Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Aurelio DURAN GONZALEZ, Maria C. ESTRADA, Maria Luisa MARTINEZ DE MUNGUIA, Irma PALACIOS DE BANUELOS, Lucia MUNIZ DE ANDRADE, Karina NORIS, Adriana POUPARINA, Plaintiffs, v. U.S. DEPARTMENT OF HOMELAND SECURITY and Janet NAPOLITANO, Secretary of the Department of Homeland Security, Defendants.	Case No. CV 06-1411-MJP **JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND AMENDMENT OF THE CLASS DEFINITION** ~~PROPOSED~~ **ORDER** Noted for: July 11, 2014

This matter comes before the Court on the parties' request for final approval of the settlement and amendment of the class definition. Following a fairness hearing on July 11, 2014,

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IT IS ORDERED that the Settlement Agreement and Release (ECF No. 98-1) is APPROVED.

IT IS FURTHER ORDERED that the Class Definition is amended as follows:

"Any person who:

1. Is the beneficiary or derivative beneficiary of an immigrant visa petition or labor certification filed on or before April 30, 2001, provided that, if the immigrant visa petition or labor certification was filed after January 14, 1998:
    a. the beneficiary was physically present in the United States on December 21, 2000, or
    b. if a derivative beneficiary, the derivative beneficiary or the primary beneficiary was physically present in the United States on December 21, 2000.
2. Is inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act ("INA"), because he or she entered or attempted to reenter the United States without being admitted after April 1, 1997, and without permission after having previously been removed;
3. Properly filed a Form I-485 (Application to Adjust Status) and Form I-485 Supplement A (Adjustment of Status Under Section 245(i)) while residing within the jurisdiction of the Ninth Circuit on or after August 13, 2004, and on or before November 30, 2007;
4. Filed a Form I-212 (Application for Permission to Reapply for Admission Into the United States After Deportation or Removal) on or after August 13, 2004, and on or before November 30, 2007;

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5. Form I-485, Form I-485 Supplement A, and Form I-212 were denied by U.S. Citizenship and Immigration Services ("USCIS") and/or the Executive Office for Immigration Review ("EOIR") on or after August 13, 2004, or have not yet been adjudicated;
6. Is not currently subject to pending removal proceedings under INA § 240, or before the United States Court of Appeals for the Ninth Circuit on a petition for review of a removal order resulting from proceedings under INA § 240; and
7. Did not enter or attempt to reenter the United States without being admitted after November 30, 2007.

Class members are further divided into three subclasses, as follows:

1. Subclass A: Class Members (i) who have remained physically present in the United States since the filing of the Form I-485, Form I-485 Supplement A, and Form I-212, and (ii) against whom removal proceedings under INA § 240 were not initiated with the filing of a Notice to Appear subsequent to the filing of the Form I-485, Form I-485 Supplement A, and Form I-212 ("Subclass A Members");
2. Subclass B: Class Members: (i) who have remained physically present in the United States since the filing of the Form I-485, Form I-485 Supplement A, and Form I-212; (ii) against whom removal proceedings under INA § 240 were initiated by the filing of a Notice to Appear, subsequent to the filing of the Form I-485, Form I-485 Supplement A, and Form I-212; (iii) who have a final, unexecuted order of removal; (iv) who have no pending direct appeals of that order, including a petition for review before the Court of Appeals for the Ninth

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Circuit; (v) whose applications to adjust status were denied based upon final administrative determinations of inadmissibility by the Executive Office for Immigration Review under INA § 212(a)(9)(C)(i)(II) and whose final orders of removal were not entered *in absentia*; and (vi) for whom the Ninth Circuit Court of Appeals did not apply the *Montgomery Ward* test as set forth in the *Garfias-Rodriguez* decision, to determine whether *Matter of Torres-Garcia,* 23 I. & N. Dec. 866 (BIA 2006), was properly retroactively applied to them ("Subclass B Member"); and

3. Subclass C: Class Members (i) who have departed the United States after filing the Form I-485, Form I-485 Supplement A, and Form I-212, (ii) who remain physically outside the United States; and (iii) who have properly filed an immigrant visa application with the United States Department of State, or who will file an immigrant visa application within one year of the effective date of this agreement ("Subclass C Members")."

Dated this 21st day of July, 2014.

MARSHA PECHMAN
Chief United States District Judge

submitted by

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