

The Honorable Richard A. Jones
United States District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

B.H., M.A., A.S.D., M.F., H.L.,
L.M.M.M., B.M., G.K., L.K.G., and D.W.,
Individually and on Behalf of All Others
Similarly Situated,

No. CV11-2108-RAJ

Plaintiffs,

CLASS NOTICE

v.

U.S. CITIZENSHIP AND
IMMIGRATION SERVICES;
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Janet
NAPOLITANO, Secretary, Department of
Homeland Security; Alejandro
MAYORKAS, Director, U.S. Citizenship
and Immigration Services; Eric H.
HOLDER, Jr., Attorney General of the
United States; Juan OSUNA, Director,
Executive Office for Immigration Review,

Defendants.

IMPORTANT CLASS NOTICE

This Notice contains important information that may pertain to you. Please read it carefully. Under the Settlement Agreement in *B.H., et al. v. United States Citizenship and Immigration Services, et al.*, No. CV11-2108-RAJ (W.D. Wash.) (also referred to as “ABT Settlement Agreement”),¹ certain individuals who seek to file an asylum

¹ The original caption for this action listed “A.B.T., K.M.-W., G.K., L.K.G., [and] D.W.” as the individual plaintiffs. This Notice will refer to this action as “ABT,” the Settlement Agreement in this action as “the

1 application or have already filed an asylum application, are entitled to new procedures
2 relating to the crediting of time toward eligibility for employment authorization.
3

4 On December 15, 2011, Plaintiffs filed a class action complaint challenging the federal
5 government's practices with respect to Employment Authorization Documents ("EADs")
6 of applicants for asylum. Plaintiffs are all noncitizens in the United States who have been
7 placed in removal proceedings, have filed complete Form I-589, *Application for Asylum*
8 *and Withholding of Removal* ("asylum application"), and have filed or will file a Form I-
9 765, *Application for Employment Authorization* ("application for employment
10 authorization") pursuant to immigration regulations (8 C.F.R. § 274a.12(c)(8)).
11 Defendants include the U.S. Citizenship and Immigration Services ("USCIS") and the
12 Executive Office for Immigration Review ("EOIR").
13

14 After lengthy settlement negotiations, on March 29, 2013, Plaintiffs and Defendants
15 submitted a stipulated motion for a nationwide class certification and stipulated motion
16 for Settlement Agreement. The general terms of those stipulated motions are laid out
17 below.
18

19 On May 8, 2013, the Court granted the Parties' Joint Motion for Preliminary Approval of
20 Settlement and ordered a Fairness Hearing on September 20, 2013. Any objections to the
21 proposed settlement should be submitted to the Court within thirty (30) days of the date
22 of this notice. The notice to the Clerk of the Court shall be sent to: Clerk, U.S. District
23 Court for the Western District of Washington, 700 Stewart Street, Seattle, WA 98101,
24 and both the envelope and letter shall state "Attention: *A.B.T., et al. v. United States*
25 *Citizenship and Immigration Services, et al.*, No. CV11-2108-RAJ (W.D. Wash.)."
26 Copies shall also be served on counsel for Plaintiffs and counsel for Defendants as set
27 forth below:
28

29 TO PLAINTIFFS:

30
31 Matt Adams
32 NORTHWEST IMMIGRANT RIGHTS PROJECT
33 615 2nd Avenue, Suite 400
34 Seattle, WA 98104
35

36 TO DEFENDANTS:

37
38 J. Max Weintraub
39 Senior Litigation Counsel
40 United States Department of Justice, Civil Division
41 Office of Immigration Litigation – District Court Section
42 P.O. Box 868, Ben Franklin Station
43

44 ABT Settlement Agreement," claimants under the Agreement as "ABT claimants," and the claim review
45 process under the Agreement as the "Individual ABT Claim Review process."
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1 Washington, D.C. 20044

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3 The complete Settlement Agreement, including definitions of Class Members, exact
4 terms of the relief, and the exact terms of any process available to seek review of an
5 alleged violation of the Settlement Agreement, may be found at www.nwirp.org,
6 www.americanimmigrationcouncil.org, www.mlri.org, and www.ghp-law.net. In
7 addition, this information is available on the USCIS website, www.uscis.gov, and the
8 EOIR website, www.usdoj.gov/eoir.

