

## FREQUENTLY ASKED QUESTIONS ABOUT THE NWIRP V. INS SETTLEMENT

USCIS has announced that on February 1, 2009, it will begin to accept applications from class members in *Northwest Immigrant Rights Project, et al., v. United States Citizenship and Immigration Services* ("NWIRP"). The official CIS forms to file should be available prior to the February 1, 2009 start date. USCIS will accept applications until January 31, 2010. ***Only those individuals who are NWIRP class members are entitled to benefits under the Court's order.***

### WHO IS A NWIRP CLASS MEMBER?

There are ***three kinds of requirements*** to be a NWIRP class member. You must satisfy ***all three*** of the categories [#1 (a, b, and c), #2 (a, b, or c), and #3 (a, b, or c)] :

**(1) General legalization requirements.** You must meet ***all*** three (a, b, and c) of the following *general requirements for legalization*:

(a) You entered the United States on a non-immigrant visa (for example a visitor's visa, or student visa, or temporary worker visa) ***prior to January 1, 1982; and***

(b) You ***lived continuously in the United States from prior to January 1, 1982 until some time between May 5, 1987, and May 4, 1988***, when you visited the INS or a Qualified Designated Entity ("QDE") to apply for legalization under the 1986 "amnesty" law; **and**

(c) You have ***no convictions for certain criminal offenses***: (1) one felony or three misdemeanors in the United States, (2) any crime involving moral turpitude, such as theft or fraud, except a single petty offense or a juvenile conviction, or (3) any drug offense, except simple possession of marijuana under 30 grams.

[Caution: immigration laws define "conviction" differently than state and local criminal law. If you have ever been arrested, you will need to track down the court records showing the disposition of any case, in order for your immigration lawyer to determine if you had a "conviction" as defined in immigration laws. A lawyer can help you find old records if you are having trouble. Even if there was a "conviction" it may still be possible to get the conviction vacated or changed in some way so it would not be a problem, but that will require the help of a criminal defense lawyer.]

**AND (2) NWIRP requirements.** Next, you must also fall into at least one of the following three situations:

(a) You violated your nonimmigrant status prior to January 1, 1982 and the violation of status is evident based on a review of federal government files (for example, you worked without authorization before January 1, 1982 and you have Social Security records, tax records, or other federal government records to show income relating to your pre-1982, unauthorized work in your name; or you were here with a non-immigrant visa and before 1982, you failed to file annual or quarterly address reports with the INS, as then required by the law); or

(b) You entered the United States prior to January 1, 1982 as a student (on "F" or "J" visa) or as a temporary workers (on "H" or "L" visa), and you failed to maintain your status through January 1, 1982 (for example, before January 1, 1982, you dropped out of school, took less than a full course of study, transferred schools without advance INS authorization, or terminated your authorized H or L employment); or

(c) After January 1, 1982, you obtained reinstatement to nonimmigrant status, or entry into the United States on a nonimmigrant visa, or a change of nonimmigrant status, or adjustment of status, or some other immigration benefit that apparently put you in lawful immigration status, though you did not qualify for such benefit (for example, because when you applied for the benefit, you did not inform INS or the consulate that you had previously worked without authorization),

**AND (3) Filing/front-desking requirements.** Finally, you must also have made a significant effort to apply for legalization during the 1987-88 application year. You must fall into at least one of the following three categories:

(a) Between May 5, 1987 and May 4, 1988, you *attempted to file* a complete application for legalization (Form I-687) under § 245A of the INA and fees with an INS officer or agent acting on behalf of the INS, including a QDE,<sup>1</sup> and had your *application rejected* for filing; or

(b) Between May 5, 1987 and May 4, 1988, you *attempted to apply* for legalization with an INS officer, or agent acting on behalf of the INS, including a

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<sup>1</sup> QDEs were usually community-based non-profit organizations (such as Catholic Charities) that were authorized to accept amnesty applications for the INS.

