the class." Commonality is not required on every question raised in a class action. DeBoer v. Mellon Mortgage Company, 64 F.3d 1171, 1174 (8th Cir. 1995), cert. denied, 517 U.S. 1156 (1996). A common question of law exists when the legal question linking

the class members is substantially related to the resolution of the litigation. Id. Thus, commonality is satisfied when, as here, "members of the class have allegedly been affected by a general policy of the defendant, and the policy is the focus of the litigation. Beckman, 192 F.R.D. at 614 (citation omitted).

A challenge to a program's compliance with the mandates of its enabling legislation, even where the plaintiffs-beneficiaries are differently impacted by the violations, satisfies the commonality requirement. Baby Neal v. Casey, 43 F.3d 48, 56 (3d Cir. 1994). Courts consider "common" such challenges based on alleged violations of statutory standards. Id. at 56-57. *See also* Walters v. Reno, 145 F.3d 1032, 1046 (9th Cir. 1998), cert. denied 526 U.S. 1003 (1999)(successful challenge to notice provided to individual non-citizens in civil document fraud proceedings); Campos v. INS, 188 F.R.D. 656, 660 (S.D. Fla. 1999) (citing Campos v. Nail, 940 F.2d 495 (9th Cir. 1991) (Salvadoran and Guatemalan asylum seekers permitted to challenge pattern and practice of immigration judge who consistently denied requests for change of venue)); Fernandez Roque v. Smith, 91 F.R.D. 117 (N.D. Ga. 1981) (Cuba nationals denied parole challenged INS system-wide parole procedures); Haitian Refugee Center v. Smith, 676 F.2d 1023, 1026 (11th Cir. 1982).

The threshold for commonality is not high. Forbush v. J.C. Penney Co., 994 F.2d 1101, 1106 (5th Cir. 1993). Moreover, the circumstances of each class member need not be identical; to the contrary, "[f]actual differences between plaintiffs are to be expected." Jenson, 139 F.R.D. at 664 (citing Coley v. Clinton, 635 F.2d 1364 (8th Cir. 1980)).

In the instant case, an identical legal issue links all members of the class: whether Defendants have misadministered the asylee adjustment numbers. Additionally, common

legal questions link the members of each subclass. Subclasses I, II and III are each concerned with the additional questions of whether Defendants have failed to annually issue all 10,000 asylee adjustment numbers as required by 8 U.S.C. §1158(b) and, with regard to adjustment numbers that were issued, whether Defendants issued them on a first in, first out basis as required by 8 C.F.R. §209.2(a)(1). Similarly, the legal question common to all members of subclass IV is whether Defendants' requirement that asylees apply for an EAD and renew this EAD application every year, at the current cost of $120.00 per year, violates 8 U.S.C. §1158(c)(1)(B).

All plaintiffs and class members are further back on the waiting list than they otherwise would have been as a direct result of practices challenged in this lawsuit. In fact, had Defendants correctly administered the asylee adjustment numbers –in particular, had they issued the 18,000 unused asylee adjustment numbers authorized by the President – in all likelihood members of subclass I would have adjusted by now, and members of subclass II would be adjusted by the end of this fiscal year. Moreover, all members of subclass IV bear the additional burden of having to apply for and renew EADs.

All class members are interested in a "satisfactory common course of conduct" by Defendants in the future issuance of asylee adjustment numbers and EADs. DeBoer, 64 F.3d at 1174. Consequently, Plaintiffs are requesting declaratory and injunctive relief. "This declaratory and injunctive nexus is sufficient to establish the requisite commonality." Paxton, 688 F.2d 561.

C. Typicality

Fed. R. Civ. P. 23(a)(3) requires that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Typicality is demonstrated

where "the named plaintiffs' claims arise out of the same event or practice or course of conduct that gives rise to the class members' claims and is based on the same legal theory." Sondel, 1993 D.Ct. LEXIS 21252 at *26 (citing Paxton, 688 F.2d at 561-62; Dirks v. Clayton Brokerage Co. of St. Louis, 105 F.R.D. 125, 132-33 (D. Minn. 1985)). "The pertinent legal inquiry is whether the named plaintiffs' individual circumstances are markedly different or whether the legal theory upon which the claims are based differs from that upon which the other class members will be based." Sondel, 1993 D.Ct. LEXIS 21252 at *26.

Plaintiffs' burden of demonstrating typicality is "'fairly easily met so long as other class members have claims similar to the named plaintiff[s].'" Select Comfort Corporation Securities Litigation, 202 F.R.D. 3d 598, 604 (D. Minn. 2001) (quoting Alpern v. UtiliCorp United, Inc., 84 F.3d 1525, 1540 (8th Cir. 1996)). As with commonality, it is not necessary that the factual circumstances of the named plaintiffs be identical to those of other class members. Id. at *27. Commonality and typicality are closely related; a "finding of one generally compels a finding of the other." Select Comfort Corporation Securities Litigation, 202 F.R.D. 598, 602 (D. Minn. 2001) (citations omitted).

