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THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

TERESITA G. COSTELO, and LORENZO P. ONG, Individually And On Behalf Of All Others Similarly Situated, Plaintiffs, v. MICHAEL CHERTOFF, Secretary Of The Department Of Homeland Security; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; EMILIO T. GONZALEZ, Director, United States Citizenship And Immigration Services; DAVID TYLER, Director, National Visa Center; CHRISTINA POULOS, Acting Director, California Service Center, United States Citizenship and Immigration Services; And CONDOLEEZA RICE, Secretary of State, Defendants.	Case No. SACV08-688 JVS (SHx) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR CLASS CERTIFICATION Hearing Date: August 11, 2008 Time: 1:30pm Courtroom: 10C

Plaintiffs, by and through their undersigned attorneys, hereby move this court, pursuant to Federal Rule of Civil Procedure 23, to certify this case as a class action. See F.R.C.P. Rule 23(a), (b)(2). This motion is supported by the pleadings, exhibits on file in this case and the following memorandum.

I. PROPOSED CLASS DEFINITION.

Plaintiffs seek certification provisionally of the following class of similarly situated persons:

> All persons who have filed an immigrant visa petition(s) for their child or children with a request for the original priority date or are the derivative beneficiary of an immigrant visa petition who face future and/or ongoing separation from family members as a result of the Defendants failure to automatically convert and retain the original visa petition priority date pursuant to Section 3 of the Child Status Protection Act.

Plaintiffs seek to have this class certified under F.R.C.P. 23.

II. THIS ACTION SATISFIES THE REQUIREMENTS OF RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

In order to be certified for class treatment, an action must satisfy the four requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Morgan v. Laborers Pension Trust Fund, etc., 81 F.R.D. 669, 675 (N.D. Cal. 1979). Courts frequently certify classes in the immigration context where the plaintiffs challenge

the legality of a practice or policy of the immigration service.[1] In the instant case, not only do Plaintiffs challenge the legality of a practice and policy of the immigration service, but Plaintiffs also meet the four requirements of F.R.C.P. 23(a) and satisfy the requirements of F.R.C.P. 23(b)(2).

A. This Action Satisfies The Four Requirements Of F.R.C.P 23(a).

All class actions in federal court must meet the prerequisites of Rule 23(a). There are four prerequisites: 1) Numerosity: the class must be so numerous that joinder of all members individually is "impracticable"; 2) Commonality: there must be questions of law or fact common to the class; 3) Typicality: the claims or defenses of the class representative must be typical of the claims or defenses of the class; 4) Adequacy of representation: the person representing the class must be able to fairly and adequately protect the interests of all members of the class.

1. Because the Class Is So Numerous, Joinder is Impracticable.

[1] See, e.g., National Center for Immigrants' Rights, Inc. v. INS, Civ. No. 83-7927-KN (C.D. Cal.)(order issued July 9, 1985, certifying a nationwide class of all persons subject to an INS regulation under challenge); Illinois Migrant Council v. Pilliod, 540 F.2d 1062, 1072 (7th Cir. 1976), modified, 548 F.2d 715 (7th Cir. 1977); Flores v. Meese, No. 85-4544RJK (C.D. Cal., August 11, 1988)(class of children in INS Western Region); Haitian Refugee Center v. Smith, 676 F.2d 1023, 1026 n.1, 1033 (class of Haitian political asylum applicants denied by the INS District in Miami, Florida); Orantes Hernandez v. Smith, 541 F. Supp. 351, 371 (C.D. Cal., 1982); Gorbach v. Reno, 219 F.3d 1087 (9th Cir. 2000); LULAC v. INS, No. 87-4757-WDK (C.D. Cal., July 15, 1988)(class of persons eligible for legalization who, in reliance on INS, failed to file application by deadline), aff'd sub nom. Catholic Soc. Servs., Inc. v. Thornburgh, 956 F.2d 914 (9th Cir. 1992), vacated sub nom. on other grounds, Reno v. Catholic Soc. Servs., Inc., 509 U.S. 43 (1993); Zambrano et al. v. INS, No. S-88-455-EJG (E.D.Cal., August 9, 1988)(class of aliens who were discouraged from filing or denied legalization because of INS regulations on "public charge"), aff'd 972 F.2d 1122(9th Cir. 1992), vacated on other grounds, 509 U.S. 918 (1993); Haitian Refugee Center v. Nelson, 694 F. Supp. 864 (S.D. Fla. 1988)(class of farmworker legalization applicants denied due process as a result of several INS procedures), aff'd 872 F.2d 1555 (11th Cir. 1989), aff'd sub nom. McNary v. Haitian Refugee Center, Inc., 498 U.S. 479 (1991).

