316 Fed.Appx. 565
This case was not selected for publication in the Federal Reporter.
Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3.
(Find CTA9 Rule 36-3)
United States Court of Appeals,
Ninth Circuit.

PROYECTO SAN PABLO; et al.,
Plaintiffs-Appellees,
v.
DEPARTMENT OF HOMELAND SECURITY; et al., Defendants-Appellants.

No. 07-16215. | Argued and Submitted Nov. 21, 2008. | Filed Dec. 5, 2008.

Synopsis
Background: Aliens filed class action to compel United States Citizen and Immigration Services (USCIS) to adjudicate their applications for waivers of inadmissibility pursuant to Immigration Reform and Control Act, and to produce their complete prior deportation files. The United States District Court for the District of Arizona, Raner C. Collins, J., entered judgment in aliens' favor, and USCIS appealed.

Holding: The Court of Appeals held that district court had jurisdiction to issue order in aid of its jurisdiction.

Affirmed.

Attorneys and Law Firms

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Appeal from the United States District Court for the District of Arizona, Raner C. Collins, District Judge, Presiding. D.C. No. CV-89-00456-RCC.
Before: CANBY and WARDLAW, Circuit Judges, and MILLS,[*] District Judge.

[*] The Honorable Richard Mills, United States District Judge for the Central District of Illinois, sitting by designation.

Opinion

***566 MEMORANDUM**[**]

[**] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

United States Citizen and Immigration Services ("USCIS") appeals from the district court's June 4, 2007 Order requiring it to comply with its March 27, 2001 Judgment and Order compelling adjudication of plaintiff-class members' applications for waivers of inadmissibility pursuant to the Immigration Reform and Control Act of 1986 ("Reform Act"), and production of the class members' complete prior deportation files. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

USCIS argues that the district court did not have jurisdiction to issue the June 2007 Order because the Reform Act vests jurisdiction to review substantive eligibility determinations solely in the circuit courts following an order of deportation. However, the district court's March 2001 Judgment and Order, from which USCIS did not appeal, required USCIS to adjudicate Reform Act waiver applications on their merits. This adjudication must be separate from the adjudication of the applicant's legalization application. *See Matter of P-,* 19 I. & N. Dec. 823, 824 (BIA 1988) ("Each application should be adjudicated separately since the applicant has the right to appeal from an adverse decision of either application."). The district court properly concluded that USCIS, when it simply denied waiver applications on futility grounds, failed to comply with its March 2001 Judgment and Order requiring it to consider each waiver application on its merits in the same manner as it adjudicates non-class members' waiver applications.

Our decision in *Pedroza-Padilla v. Gonzales,* 486 F.3d 1362 (9th Cir.2007), does not support USCIS's position. There the Administrative Appeals Office considered Pedroza-Padilla's legalization application, denied it for

failure to meet the continuous residency requirement, and we affirmed because "nothing in the statute compels Pedroza's argument that continuous residence may be waived." *Id.* at 1365. We did not reach whether an applicant is procedurally entitled to adjudication of waiver eligibility.

Therefore, the district court's requirement that USCIS adjudicate waiver applications on the merits, merely clarifies and enforces its 2001 Judgment and Order. It does not constitute review of the decisions USCIS reaches on the merits. The district court has jurisdiction to issue such an order in aid of its jurisdiction. *See* 28 U.S.C. § 1651.

AFFIRMED.

Parallel Citations

2008 WL 5110903 (C.A.9 (Ariz.))