The applications of all Plaintiffs have been subjected to the same problems with the Defendants' administration of the asylee adjustment numbers as have those of the class. As a result, both plaintiffs and proposed class members are all further back on the waiting list than they would be had Defendants followed the statute and regulations in its administration of asylee adjustments. Plaintiffs assert the same legal claims and seek the same relief for themselves as they do for the proposed class. Moreover, as discussed

above, individual Plaintiffs share the same circumstances and claims as members of each subclass.

Finally, class certification in the instant case does not present the sorts of dangers the typicality requirement was intended to avoid. There is no danger that the named plaintiffs have unique interests that might motivate them to litigate against or settle with the defendants in a way that prejudices the class members. The named Plaintiffs are seeking only relief applicable to themselves and all class members alike. They assert only claims applicable to all plaintiffs. "[G]iven the nature of the injunctive relief sought," plaintiffs' claims are typical of those of the class. DeBoer, 64 F.3d at 1174.

D. Adequacy of Representation

Fed. R. Civ. P. 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." There are two elements to this requirement. First, the representative for the class must be able to prosecute the action vigorously through qualified counsel. Second, the representative's interests must be sufficiently similar to that of the class members that it is unlikely their goals will diverge. Sondel, 1993 Dist. LEXIS 21252 at *28; Beckman, 192 F.R.D. at 614. "Otherwise stated, adequate representation turns upon the qualifications and experience of the plaintiffs' counsel to conduct the litigation and whether the plaintiffs have any interests antagonistic to the class." Beckman, id.

"[G]enerally speaking, consideration of the adequacy requirement tends to focus primarily on the competence and experience of class counsel … " Sondel, 1993 Dist. LEXIS 21252 at *29-29. In the present action, as the attached declarations demonstrate, Plaintiffs' counsel have extensive experience in immigration law, including serving as

counsel for plaintiffs in immigration class action litigation. Additionally, Defendants have admitted that Plaintiffs' counsel are competent. *See* Defendants' Answer, ¶ 285.

Further, Plaintiffs' interests are not antagonistic to those of the class. All Plaintiffs have a substantial stake in the outcome of the litigation. *Cf.* Sondel, 1993 Dist. LEXIS 21252 at *29. All Plaintiffs are currently waiting for an admission number, and thus share an interest in having future asylee admission numbers distributed in accordance with the law. Additionally, without an injunction, many of the Plaintiffs will have to renew their EADs while they continue to wait to be adjusted. There are also one or more Plaintiffs who fall within subclasses I, II, III and IV who will represent these subclasses. The injunctive relief sought in this suit will benefit the Plaintiffs and class members equally, and none of the named Plaintiffs seeks to pursue any interest that is antagonistic to any interest of the class members. All class representatives will fairly and vigorously litigate and protect the interests of the class members.

II. Fed. R. Civ. P. 23(b)(2) Requirement

The class proposed by plaintiffs falls within Fed. R. Civ. P. 23(b)(2) because Plaintiffs allege that Defendants have "acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Rule 23(b)(2) is intended to foster institutional reform by facilitating suits that challenge the widespread violation of the rights of those who are individually unable to vindicate their own rights. Baby Neal, supra, 43 F.3d at 64. Moreover, the Eighth Circuit has indicated that where, as here, Rule 23(a) prerequisites have been met and injunctive or declaratory relief is requested, the action

usually should be allowed to proceed under 23(b)(2). DeBoer, 64 F.3d at 1175 (citing 7A Charles A. Wright, et al., Fed. Prac. and Proc. §1775 at 470 (1986)).

In the present case, Plaintiffs seek relief for the entire class that is necessary and appropriate to remedy Defendants' violations of the immigration laws and regulations. "These allegations fit squarely into the 23(b)(2) classification. Should plaintiffs' claims be found to have merit, class-wide injunction relief would be appropriate." Jenson, 139 F.R.D. at 666. *Accord* Beckman, 192 F.R.D. at 615 ("Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of 23(b)(2) cases) (citing Anchem Products, Inc. v. Windsor, 521 U.S. 591, 614, 117 S.Ct. 2231, 2245, 138 L.Ed. 2d 689 (1997)).

CONCLUSION

For the above stated reasons, Plaintiffs satisfy the requirements for class certification under Fed. R. Civ. P. 23(a)(1), (2), (3), and (4) and 23(b)(2). Accordingly, Plaintiffs respectfully request that this Court enter an order certifying the following class and subclasses:

Class:	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; and

Subclass IV: All asylees who applied for or applied to renew an Employment Authorization Document (EAD).

Respectfully submitted,

ATTORNEYS FOR PLAINTIFFS

By_____

MARY KENNEY
NADINE K. WETTSTEIN
J. TRACI HONG
American Immigration Law Foundation
918 F Street, N.W.
Washington, D.C. 20004
Telephone: (202) 742-5600
Fax: (202) 783-7857

JAMES K. LANGDON II
Attorney Registration # 171931
Suite 1500
50 South Sixth Street
Minneapolis, MN 55402
Telephone: (612) 340-8759
Fax: (612) 340-2868

IRIS GOMEZ
Massachusetts Law Reform Institute
99 Chauncy Street, Suite 500
Boston, MA 02111
Telephone: (617) 357-0700
Fax: (617) 357-0777

ATTORNEYS FOR PLAINTIFFS

[INSERT CERTIFICATE OF SERVICE]