

Court Orders USCIS to Issue Green Cards to Plaintiffs Granted LPR Status as Removal Relief

THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, in a sternly worded opinion, fashioned a permanent injunction compelling the issuance of proof of status to a class of persons “who have been or will be granted lawful permanent resident status.” The court handed down this injunction after rejecting counter-proposals from the Department of Justice (DOJ), Department of Homeland Security (DOS), and U.S. Citizenship and Immigration Services (USCIS), finding “where the failure to present documentation precludes lawful employment and obtaining certain state benefits, the effect on the welfare of plaintiffs is obvious and undisputed.”

Exercising Their Rights

In *Santillan v. Gonzales*, 2005 U.S. Dist. LEXIS 39118 (N.D. Cal. 2005) at 7–23, plaintiffs had been granted the status of lawful permanent residence (LPR) when they sought documentation of their adjusted status as LPRs from their local USCIS offices through Alien Documentation, Identification and Telecommunication (ADIT) processing.

During an extensive period of time, plaintiffs had not received the requested documentation of their permanent resident status. Subsequently, on July 4, 2004, plaintiffs filed an action for declaratory and injunctive relief, seeking to compel the agency officials to issue evidence of their adjusted legal status “in a timely manner.” On October 12, 2004, the court certified plaintiffs’ claims as a class action. *Santillan v. Gonzales*, 388 F. Supp. 2d 1065, 2005 U.S. Dist. LEXIS 36955 (N.D. Cal. 2005), citing *Santillan v. Ashcroft*, 2004 U.S. Dist. LEXIS 20824, 2004 WL 2297990 (Oct. 12, 2004 N.D. Cal.) (Patel, J.).

New Regs Change Playing Field

On April 1, 2005, after class certification was granted to plaintiffs, a new system of Executive Office for Immigration Review (EOIR) regulations went into effect, which repositioned the timing of security examinations of applicants, requiring that these examinations be completed *before* an immigration judge hears an alien’s application for adjustment of status, rather than *after* a grant of adjusted status. Under this new sys-

tem, where “investigations are incomplete by the time of a hearing, the immigration judge may grant a continuance or hear the case on its merits; however, the judge may not grant an application for immigration relief if the examinations are incomplete or not current.” *Id.* at 6–7.

According to the district court, under these new procedures, “persons granted LPR status waited from several months to over one year for the commencement of their ADIT processing, in addition to weeks or months for the completion of processing and the issuance of documentation verifying LPR status. As many as 12,539 persons adjudicated to be LPRs after October 1, 2000, may not have received documentation of status from USCIS.” As a result, the court divided plaintiffs into two subclasses based on when they were adjudicated to be lawful permanent residents. Members of the first subclass were granted LPR status under the regulations in force prior to April 1, 2005 (Pre–April 1 Subclass). Members of this subclass were not required to undergo any background checks prior to their EOIR adjudication. Consequently, members of this subclass may have been granted LPR status without having completed background checks that USCIS now requires before issuing permanent documentation. Members of the second subclass (Post–April 1 Subclass) were required to complete mandatory background checks before being granted LPR status. *Santillan v. Gonzales*, 2005 U.S. Dist. LEXIS 39118 at 3–5.

An APA Violation

Based on the agencies’ continued failure to provide documentation, coupled with evidence that delays would persist, plaintiffs moved for summary judgment claiming that the agencies were improperly withholding permanent documentation of status, and their decision to cease providing temporary documentation was “arbitrary and capricious” in violation of §706(2)(A) of the Administrative Procedure Act (APA). *Santillan v. Gonzales*, 388 F. Supp. 2d 1065 (N.D. Cal. 2005) at 29–30. Plaintiffs also claimed that the agencies had a “purely ministerial duty to issue documentation of LPR status,” and that DHS had no authority to make an independent determination of eligibility. The court found that the agencies’ delay in issuing documentation was thus a violation of APA §706(1).

The court held that it had jurisdiction over the agencies’ actions pursuant to the APA, citing 5 USC §§702 and 551(13). In deciding plaintiffs’ motion for summary judgment, the court noted that all class members adjudicated to be LPRs under the post–April 1, 2005, regulations, already have been determined not to be a security risk. The court found this persuasive and stated that this “has bearing on agencies’ national security arguments, which have substantially less merit when applied to an LPR already determined not to be a known threat.”

The court sustained plaintiffs’ motion for summary judgment pursuant to §§706(1) and 706(2)(A) and wrote that the →

agencies' "repeated, conclusory appeals to national security concerns do not withstand careful scrutiny and leave this court with no basis for concluding that the post-September 11 policy rationally furthers national security interests." The court then concluded that USCIS has a duty to provide documentation to LPRs "at a time that does not unreasonably compromise the LPRs' enhanced rights." Particular emphasis was placed on the immediate vesting in full of LPR rights "on the date of the EOIR's order granting status."

Agencies' Proposals, Court's Rejection

The court reviewed the agencies' proposal regarding the scope of the permanent injunction and separated their concerns into three categories: (1) the agencies argued the need to verify the identity of each person seeking permanent documentation of LPR status and the validity of the grant of such status; (2) they argued that a supplemental

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FBI name check would be required in some cases and maintained that this supplemental name check could delay issuance of permanent documentation; and (3) the agencies maintained that Green Cards produced using biometric data, including fingerprints and photographs, are "more secure than the previously issued temporary documentation," and take time due to the collection process being outsourced to application support centers where LPRs are required to schedule individual appointments.

The court rejected these contentions, finding that the agencies' "purported national security concerns" were outweighed by the "real and substantial harms suffered by class members who are unable to work lawfully or travel abroad to see family without status documentation." The court further described these rights as "vested from the moment class members are granted LPR status, and defendants' withholding documentation from them prevents class members from exercising their lawful rights." The court noted that members of the pre-April 1 subclass have waited extraordinary lengths of time for documentation that secures their ability to live as lawful residents of this country.

Details of the Permanent Injunction

For the post-April 1 subclass, the court's injunction requires the following: a notice of documentation procedures shall be maintained on the USCIS website; within three days of an EOIR order becoming final, local U.S. Immigration and Customs Enforcement (ICE) Chief Counsel offices shall deliver to USCIS a notice of such order along with verification of completion of all required security and background checks; provisions for InfoPass appointments and verification of the identity of the alien

seeking status documentation; provisions for collection of needed biometrics; and requirements for the production and mailing of a Green Card (I-551).

For the pre-April 1 subclass, the injunction requires a notice on the USCIS website to individuals granted relief from removal proceedings regarding documentation procedures; notice by mail to any potential pre-April 1 EOIR-grantees who received orders between October 1, 2000, and March 31, 2005, for whom the USCIS systems do not show issuance of permanent I-551s; provisions for InfoPass appointments and verification of the identity of the alien seeking status documentation; provisions for collection of needed biometrics; and requirements for the production and mailing of a Green Card.

PRACTICE POINTER: If a class member has not received LPR status documentation within the time limits set forth in the court's permanent injunction, counsel should notify a national point of contact at the USCIS Office of Field Operations at a dedicated e-mail address. In this e-mail inquiry, counsel must provide the alien's name, A-number, date of birth, address, date of EOIR order, type of relief granted, whether the order was final, dates of the InfoPass and application support center (ASC) appointments, the USCIS district or suboffice involved, and any other relevant information about this request for status documentation. ■

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