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11 **WHO IS AN ABT CLASS MEMBER?**

12
13 This summary of the Class and Subclasses is meant to provide the general guidelines of
14 who qualifies as Class members. The ABT Class is a nationwide class comprised of a
15 general class and four subclasses. **There is no requirement and no process for**
16 **applying for class membership.** A person who falls within the categories enumerated
17 below need not take any other action to be recognized as a class member.

18
19 **Notice and Review Class:**

20 The general class, called the Notice and Review Class, includes noncitizens in the United
21 States who have filed or will file (or as explained below, who will “lodge” at an
22 immigration court window) a complete asylum application with Defendants, whose
23 asylum applications have not been either approved or denied with all rights of review or
24 appeal exhausted, and whose applications for employment authorization based on their
25 status as asylum applicants have been or will be denied because of alleged insufficient
26 notice and/or opportunity for review. In addition, a general class member must fall
27 within one or more of the following subclasses:

28
29 **Hearing Subclass:**

30 The Hearing Subclass includes noncitizens who have been placed in
31 proceedings before an immigration judge; and who have filed or lodged (as
32 explained below), or sought to lodge, or who will lodge or seek to lodge, a
33 complete defensive asylum application with the immigration court prior to a
34 hearing before an immigration judge; and whose eligibility for employment
35 authorization has been or will be calculated from the date the asylum
36 application was or will be filed at a hearing before an immigration judge.

37
38 **Prolonged Tolling Subclass:**

39 The Prolonged Tolling Subclass includes noncitizens, who are not detained in
40 immigration custody, who have filed an application for asylum and whose
41 time creditable toward employment authorization is stopped or will be stopped
42 due to delay attributed to them by Defendants, including for failure to accept
43 the next expedited hearing date offered by the Immigration Court, and who
44 have, or will have, allegedly resolved the issue causing the delay prior to the
45 next scheduled hearing.

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1 **Missed Asylum Interview Subclass:**

2 The Missed Asylum Interview Subclass includes noncitizens who have failed
3 or will fail to appear for an asylum interview with USCIS, and as a result will
4 not accrue time creditable toward eligibility for employment authorization
5 following the date of the missed asylum interview.
6

7 **Remand Subclass:**

8 The Remand Subclass includes noncitizens: (i) whose asylum applications
9 were or will be denied by the immigration court before 180 days accrued
10 toward employment authorization; (ii) whose appeal to the Board of
11 Immigration Appeals (BIA) or a federal court of appeals was remanded for
12 further adjudication of their asylum claim by an immigration judge; and (iii)
13 who have not been credited time toward eligibility for employment
14 authorization from the date of the initial denial.
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17 **WHAT BENEFITS ARE PROVIDED TO ABT CLASS MEMBERS?**

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19 This summary of the benefits available to Class members is meant to provide the *general*
20 guidelines of who qualifies as Class members. A person who believes he or she is a
21 Class member and has been denied an ABT Class member benefit should first review the
22 exact terms of the Settlement Agreement or seek legal assistance to do so.
23

24 **Notice & Review Class (General Class) Benefits:**

25 EOIR will amend the November 15, 2011, Operating Policies and Procedures
26 Memorandum (“OPPM”) 11-02: The Asylum Clock from Chief Immigration Judge
27 Brian O’Leary, to state that an immigration judge must make the reason(s) for the case
28 adjournment clear on the record. Defendants also will provide a notice containing
29 general information regarding employment authorization for individuals with pending
30 asylum applications, including where to obtain case-specific information, the impact of
31 hearing adjournment codes on EAD eligibility, and where to direct inquiries relating to
32 requests to correct hearing adjournment codes and inquiries relating to EAD eligibility.
33 EOIR will provide that notice to an asylum applicant when an asylum application is
34 lodged or filed with an immigration court. In addition, EOIR will make a copy of the
35 notice available at each hearing. USCIS will make the information publicly available,
36 including providing the notice to an asylum applicant upon referral to immigration court.
37

