The Honorable Richard A. Jones
United States District Judge

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, Plaintiffs, 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.	No. CV11-2108-RAJ CORRECTED CLASS NOTICE[1]

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"),[2] certain individuals who seek to file an asylum

[1] The Corrected Class Notice contains an amended date for the Fairness Hearing.
[2] 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

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

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

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

On May 7, 2013, the Court granted the Parties' Joint Motion for Preliminary Approval of Settlement and ordered a Fairness Hearing on September 20, 2013. Any objections to the proposed settlement should be submitted to the Court within thirty (30) days of the date of this notice. The notice to the Clerk of the Court shall be sent to: Clerk, U.S. District Court for the Western District of Washington, 700 Stewart Street, Seattle, WA 98101, and both the envelope and letter shall state "Attention: *A.B.T., et al. v. United States Citizenship and Immigration Services, et al.*, No. CV11-2108-RAJ (W.D. Wash.)." Copies shall also be served on counsel for Plaintiffs and counsel for Defendants as set forth below:

TO PLAINTIFFS:

Matt Adams
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 2nd Avenue, Suite 400
Seattle, WA 98104

TO DEFENDANTS:

J. Max Weintraub
Senior Litigation Counsel
United States Department of Justice, Civil Division
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044

ABT Settlement Agreement," claimants under the Agreement as "ABT claimants," and the claim review process under the Agreement as the "Individual ABT Claim Review process."

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

WHO IS AN ABT CLASS MEMBER?

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

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

> **Hearing Subclass:**
> The Hearing Subclass includes noncitizens who have been placed in proceedings before an immigration judge; and who have filed or lodged (as explained below), or sought to lodge, or who will lodge or seek to lodge, a complete defensive asylum application with the immigration court prior to a hearing before an immigration judge; and whose eligibility for employment authorization has been or will be calculated from the date the asylum application was or will be filed at a hearing before an immigration judge.
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> **Prolonged Tolling Subclass:**
> The Prolonged Tolling Subclass includes noncitizens, who are not detained in immigration custody, who have filed an application for asylum and whose time creditable toward employment authorization is stopped or will be stopped due to delay attributed to them by Defendants, including for failure to accept the next expedited hearing date offered by the Immigration Court, and who have, or will have, allegedly resolved the issue causing the delay prior to the next scheduled hearing.

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

Remand Subclass:
The Remand Subclass includes noncitizens: (i) whose asylum applications were or will be denied by the immigration court before 180 days accrued toward employment authorization; (ii) whose appeal to the Board of Immigration Appeals (BIA) or a federal court of appeals was remanded for further adjudication of their asylum claim by an immigration judge; and (iii) who have not been credited time toward eligibility for employment authorization from the date of the initial denial.

WHAT BENEFITS ARE PROVIDED TO ABT CLASS MEMBERS?

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

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

Timeframe for Benefits: Defendants will amend the November 15, 2011, OPPM, within six (6) months of the Effective Date of the Settlement Agreement. With regard to the remaining resolutions regarding notice, Defendants will implement these resolutions as soon as possible, but no later than twenty-four (24) months from the Effective Date of the Settlement Agreement. However, within six (6) months of the Effective Date of the Settlement Agreement, Defendants will create an interim notice regarding employment authorization for individuals with pending asylum applications. EOIR will provide this notice to an asylum applicant when an asylum application is lodged or filed with an

immigration court and also will make a copy of the notice available at each hearing. USCIS will make the information publicly available, including providing the notice to an asylum applicant upon referral to immigration court. Defendants also will provide contact information for inquiries regarding requests to correct the calculation of the asylum adjudications period before the Asylum Office, hearing adjournment codes before the Immigration Court, and asylum-related EAD denials before USCIS.

Hearing Subclass Benefits:

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

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

Prolonged Tolling Subclass Benefits:

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

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

Missed Asylum Interview Subclass Benefits:

USCIS will mail a "Failure to Appear" Warning Letter as soon as possible after an asylum applicant misses an interview. The letter will describe the effect of the failure to

appear on EAD eligibility and list procedural steps the applicant must take to establish "good cause" for failing to appear for the interview. It will also describe the effect of failing to respond to the warning letter within a forty-five (45) day period.

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

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

Remand Subclass Benefits:

Following a BIA remand of a case for adjudication of an asylum claim, whether following an appeal from an immigration judge decision or following a remand from a circuit court of appeals, the applicant, for purposes of EAD eligibility, will be credited with the number of days that elapsed between the initial immigration judge denial and the date of the BIA remand order. An asylum applicant seeking employment authorization must attach a copy of the complete BIA order remanding his or her case to the immigration court for adjudication of the asylum claim to his or her application for employment authorization.

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

WHAT IS THE EFFECTIVE DATE OF THE SETTLEMENT AGREEMENT?

The ABT Settlement Agreement becomes effective upon the U.S. District Court's preliminary approval of the Settlement Agreement.

WHEN WILL THE ABT SETTLEMENT AGREEMENT TERMINATE?

The ABT Settlement Agreement and all of the rights acquired under the Agreement, shall end four (4) years following the full implementation of all the terms of Agreement, as documented by Defendants' reports to Plaintiffs and the Court with respect to each settlement term (*see* Section II.C.13, of the Settlement Agreement), or upon the following date: the Effective Date of Agreement plus six (6) years, whichever shall first occur.

HOW DO I BRING A CLAIM UNDER THE SETTLEMENT AGREEMENT?

A person who believes he or she is a Class member and has been denied an ABT Class member benefit may be entitled to bring a claim under the ABT Settlement Agreement. To bring an individual claim about your case under the ABT Settlement Agreement, you must follow the Individual ABT Claim Review process and complete an ABT Claim Form, as outlined in section II.C.11.b of the Settlement Agreement. For further information regarding the dispute resolution process, including the complete ABT Settlement Agreement and the ABT Claim Form for individual ABT class members alleging violations of the ABT Settlement Agreement, go to the web site of class counsel, 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, and EOIR's website, www.usdoj.gov/eoir.

You may also contact the lawyers representing the class:

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 2nd Avenue, Suite 400
Seattle, WA 98104
(206) 587-4009
(206) 587-4025 (Fax)

AMERICAN IMMIGRATION COUNCIL
1331 G Street NW, Suite 200
Washington, DC 20005
(202) 507-7516
(202) 742-5619 (Fax)

GIBBS HOUSTON PAUW
1000 Second Avenue, Suite 1600
Seattle, WA 98104
(206) 682-1080
(206) 689-2270 (Fax)

MASSACHUSETTS LAW REFORM INSTITUTE
99 Chauncy Street, Suite 500
Boston, MA 02111
(617) 357-0700
(617) 357-0777 (Fax)

Do not contact the U.S. District Court for additional information.