Rule 23(a)(1) of the Federal Rules of Civil Procedure requires that the class be "so numerous that joinder is impractical." F.R.C.P. 23(a)(1). Here, the proposed class includes the thousands of parents who have filed an immigrant visa petition or are the adult children beneficiaries of an immigrant visa petition who face separation from family as a result of the Defendants refusal to automatically convert and retain the original priority date of the original visa petition pursuant to Section 3 of the Child Status Protection Act ("CSPA"). As discussed below and evidenced in supporting exhibits, the proposed class and this action meet all of the requirements under the Federal Rules of Civil Procedure for class certification. See Exhibit A (Declaration of Nancy E. Miller, Esq.); Exhibit B (Declaration of Jeremiah Johnson, Esq.)

Here, joinder of all the possibly affected persons is not feasible and Plaintiffs have more than satisfied the numerosity requirement of F.R.C.P. 23(a)(1). See Carey v. Greyhound Bus Co., 500 F.2d 1372, 1381 (5th Cir. 1974)(number of class members assumed to be 28); Arkansas Education Ass'n v. Board of Education, 446 F.2d 763, 765-66 (8th Cir. 1971)(class membership of 20 persons). See generally 3B Moore's Federal Practice 23.05[1] at 23-154 to 23-155 (1978).

Furthermore, it is not necessary to establish the exact size of the class in order to satisfy F.R.C.P. 23(a)(1), especially when plaintiffs are unable to identify the names of class members with reasonable diligence. See In re Financial

Securities Litigation, 69 F.R.D. 24, 34 (S.D. Cal. 1975); 7 Wright & Miller, Federal Practice and Procedure: Civil § 1762. Indeed, "[w]here the exact size of the class is unknown but general knowledge and common sense indicate that it is large, the numerosity requirement is satisfied." Orantes-Hernandez v. Smith, 541 F. Supp. 351, 371 (C.D. Cal. 1982). Because Plaintiffs are challenging Defendants' lack of uniform policy and failure to implement regulations addressing the automatic conversion and retention provision pursuant to INA § 203(h)(3) as applied to thousands of individuals and families, many of whom cannot be identified at this stage of the litigation, Plaintiffs satisfy the numerosity requirement of F.R.C.P. 23(a)(1).

Moreover, this Court may consider factors other than class size in determining whether joinder would be impracticable, including the geographical diversity of class members; the ability of Plaintiffs to identify individual class members; the ability of individual claimants to institute separate suits; and the type of review sought. These other factors further evidence the impracticability of joinder in the present case. See Section II(A)(2)(a), (b),(c),(d), *infra*.

a. The Plaintiffs Are Geographically Dispersed.

The geographical location of class members in this case makes joinder impracticable.[2] See Exhibits A, B, *supra*. Individuals falling under the proposed class definition are immigrants from several countries throughout the world. As such, joinder of all class members is impractical.

b. Members Of The Proposed Class Are Not Specifically Identifiable.

The fact that members of the proposed class are not specifically identifiable further supports certification of this class, since "joinder of unknown individuals is certainly impracticable."[3] The identity of all individuals eligible under Section 3 of the CSPA, codified at INA § 203(h)(3) cannot be determined.

c. Members Of The Proposed Class Are Unable To Initiate Individual Action.

The ability of individual class members to institute separate suits is also an important factor in determining impracticability of joinder. See Paxton v. Union Nat'l Bank, 688 F.2d 552, 559 (8th Cir. 1982), cert. denied, 460 U.S. 1083 (1983); see also Council of the Blind v. Regan, 709 F.2d 1521, 1543-4, n. 48 (D.C. Cir. 1983)(*Robinson, C.J. dissenting on other grounds*)(practicability of joinder includes consideration of ability of individual claimants to institute separate suits).