38 Timeframe for Benefits: Defendants will amend the November 15, 2011, OPPM, within
39 six (6) months of the Effective Date of the Settlement Agreement. With regard to the
40 remaining resolutions regarding notice, Defendants will implement these resolutions as
41 soon as possible, but no later than twenty-four (24) months from the Effective Date of the
42 Settlement Agreement. However, within six (6) months of the Effective Date of the
43 Settlement Agreement, Defendants will create an interim notice regarding employment
44 authorization for individuals with pending asylum applications. EOIR will provide this
45 notice to an asylum applicant when an asylum application is lodged or filed with an
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1 immigration court and also will make a copy of the notice available at each hearing.
2 USCIS will make the information publicly available, including providing the notice to an
3 asylum applicant upon referral to immigration court. Defendants also will provide
4 contact information for inquiries regarding requests to correct the calculation of the
5 asylum adjudications period before the Asylum Office, hearing adjournment codes before
6 the Immigration Court, and asylum-related EAD denials before USCIS.

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9 **Hearing Subclass Benefits:**

10 For noncitizens who have been placed in proceedings before an immigration judge, EOIR
11 will accept complete defensive asylum applications at the immigration court clerk's
12 window prior to the date of the Class members' hearing before an Immigration Judge as
13 "lodged not filed." EOIR will transmit the "lodged not filed" date to USCIS. When
14 eligible to apply for employment authorization, the applicant will then submit an
15 application for employment authorization to USCIS, along with a copy of the asylum
16 application that the EOIR immigration court clerk stamped "lodged not filed." USCIS
17 will consider the date that an asylum application is "lodged not filed" at the EOIR clerk's
18 window as the filing date for the purpose of calculating the time period for EAD
19 eligibility.

20
21 Timeframe for benefits: Defendants will implement these resolutions as soon as possible
22 but no later than twenty-four (24) months from the Effective Date of the Settlement
23 Agreement. In the interim, within six (6) months of the Effective Date of the Settlement
24 Agreement, when eligible to apply for employment authorization, the applicant will
25 submit an application for employment authorization to USCIS, along with a copy of the
26 asylum application that the EOIR immigration court clerk stamped "lodged not filed." In
27 adjudicating the application for employment authorization, USCIS will consider the date
28 on which the application was stamped "lodged not filed" as the application filing date for
29 the purpose of calculating the time period for EAD eligibility.

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32 **Prolonged Tolling Subclass Benefits:**

33 EOIR will amend the November 15, 2011, Operating Policies and Procedures
34 Memorandum 11-02: The Asylum Clock, section VI.E.2.c., to provide that, in setting
35 individual hearing dates in expedited non-detained cases with a pending asylum
36 application, an immigration judge must allow a minimum of forty-five (45) days between
37 the date of the last master calendar hearing date and the individual hearing date.

38
39 Timeframe for benefits: Defendants will implement these resolutions within six (6)
40 months of the Effective Date of the Settlement Agreement.

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43 **Missed Asylum Interview Subclass Benefits:**

44 USCIS will mail a "Failure to Appear" Warning Letter as soon as possible after an
45 asylum applicant misses an interview. The letter will describe the effect of the failure to
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1 appear on EAD eligibility and list procedural steps the applicant must take to establish
2 “good cause” for failing to appear for the interview. It will also describe the effect of
3 failing to respond to the warning letter within a forty-five (45) day period.
4