QDE, but were *advised that you were ineligible* for legalization, or were refused a legalization application form, and this information, or inability to obtain an application form, was a *substantial cause of your failure to file* or complete a timely written application; or

(c) You *filed an application for legalization between May 5, 1987 and May 4, 1988*; and

(i) no final decision has been made on your application and it remains pending; or

(ii) your application was denied, or

(iii) your application was initially approved and then later terminated (or proposed for termination) because your violation of status prior to January 1, 1982 was not “known to the government,” or because you were reinstated to nonimmigrant status or granted a visa or some other benefit that put you in a lawful immigration status.

### **OTHER FREQUENTLY ASKED QUESTIONS**

- **WHAT SHOULD I DO NOW IF I THINK I AM A CLASS MEMBER?**

You cannot apply until February 1, 2009, but you can start preparing your application now. CIS has not issued the final application form yet, but the agreed information is listed in the court settlement documents **hyperlink here**. You can take the following steps to begin preparing to file your application:

Complete the attached worksheet and send it back to class counsel, so we can let you know about developments in the case. We cannot answer individual questions, unless you have the worksheet on file with us.

Start gathering evidence you will need to make the best application. If you filed a prior application with INS or CIS, send a G-639 Freedom of Information Act request to the CIS National Records Center to get a complete copy of your file.

Obtain documentation to show that you entered the United States on a nonimmigrant visa before 1/1/82, such as your old passport, visa, travel records,

school records, etc. Obtain records to show that you resided continuously in the U.S. between 1/1/82 and 5/4/88, such as housing, employment, tax, church, medical records.

If you have a criminal history (even arrests that were dismissed or not prosecuted), you should obtain a certified copy of the court docket for your lawyer to review, or a letter from the court stating that the records are no longer available.

Start completing the Class Member Worksheet, and the I-687 form. The forms agreed in the settlement will be posted on our webpage.

- WHAT ARE THE BENEFITS OF CLASS MEMBERSHIP?

If you tried to file an application for legalization in 1987-88 but were turned away, CIS will have to accept your application during a one year application period from February 1, 2009 to January 31, 2010.

If you were able to file an application for legalization in 1987-88, CIS will have to decide your case under the standards of the settlement. Under these standards it may be possible to qualify for legalization by showing that before 1/1/82 you failed to file the annual or quarterly address reports that were required by INS.

While your application is pending, you are entitled to remain in the United States and to employment authorization.

Class members whose legalization applications are ultimately approved will receive "Temporary Resident Status," and 18 months later become eligible to apply for permanent residence.

Class members granted temporary residence may have their spouses and children apply to remain with them in the United States under "family unity" status if the family member resided in the United States on May 4, 1988. Persons who have applied for and been granted family unity status may receive work authorization and permission to remain in the United States lawfully.

- HOW DO I PROVE I AM A CLASS MEMBER?

*Persons who filed legalization applications during the 1987-88 application year:* you should obtain copies of your application, receipts, and any notices from INS or CIS about your application. Hopefully you have copies, or can get them from a prior attorney. As an alternative, you can ask CIS for a copy of your file, by sending

Form G-639 (Freedom of Information Act Request) to CIS National Records Center for a complete copy of your file. They are very slow, so you should do this soon.

*Persons who were turned away during the 1987-88 application year:* you will need to submit a "Class Member Worksheet" and application for temporary residence (Form I-687) to the CIS when the application period opens. If you have copies of the paperwork you prepared from 1987-88, that would be particularly useful. Also helpful are declarations from people who helped you prepare the paperwork in 1987-1988, or who went with you to INS, or who have knowledge about your efforts to file during the 1987-1988 application period.

You should also try to gather any available evidence regarding your non-immigrant entry into the United States before January 1, 1982, including, for example, copies of passports, entry stamps, visa applications, I-94's, I-20's, airline travel records, documents showing that they were present in the United States in non-immigrant status prior to or shortly after January 1, 1982, or credible declarations regarding entry prior to January 1, 1982 with a non-immigrant visa. Helpful information includes the U.S. Consulate where the pre-1982 non-immigrant visa was applied for, the approximate date that it was obtained, the type of visa obtained, the approximate date when the visa was used to enter the United States, where you entered the United States using the non-immigrant visa, and a brief description of any activities that you engaged in consistent with the terms of the visa immediately after entering the United States, e.g. attending school.