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[2] See Ziedman v. J. Ray McDermott & Co., Inc., 651 F.2d 1030, 1038 (5th Cir. 1981); see also Newberg on Class Actions 2d at § 3.06; Council of the Blind v. Regan, 709 F.2d 1521, 1543-4, n.48 (D.C. Cir. 1983)(Robinson, C.J., dissenting on other grounds). In one case, the fact that defendants were located from California to New York and from North Carolina to Nebraska made joinder not only impractical but impossible, even though there were only thirteen defendants. Dale Electronics, Inc. v. R.C.L. Electronics, Inc., 53 F.R.D. 531, 534 (D.N.H. 1971).

[3] Jack v. American Linen Supply Co., 498 F.2d 122, 124 (5th Cir. 1974).

Here, many potential class members are not able to afford the high costs of litigating their own individual case. See Exhibit B, Declaration of Jeremiah Johnson, Esq. This fact indicates that class certification is appropriate. See Morgan v. Sielaff, 546 F.2d 218, 222 (7th Cir. 1976)("Only a representative proceeding avoids a multiplicity of lawsuits and guarantees a hearing for individuals, such as many of the class members here, who by reason of ignorance, poverty, illness or lack of counsel may not have been in a position to seek one on their own behalf").

d. When The Only Relief Sought By Plaintiffs Is Injunctive And Declaratory In Nature, Courts Are More Willing To Certify A Class.

When plaintiffs are seeking injunctive or declaratory relief, the courts approach F.R.C.P. 23 liberally. In particular, courts have liberally construed the numerosity requirement of F.R.C.P. 23 such that smaller classes are less objectionable. See Jones v. Diamond, 519 F.2d 1090, 1100 (5th Cir. 1975). Furthermore, the burden on plaintiffs to identify the class members represented is substantially reduced. See Doe v. Charleston Area Medical Center, Inc., 529 F.2d 638, 645 (4th Cir. 1975)("where the only relief sought for the class is injunctive and declaratory in nature...even 'speculative and conclusory representations' as to the size of the class suffice as to the requirement of many," *quoting* Doe v. Flowers, 364 F. Supp. 953, 954 (N.D.W. Va. 1973), aff'd, 416 U.S. 922 91974)).

Here, Plaintiffs not only challenge Defendants' lack of uniform policy implementing the provisions of Section 3 of CSPA, codified at INA § 203(h)(3), but they are also seeking declaratory and injunctive relief on behalf of members of the proposed class. Because Plaintiffs have effectively satisfied the stricter numerosity requirement of F.R.C.P. 23(a)(1), *a fortiori*, Plaintiffs meet the requirements of the rule when liberally construed. See Section II(a)(1), *supra.*

2. Plaintiffs Present Questions Of Law Or Fact Common To The Proposed Class.

Rule 23(a)(2) requires that there be "questions of law *or* fact common to the class." Rodriguez v. Swank, 318 F. Supp. 289, 293-4 (N.D. Ill. 1970), aff'd 403 U.S. 901 (1971)(*emphasis added*)(common legal question satisfied Rule 23[a][2]). Generally, a lawsuit challenging a pattern and practice of allegedly illegal conduct presents common questions of law and fact. See, e.g., LaDuke v. Nelson, 762 F.2d 1318, 1332 (9th Cir. 1985); Illinois Migrant Council v. Pilliod, 540 F.2d at 1066-67, 1072; Medrano v. Allee, 347 F. Supp. 605, 610 (S.D. Tex. 1972), modified, 416 U.S. 802 (1974). Here, *both* questions of law *and* questions of fact are common to the claims of the proposed class members and the named plaintiffs.

The issues of fact common to the proposed class include the Defendants' failure to adopt policies and procedures in accordance with INA § 203(h)(3); Defendants' failure to promulgate a uniform policy to implement Section 3 of the

CSPA, INA § 203(h)(3). Specifically, the claims of the proposed class representative and those of the proposed class members raise common questions of law and fact concerning whether the Defendants may refuse to recognize a statute that preserves a parent's original priority date for use by their sons and daughters after they turn 21. Although the USCIS has granted some visa petitions and permitted retention of the earlier priority dates pursuant to INA § 203(h)(3), there appears to be no uniform policy from Defendants as a whole.

