

EB2 Class Action – Permanent Injunction Issued

May 4, 2000 - Berry, Appleman & Leiden, in conjunction with the law firm of Van Der Hout & Brigagliano, today announced that the United States District Court issued an Order granting class certification and issuing a permanent injunction against INS in the EB2 class action lawsuit. The suit, Chintakuntla et al. v. INS, Case No. C-99-5211 MMC, N.D. CA, challenged the INS denial of employment based second preference (EB2) I-140 petitions where the underlying approved labor certification (ETA 750A) states that the employer will accept an individual with a bachelor's degree plus five years experience in lieu of a master's degree. The court issued a 14 page order that defined the class and that detailed the remedies for which class members are entitled to apply.

Revised class definition

The court-certified class is divided into two subclasses, defined as follows:

any alien who is the beneficiary of an I-140 Employment Based Second Preference (EB-2) immigrant visa petition seeking to classify the alien beneficiary as a member of the professions holding an advanced degree, or the equivalent, whose ETA-750 indicated that a bachelor's degree (plus at least five years experience) was required for the position, whose I-140 petition was or may be denied by the Service on the basis that the position did not require an advanced degree, and who falls within one of the following 2 sub classes:

The first sub-class includes any alien described (in the paragraph) above and:

in whose case the I-140 petition was still pending before the Service on March 20, 2000, (whether before a Service Center or before the AAO); a case will be considered "pending" if an appeal has been filed or if the time for filing a notice of appeal had not expired as of March 20, 2000, and an appeal was timely filed.

The second sub-class includes any alien described (in the paragraph) above and:

in whose case the Service made an administratively final decision on or after July 1, 1997 denying the EB-2 visa petition (whether because the AAO affirmed the initial denial or because the petitioner did not appeal the initial denial to the AAO);

and in whose case there is not already pending a civil action seeking judicial review of the final Service decision in a different case.

Additional actions must be taken to gain the benefits of the Court Order

Attorneys, employers, or individual beneficiaries who are aware of cases that may fit the description of either subclass of the certified class are urged to read the court order carefully and file the appropriate applications with the INS. **Under the terms of the court order, it is no longer necessary to separately join the class by submitting a questionnaire and supporting documents. Individuals who have previously submitted questionnaires and supporting documents must file additional documents with the INS in order to gain the benefits of the court order.** Applications and motions specified in the court order may be filed immediately with appropriate labeling (see the Berry, Appleman & Leiden website for labeling instructions). In addition, within 60 days of the date of the order (May 4, 2000), the INS will publish in the Federal Register an official notice of filing requirements for members of the class. Potential class members should consult with their own attorneys and direct them to the Berry, Appleman & Leiden website (www.USABAL.com) and to the upcoming Federal Register notice for additional information on what is required.

Filing of Adjustment of Status applications prior to approval of I-140

The INS will apply the terms of its March 20 memorandum to the adjudication of all pending EB2 petitions for members of the first sub-class and all reconsidered EB2 petitions for members of the second sub-class.

Processing of EB2 I-140 petitions for most class members will no longer be expedited; however, to prevent harms caused by either expiration of a class member's nonimmigrant status, or a rollback of immigrant visa availability, all class members and their families will be able to file adjustment of status (I-485), employment authorization (I-765) and advance parole (I-131) applications with INS prior to November 1, 2000, without waiting for the approval of their EB2 I-140 immigrant visa petitions.

In addition, members of the second sub-class will be required to file Motions to Reconsider the denial of their I-140 petitions, with the appropriate filing fee, prior to November 1, 2000 in order to be reconsidered under the court order.

Expedited readjudication for beneficiaries abroad

Berry, Appleman & Leiden will continue to accept questionnaires and supporting documents for only those class members whose EB-2 petition was denied and who are now abroad due to their having left the U.S. as a result of expiration of their NIV status. For these individuals, the INS has agreed to expedite the readjudication of a maximum of 25 EB-2 petitions so that they may have the option of consular immigrant visa processing

to return to the U.S. Attorneys, employers, or individual beneficiaries who are aware of cases that fit in either subclass of the certified class, and who meet the additional requirement stated in this paragraph are urged to complete and submit a questionnaire (available at the Berry, Appleman & Leiden website, www.USABAL.com) and supporting documents immediately by faxing the documents to Ron Wada, Berry, Appleman & Leiden, at (503) 213-8872. (Clients of Berry, Appleman & Leiden and individuals who have previously submitted these documents need not do so again.) Berry, Appleman & Leiden LLP will accept cases for inclusion in this group on a first come / first served basis. At present, 13 individuals meeting the requirements for expedited readjudication described in this paragraph have been identified.

Special provision for cases involving age-out of derivative beneficiaries

For cases involving potential age-out of a derivative beneficiary, INS will follow its standing policy to expedite adjudication of any class member's adjustment application to the extent feasible if the class member gives the INS 120 days written notice, accompanied by a birth certificate or other proof of the date on which a child of the class member will become 21 years old.

For further information

Further information on eligibility and status of the suit is available on the Berry, Appleman & Leiden website at www.USABAL.com, or by sending an email inquiry to eb2litigation@USABAL.com.

Berry, Appleman & Leiden LLP

LABELING INSTRUCTIONS FOR APPLICATIONS AND MOTIONS FILED WITH THE INS PURSUANT TO THE COURT ORDER IN THE EB2 CLASS ACTION

Any motion to reconsider, or application for adjustment of status, employment authorization, or advance parole, filed pursuant to the court order should be filed with the appropriate filing fees. The motion or application(s) should be addressed to the director of the appropriate INS service center and clearly marked on the outside of the envelope with the following notations:

EB2 CLASS MEMBER

DO NOT OPEN IN MAIL ROOM

DELIVER IMMEDIATELY TO DIRECTOR'S OFFICE

In addition, the individual must (presumably in a cover letter) identify himself or herself as a member of either the first or second sub-class of the certified class, and, for employment authorization, advise the Service of the date on which their current employment authorization is scheduled to expire. The Service will adjudicate the I-765 by the day before the date on which the individual's current employment authorization is scheduled to expire and if approved will issue the appropriate documents.