5 If forty-five (45) days have passed with no action by the applicant, USCIS will include a
6 “Referral Notice for Failure to Appear” with charging documents mailed to the applicant.
7 This notice will describe the effect of the failure to appear on EAD eligibility after
8 USCIS has referred a case to immigration court and list procedural steps the applicant
9 must take to establish “exceptional circumstances” for failing to appear at an asylum
10 interview with an Asylum Office. Upon determining whether exceptional circumstances
11 exist, the Asylum Office will issue a determination letter to the applicant and his or her
12 representative of record, and notify U.S. Immigration and Customs Enforcement’s Office
13 of the Principal Legal Advisor (“ICE OPLA”) of the determination. If the Asylum Office
14 determines that the applicant established “exceptional circumstances,” the applicant may
15 then request that ICE OPLA file a joint motion for dismissal of immigration proceedings.
16 If the immigration judge dismisses proceedings, and the asylum application is returned to
17 the Asylum Office, the Asylum Office will reopen the asylum application and take
18 jurisdiction over the applicant’s case. The time period for determining asylum
19 adjudication and EAD eligibility, which stopped on the date of the applicant’s failure to
20 appear for the asylum interview, will restart on the date the applicant appears for the
21 rescheduled interview at an Asylum Office.
22

23 Timeframe for Benefits: Defendants will implement these resolutions within six (6)
24 months of the Effective Date of the Settlement Agreement.
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26

27 **Remand Subclass Benefits:**

28 Following a BIA remand of a case for adjudication of an asylum claim, whether
29 following an appeal from an immigration judge decision or following a remand from a
30 circuit court of appeals, the applicant, for purposes of EAD eligibility, will be credited
31 with the number of days that elapsed between the initial immigration judge denial and the
32 date of the BIA remand order. An asylum applicant seeking employment authorization
33 must attach a copy of the complete BIA order remanding his or her case to the
34 immigration court for adjudication of the asylum claim to his or her application for
35 employment authorization.
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37 Timeframe for Benefits: Defendants will implement these resolutions within six (6)
38 months of the Effective Date of the Settlement Agreement.
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41 **WHAT IS THE EFFECTIVE DATE OF THE SETTLEMENT AGREEMENT?**
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43 The ABT Settlement Agreement becomes effective upon the U.S. District Court’s
44 preliminary approval of the Settlement Agreement.
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2 **WHEN WILL THE ABT SETTLEMENT AGREEMENT TERMINATE?**
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4 The ABT Settlement Agreement and all of the rights acquired under the Agreement, shall
5 end four (4) years following the full implementation of all the terms of Agreement, as
6 documented by Defendants' reports to Plaintiffs and the Court with respect to each
7 settlement term (*see* Section II.C.13, of the Settlement Agreement), or upon the following
8 date: the Effective Date of Agreement plus six (6) years, whichever shall first occur.
9

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11 **HOW DO I BRING A CLAIM UNDER THE SETTLEMENT AGREEMENT?**
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13 A person who believes he or she is a Class member and has been denied an ABT Class
14 member benefit may be entitled to bring a claim under the ABT Settlement Agreement.
15 To bring an individual claim about your case under the ABT Settlement Agreement, you
16 must follow the Individual ABT Claim Review process and complete an ABT Claim
17 Form, as outlined in section II.C.11.b of the Settlement Agreement. For further
18 information regarding the dispute resolution process, including the complete ABT
19 Settlement Agreement and the ABT Claim Form for individual ABT class members
20 alleging violations of the ABT Settlement Agreement, go to the web site of class counsel,
21 www.nwirp.org, www.americanimmigrationcouncil.org, www.mlri.org, and www.ghp-law.net. In addition, this information is available on USCIS' web site, www.uscis.gov,
22 and EOIR's website, www.usdoj.gov/eoir.
23

24
25 You may also contact the lawyers representing the class:
26

27 NORTHWEST IMMIGRANT RIGHTS PROJECT
28 615 2nd Avenue, Suite 400
29 Seattle, WA 98104
30 (206) 587-4009
31 (206) 587-4025 (Fax)
32

33 AMERICAN IMMIGRATION COUNCIL
34 1331 G Street NW, Suite 200
35 Washington, DC 20005
36 (202) 507-7516
37 (202) 742-5619 (Fax)
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Do not contact the U.S. District Court for additional information.