Common questions of law presented in this proposed class action include whether Defendants' challenged practices and policies violate INA § 203(h)(3); whether Defendants' failure to promulgate regulations implementing CSPA benefits violates the Administrative Procedure Act (APA), 5 U.S.C. § 551 et seq., the Due Process Clause and equal protection guarantee of the Fifth Amendment to the United States Constitution, and Article II §§ 1 and 3 of the United States Constitution.

The questions of fact and law raised by Plaintiffs are not unique to any individual class member, rather they are issues common to the thousands of individuals who are eligible for lawful permanent resident status pursuant to INA § 203(h)(3). The claims of the proposed class representatives and those of the proposed class members raise common questions of law and fact, i.e. whether Defendants may simply disregard the provisions of CSPA, an ameliorative law

enacted by Congress to preserve a parent's original priority date for use by their sons and daughters after they age out. Plaintiffs are seeking broad-based relief to be applied across the board for the benefit of all class members.

Courts have made clear that the commonality requirement is met if the members of the class have allegedly been affected by a general policy of the defendant and the general policy is the focus of the litigation. See e.g. LaDuke v. Nelson, 762, F.2d 1318, 1332 (9th Cir. 1985)' Illinois Migrant Council v. Pilliod, 540 F.2d 1062, 1066-67, 1072 (7th Cir. 1976); Medrano v. Allee, 347 F. Supp. 605, 610 (S.D. Tex. 1972), modified, 416 U.S. 802 (1974); Sweet v. General Tire and Rubber Co., 74 F.R.D. 333, 335 (N.D. Ohio 1976). Even if there are individual variations in the facts or legal issues as they relate to a particular named plaintiff or proposed class member, the commonality requirement is satisfied so long as the class shares some common question of law or fact. See e.g. Eisen v. Carlisle and Jacqueline, 391 F.2d 555, 562 (2nd Cir. 1968) (class certification granted notwithstanding "varying fact patterns underlying each individual…transaction"). See also Senter v. General Motors Corp., 532 F.2d 511, 524 (6th Cir. 1976), cert. denied, 429 U.S. 870 (1976)(class certification granted in employment discrimination action even though it was "manifest that every decision to hire, fire or discharge an employee may involve individual consideration"); Norwalk CORE v. Norwalk Redeveloping Agency, 395 F.2d 920, 937 (2nd Cir. 1968)(class certified

in challenge to relocation practices or urban renewal project despite the different treatment suffered by each tenant during the relocation process); Cullen v. New York State Civil Service Commission Cullen v. New York State Civil Service Commission, 435 F. Supp. 546, 559 (E.D. N.Y. 1977)(class certification granted in lawsuit challenging coercive practices in obtaining political contributions from public employees even though "fact questions specific to each instance of the alleged coercion will remain").

3. Plaintiffs Are Typical Of The Claims Of The Class.

Rule 23(a)(3) requires that the claims of the named plaintiffs be "typical of the claims…of the class." Meeting this requirement usually follows from the presence of common questions of law. As such, courts have construed subdivisions (a)(2) and (a)(3) to be largely duplicative. See 3B Moore's Federal Practice 23.06-2, at 23-325.[4]

This requirement under F.R.C.P. 23(a)(3) is shown in the Fifth's Circuit Court of Appeals decision in Gonzalez v. Cassidy, 474 F.2d 67, 71 n. 7 (5th Cir. 1973). There the court construed the typicality requirement as follows: "[The named plaintiff] was typical of the class within the meaning of Rule 23(a)(3)

[4] See also Orantes-Hernandes v. INS, 541 F. Supp. 351, 371 (C.D.Cal. 1982); American Airlines, Inc. v. Transport Workers Union, 44 F.R.D. 47, 48 (N.D. Okla. 1968) (holding (a)(3) met by representatives "sharing common with the class any claim or defense it has"); Mersay v. First Republic Corp., 43 F.R.D. 465, 468-69 (S.D. N.Y. 1968)(allegation that defendants engage in scheme common to all members of class held to support finding that claims of representative party typical). As set forth above, common questions of law and fact exist in the case at bar.

because he did not have interests which conflicted with those of the class, and because his claims for relief were based on the same legal or remedial theory." Here the representative plaintiffs here have absolutely no interests that conflict with those of the proposed class as in Gonzalez. Similarly, the named plaintiffs have identical legal theories as to the class they seek to represent, and they seek identical injunctive and declaratory relief for themselves and for the class as a whole.

