

A.B.T. et al. v. USCIS, et al.
A Nationwide Class Action to Fix the “Asylum Clock”
Terms of Settlement

On April 12, 2013, the plaintiffs in *A.B.T. et al. v. USCIS, et al.*, represented by the American Immigration Council’s Legal Action Center (LAC), the Northwest Immigrant Rights Project (NWIRP), the Massachusetts Law Reform Institute, and the Seattle law firm Gibbs Houston Pauw, filed a proposed settlement agreement with the court. If approved, the settlement will create several important changes to the “asylum clock,” the method by which government immigration agencies calculate the 180-day waiting period during which an asylum applicant cannot apply for work authorization. These changes will be phased in over two years. Among them are:

- Elimination of delay due to the heavy Immigration Court docket

Currently, Immigration Court policy provides that the asylum application of an individual in removal proceedings may only be accepted at a hearing in open court, which might be scheduled months or even years out due to heavy case loads. An individual’s asylum clock does not start until the asylum application is filed with the Immigration Court. Under the settlement agreement, the Immigration Court will accept as “lodged” an asylum application filed with a clerk at the court window. When an application is lodged with the court clerk, the asylum clock will start on the lodging date. As a result, the applicant will not have to wait until a hearing for the asylum clock to start.

- More time to prepare an expedited asylum case

The asylum clock will stop whenever an applicant causes a delay in the asylum proceedings. When an applicant refuses the next available hearing date, this is considered applicant-caused delay that will stop the asylum clock. Current Immigration Court policy allows an Immigration Judge to schedule an expedited hearing date in as short a time as 14 days, which often leaves too little time for the applicant to prepare. Under the settlement, an Immigration Judge has to allow a non-detained applicant at least 45 days before an expedited hearing date.

- Employment authorization in cases of successful appeal

Under the current system, an asylum seeker is unable to “restart” the clock after an initial denial by an Immigration Judge, even if the asylum seeker wins on appeal and the case is remanded by the Board of Immigration Appeals (BIA). Under the settlement, an

applicant's asylum clock will restart after a successful BIA remand and the asylum clock will be credited with the number of days that elapsed between the initial Immigration Judge denial and the date of the BIA remand order.

- Notice of the right to reschedule a missed asylum interview

Missing an asylum interview with U.S. Citizenship and Immigration Services (USCIS) stops the asylum clock for work authorization. Pursuant to the settlement agreement, USCIS will mail a letter to asylum applicants who miss an asylum interview, informing them of how missing an interview affects work authorization eligibility, and giving them 45 days – rather than the current 15 days – to show good cause for having missed the interview.

- Notice of the asylum clock in removal proceedings

Currently, many asylum applicants are not aware that the decisions that they make at a preliminary hearing in Immigration Court may stop the asylum clock and prevent them from obtaining the right to work while their asylum applications are pending. The reason given by the Immigration Judge for setting the next hearing – the “adjournment code” – determines whether the asylum clock runs or stops. Currently, an Immigration Judge may or may not state the reason for the adjournment. Under the settlement, the Immigration Court will provide a written notice to asylum seekers and their counsel about the asylum clock, including the impact of the different hearing adjournment codes on employment authorization. The Immigration Judge will be instructed to state clearly on the record the reason for adjournment.

- Creation of a process for challenging certain asylum employment authorization denials.

Under the settlement, a class member whose work authorization was improperly denied will be able to submit a claim, which the government must adjudicate within a set time. If still unresolved after making a claim, an applicant may seek relief directly with the District Court.