- HOW LONG DO I HAVE TO APPLY FOR CLASS MEMBER BENEFITS?

If you were prevented from filing for legalization during the 1987-88 application period, you must submit a Class Member Worksheet and completed legalization application form I-687 to the USCIS during the 12 month period beginning February 1, 2009.

If you actually filed a legalization application during the legalization application period from May 1987 to May 1988, but have never had that application decided, then USCIS will decide your application in accordance with the standards of the Settlement Agreement. You may (but are not required to) send to the USCIS a class member worksheet and a letter requesting that the USCIS now make a decision on your application, and if available to you, attach copies of your application filed in 1987-88, your receipt, and any notices that the former INS or CIS sent you regarding your application.

If you filed a legalization application during the 1987-1988 legalization application period, but the INS denied your application (and you did not file an appeal to the AAO or the AAO denied your appeal), you may file a motion to reopen (re-decide) your application *within one year from the date you receive a written notice of this settlement mailed to you by the CIS.*

- HOW MUCH WILL IT COST TO APPLY?

The answer depends on whether you were able to file an application for legalization during the regular amnesty application period in 1987-88, or not.

If you timely filed for legalization in 1987-1988 (Form I-687), you do not have to pay a new filing fee for the application. You will have to pay for an employment authorization application, \$340, if you want a work authorization card.

If your timely filed I-687 application from 1987-1988 was denied and is not still pending on appeal, then you will have to file a motion to reopen (Form I-290B) with a filing fee of \$585.

If you were unable to timely file an application for legalization in 1987-1988, then you will have to submit the application (Form I-687) with a filing fee of \$710 plus an \$80 biometrics fee, plus the \$340 fee for work authorization.

- WHAT IF I HAVE ALREADY APPLIED FOR LEGALIZATION AS A CATHOLIC SOCIAL SERVICES (CSS) OR NEWMAN/LULAC CLASS MEMBER, OR HAVE APPLIED FOR RESIDENCE UNDER THE LIFE ACT?

You should not have to reapply under this case. Under the terms of the settlement, CIS must apply the *NWIRP* adjudication standards to *CSS/Newman* and LIFE Act applications. If your *CSS/Newman* or LIFE Act application was denied without proper consideration of the “known to the government” standards of Paragraph 8 of the Settlement, you may ask for your *CSS/Newman* or LIFE Act case to be reopened by filing a Class Member Worksheet and a Form I-290B. You should consult with an attorney or community-based legal services organization about your rights and remedies.

Alternatively, if you meet the *NWIRP* class definition, you can just reapply under *NWIRP*, rather than asking CIS to reopen your *LULAC* or *Newman* application.

- IF I AM DENIED LEGALIZATION, WILL I BE DEPORTED?

Applications and the information they contain are confidential and generally may not be used to put you into removal (deportation) proceedings. Generally, the information in your application may only be used to make a determination on your application for amnesty. If you commit fraud in the application, then you can be prosecuted criminally.

- WHERE CAN I OBTAIN FORMS AND FURTHER INFORMATION?

For further information and forms, go to the web site of class counsel, [www.centerforhumanrights.org](http://www.centerforhumanrights.org), and [www.ghp-law.net](http://www.ghp-law.net). Forms and information will also be available on the U.S. Citizenship and Immigration Service's web site, [www.uscis.gov](http://www.uscis.gov). You may also contact the lawyers representing the class after you have sent the Intake Form:

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256 S. Occidental Blvd.,  
Los Angeles, CA 90057  
(213) 388-8693, exts. 104 or 109  
E-mail: [amnestycoordinator@centerforhumanrights.org](mailto:amnestycoordinator@centerforhumanrights.org)

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1000 Second Ave., Suite 1600,  
Seattle, WA 98104  
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Do not contact the Court for information.