This Court must keep "in mind what the basic thrust of the action concerns." Davy v. Sullivan, 354 F. Supp. 1320, 1325 (M.D. Ala. 1973). The "basic thrust" of this action is to compel Defendants to properly adjudicate all cases filed under CSPA, or INA § 203(h)(3), and comply with the requirements of retaining the parent's original priority date.

Because no conflict exists between Plaintiffs and the class they seek to represent and the issues herein arise out of a regulation and policy that is applied across the board to all class members, the typicality requirement of F.R.C.P. 23(a)(3) is satisfied.

4. Plaintiffs Will Adequately Represent The Proposed Class.

The final requirement, F.R.C.P. 23(a)(4), is that the named plaintiffs "will fairly and adequately protect the interest of the class." There are two principal elements of this requirement: (1) the class representative's interests must be co-

extensive and not antagonistic to the class members' interests, and (2) counsel for the named representatives be qualified. See Johnson v. Georgia Highway Express, Inc., 417 F.2d 1122, 1124-25 (5th Cir. 1969).

The interest of the class representatives here are not antagonistic to those of the proposed class members. Moreover, the individual named Plaintiffs will adequately represent all members of the proposed class. Their mutual goal is to declare Defendants' practices unlawful and to enjoin further violations. See Bailey v. Ryan Stevedoring, Inc., 528 F.2d 551 (5th Cir. 1976).

Finally, Plaintiffs' attorneys have litigated numerous cases in the federal courts involving the rights of aliens, and have substantial expertise in handling immigration cases. See Exhibits A,B *supra*. For these reasons, the adequacy of representation requirement is satisfied.

B. This Action Satisfies The Requirements Of Rule 23(b)(2).

In addition to satisfying the four requirements of F.R.C.P. 23(a), a proposed class must meet one of the requirements of F.R.C.P. 23(b). Here, Plaintiffs meet the requirements of F.R.C.P. 23(b)(2) because "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." F.R.C.P. 23(b)(2). In order to meet the requirements of subsection (b)(2), it is not necessary that defendants have "act[ed] directly against

each member of the class." Rather, as long as the actions of the defendants "affect all persons similarly situated, [and] his acts apply generally to the whole class," the class is maintainable under F.R.C.P. 23(b)(2). See 7A Wright & Miller, Federal Practice and Procedure, § 1775 at 19.

To be sure, Defendants' actions have affected all persons similarly situated and apply generally to the whole class. Specifically, Defendants have failed to apply Section 3 of the CSPA, codified at INA § 203(h)(3), to thousands of visa petitions and have failed to implant any policy or regulations regarding such. Defendants' failure to implement any regulations, policy or procedures in accordance with CSPA, to which Plaintiffs challenge, is applied generally to all class members. If Plaintiffs prevail in this lawsuit, then final declaratory and injunctive relief will be appropriate for the benefit of all individuals who fall within the defined class. As such, the requirements of subsection (b)(2) have been met.

III. Conclusion

The focus of the factual inquiry into the propriety of class certification is whether there is sufficient evidence to support a "reasonable judgment" that the requirements of F.R.C.P. 23 have been met. Blackie v. Barrack, 524 F.2d 891,

900-01 (9th Cir. 1975), cert. denied 429 U.S. 816 (1976). Here, Plaintiffs meet all the requirements of class certification pursuant to F.R.C.P. 23.[5] Accordingly, the class as proposed herein should be certified.

