

Information on AILF lawsuit

12 July 2007

Updated information on the AILF litigation:

On July 10, 2007, AILF indicated that they do not need any further plaintiffs for the litigation who fall into the category of those having AOS applications rejected by the USCIS. They are still seeking, however, potential plaintiffs from people who choose not to file. Please read the information below.

“AILF’s Legal Action Center thanks AILA members for your unprecedented and enthusiastic response to our plaintiff identification effort. The potential plaintiff questionnaires and material are rolling in from all over the country. We are continuing to review the material your clients have sent.

The response has been so strong that currently we do not need any more potential plaintiffs who submitted an adjustment application for receipt in July, unless the individuals have an unusual situation or especially compelling facts, such as an aging-out child. At this time, we also would like to hear from the “non-filers” -- people who did not and do not plan to submit an adjustment application for receipt in July but would have done so “but for” the DOS and USCIS actions. These individuals will represent a separate class of plaintiffs. And we’d like to hear from more “other worker” adjustment applicants who applied in June, even if they have not yet received a rejection notice. These individuals will represent a separate class as well. They should read the [FAQ](#), and complete and email to AILF (visabulletin@ailf.org) the [short form](#) and [retainer agreement](#).

If the lawsuit is successful, the court will certify classes, and all people who meet the class descriptions will receive the relief the court orders. The class members will not need to “sign up” with AILF to enjoy those rights.

Regarding “non-filers” – As our July 7 InfoNet update explained, and as we explain in our FAQ, we will include a class of people who would have submitted their adjustment applications for receipt in July, “but for” the government’s actions. The government may try to, or the court may want to treat this class differently from the class of people who submitted applications for receipt in July. Our aim is to do the best possible for both groups.

How soon will we file the law suit? Very soon. It is not easy or quick to prepare class action litigation involving numerous people and numerous

claims, but we are working quickly because of the urgency of these events for so many people.

Injunction? AILF knows many people want a quick resolution, as do we. A temporary or ill-conceived order might create more chaos and confusion than we saw in late June / early July. And the government presumably would immediately appeal, creating even more confusion about whether applications were being accepted. By contrast, we intend to seek an injunction that will be forward-looking and will not create another crisis situation for AILA members or the government.

June filers – If your client had a priority date that would not have been current until July but sent in their adjustment application to arrive in June: We have heard that some people tried to get a jump on things by sending in their application to arrive in June for July filing. Our understanding is that USCIS will reject these applications because they were filed too early. We may not be able to protect such filers in this lawsuit. You may want to urge such clients to resubmit applications, even if they not have yet received a rejection notice.”

You will also note from the information above that in order to take advantage of any remedy that results from a successful lawsuit, you do not have to “sign up” with AILF or actively participate in the litigation. If you meet the requirements of the “class” you will potentially be eligible for the remedy. Please keep in mind that until the litigation is complete we cannot know what all of the specific requirements for class membership will be, so, therefore, your eligibility for the “class” cannot be determined at this time. We can only assume that class eligibility will be extended to applicants who can prove they either filed their AOS application and had them rejected or would have filed their AOS applications but for the actions of the USCIS and DOS. Please keep in mind that AILF has indicated having had a case filed and rejected **may** put you in a better position for an available remedy.

Does this mean you need to complete your medical exam in order to show you would have filed your case? We do not know. It **may** be sufficient to prove you at least had an appointment, even if the medical exam was not completed, or class membership **may** be dependent on having met all filing requirements, including a completed medical exam.

Is it advisable for you to file your case with the CIS only to have it rejected? We do not know. Below are some considerations regarding potential advantages and disadvantages of filing your case with the USCIS before your Priority Date is current:

Advantages:

1. You may be in a better position for a remedy following a successful lawsuit than those who choose not to file.
2. Alternatively, those who choose to file their case may be the only class chosen by the court to receive any remedy in a successful lawsuit. There is no guarantee the court will “certify” all classes which are part of the litigation.

Disadvantages:

1. The USCIS may either delay in rejecting and returning your case to us, or they may decide to hold onto the case entirely. This means your medical exam, photos, and all other evidence will not be available to us to re-file your case should your priority date become current before the litigation is completed. Most doctors indicate they will not issue duplicate medical exams so if the USCIS were to hold onto your case or delay in returning it to us, you may need to appear and pay for a second medical exam.
2. You may incur additional costs if you file your case now and are eligible to file your case again before prior fees are returned to you.
3. AILF has indicated that the USCIS may scrutinize more closely the AOS applications of any applicant who participates in the lawsuit or who participates in the class remedy. The ability of the USCIS to actually match up such cases and the lawfulness of such actions are unknown.

We would like to reiterate that information related to this issue is changing almost daily. We understand your concerns in trying to make informed decisions and therefore, we are providing you the most recent information we have available to keep you up to date. We encourage you to check our web site often for updates.