Dated: July 11, 2008

Respectfully Submitted,

/s/Nancy E. Miller

Nancy E. Miller
Robert L. Reeves
Jeremiah Johnson
Joyce A. Komanapalli
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Attorneys for Plaintiffs

[5] The Ninth Circuit Court of Appeals has disapproved of the issuance of a class-wide preliminary injunction without the district court first, at least provisionally, certifying the case as a class action. See Zepeda v. INS, 753 F.2d 719, 727-29 (9th Cir. 1985)(injunctive relief must be limited to the named plaintiffs unless the court certifies the class); National Center for Immigrants' Rights, Inc. v. INS, 743 F.2d 1365, 1371 (9th Cir. 1984)(same). For this reason, the motion for class certification should be resolved before or at the same time as the plaintiffs' motion for preliminary injunction.

DECLARATION OF NANCY E. MILLER

1. I, Nancy E. MILLER, am an attorney at law duly licensed to practice before all of the courts of the State of California. I am also admitted to practice before the U.S. Court of Appeals for the Fifth Circuit, and the U.S. Court of Appeals for the Second Circuit. If called upon to do so, I could and would testify competently to the facts set forth herein as these facts are within my personal knowledge.

2. I am a senior Attorney with the Law Offices of Reeves & Associates. In the course and scope of my employment, I am responsible for meeting with and providing consultations to individuals and families seeking immigration assistance. Furthermore, I represent hundreds of individuals and families regarding their immigration matters. Specifically I personally represent and/or have represented over twenty cases involving the automatic conversion and retention of the original priority date pursuant to the Child Status Protection Act, Section 203(h)(3) of the Immigration and Nationality Act.

3. As such, I am familiar with the Child Status Protection Act and the types of families and individuals that can be affected by this law. I have also co-authored a

number of educational articles written for immigrants and their families concerning the Child Status Protection Act and the automatic conversion and retention provision. As a result of these articles I have had the opportunity to meet with and discuss this provision with hundreds of persons both at my office in Pasadena and in the community.

4. I am familiar with the caseload at Reeves & Associates. I am aware that our office represents at a minimum 40 clients who are seeking automatic conversion and retention of the original priority date under INA § 203(h)(3) and would qualify as class members under the proposed class definition. Furthermore, I have consulted with a minimum of 100 individuals and families who appear to be *prima facie* eligible for automatic conversion and retention and would qualify as class members under the proposed class definition. During these consultations, a number of families had indicated to me that the cost of retaining an attorney to pursue the automatic conversion and retention would be prohibitive.

5. On July 25, 2008 through July 28, 2008 I attended a conference of the American Immigration Lawyers Association and had the opportunity to discuss the Child Status Protection Act and the automatic conversion and retention provision

with immigration attorneys from all over the United States. I personally met with several attorneys, including attorneys from Texas and New York, who indicated to me that they also represent clients who would appear to qualify as class members under the proposed class definition. Furthermore, at the conference I had the opportunity to attend a seminar specifically regarding the Child Status Protection Act attended by over 100 immigration attorneys. At the seminar, the moderator specifically referenced the automatic conversion and retention provision of INA § 203(h)(3), this instant class action case and indicated the broad applicability of this provision. After having attended this conference and discussing this case with a number of immigration attorneys from around the United States, I am convinced that class members under the proposed class definition would number in the tens of thousands. Additionally, since I started practicing immigration law in 1985, I have regularly reviewed the monthly U.S. Department of State visa bulletins and know that there has always been a significant backlog of immigrant visa petitions waiting for their priority date to become current from countries throughout the world.

6. I consider myself a knowledgeable and experienced immigration attorney. Often I am consulted by other attorneys regarding immigration matters, including the Child Status Protection Act. I am a member of the American Immigration

Lawyers Association (AILA) and the Los Angeles Bar Association, Immigration Section. I am currently the AILA liaison to the Executive Office for Immigration Review, Immigration Court. As an experienced immigration attorney I would estimate that class members under the proposed class definition would number in the tens of thousands.

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct to be best of my knowledge based on information provided to me.

Executed this 11th day of July in 2008 in Pasadena, California.

/s/ Nancy E. Miller

Nancy E. Miller

DECLARATION OF JEREMIAH JOHNSON

1. I, Jeremiah JOHNSON, am an attorney at law duly licensed to practice before all of the courts of the State of California. If called upon to do so, I could and would testify competently to the facts set forth herein as these facts are within my personal knowledge.

2. I am the San Francisco Managing Attorney and a partner with the Law Offices of Reeves & Associates. In the course and scope of my employment, I am responsible for meeting with and providing consultations to individuals and families seeking immigration assistance. Furthermore, I represent hundreds of individuals and families regarding their immigration matters. Specifically I personally represent and/or have represented over twenty cases involving the automatic conversion and retention of the original priority date pursuant to the Child Status Protection Act, Section 203(h)(3) of the Immigration and Nationality Act.

3. As such, I am familiar with the Child Status Protection Act and the types of families and individuals that can be affected by this law. I have also co-authored a

number of educational articles written for immigrants and their families concerning the Child Status Protection Act and the automatic conversion and retention provision. As a result of these articles I have had the opportunity to meet with and discuss this provision with hundreds of persons both at my office in San Francisco and in the community.

4. I am familiar with the caseload at Reeves & Associates. I am aware that our office represents at a minimum 40 clients who are seeking automatic conversion and retention of the original priority date under INA § 203(h)(3) and would qualify as class members under the proposed class definition. Furthermore, I have consulted with a minimum of 100 individuals and families who appear to be *prima facie* eligible for automatic conversion and retention and would qualify as class members under the proposed class definition. During these consultations, a number of families had indicated to me that the cost of retaining an attorney to pursue the automatic conversion and retention would be prohibitive.

5. On July 25, 2008 through July 28, 2008 I attended a conference of the American Immigration Lawyers Association and had the opportunity to discuss the Child Status Protection Act and the automatic conversion and retention provision

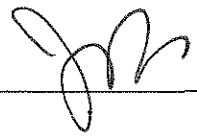
with immigration attorneys from all over the United States. I personally met with several attorneys, including attorneys from Texas and New York, who indicated to me that they also represent clients who would appear to qualify as class members under the proposed class definition. Furthermore, at the conference I had the opportunity to attend a seminar specifically regarding the Child Status Protection Act attended by over 100 immigration attorneys. At the seminar, the moderator specifically referenced the automatic conversion and retention provision of INA § 203(h)(3), this instant class action case and indicated the broad applicability of this provision. After having attended this conference and discussing this case with a number of immigration attorneys from around the United States, I am convinced that class members under the proposed class definition would number in the tens of thousands.

6. I consider myself a knowledgeable and experienced immigration attorney. Often I am consulted by other attorneys regarding immigration matters, including the Child Status Protection Act. I am a member of the American Immigration Lawyers Association and regularly read, study and familiarize myself with current trends, cases and policy relating to immigration law. As an experienced

immigration attorney I would estimate that class members under the proposed class definition would number in the tens of thousands.

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct to be best of my knowledge based on information provided to me.

Executed this 9th day of July in 2008 in San Francisco, California.



Jeremiah Johnson

PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2 North Lake Avenue, Suite 950, Pasadena, California 91101.

On July 11, 2008, I served the foregoing documents: NOTICE OF MOTION AND MOTION FOR CERTIFICATION OF CLASS ACTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR CERTIFICATION OF CLASS ACTION; DECLARATION OF NANCY E. MILLER, ESQ.; DECLARATION OF JEREMIAH JOHNSON, ESQ.; AND PROPOSED ORDER GRANTING CLASS CERTIFICATION; on the interested parties in the action described as

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☒ by placing ☐ the original and ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☒ By Mail

☐ By placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States mail at Pasadena, California.

☒ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ By Personal Service.

☐ I personally deliver a copy of said document(s) to the office(s) of the addressee(s).

☐ I caused such document(s) to be hand-delivered to the office(s) of the addressee(s).

☐ By Facsimile – I caused such document(s) to be faxed to the office of the addressee(s). The transmission of the above document to each party served, consisting of _____ pages, was reported as complete and without error as shown by the attached facsimile transmission confirmation report issued by the transmitting facsimile machine number (626) 795-6999 or (626) 795-6300.

Executed on July 11, 2008, at Pasadena, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

☒(Federal) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Francine Ang

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