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The New Immigration Law: Big Blow to Amnesty Applicants

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In 1986 an amnesty law was passed by Congress resulting in the legalization of more than 2.6 million aliens. Today, tens of thousands of amnesty applications are still pending. In addition, there are hundreds of thousands, including thousands of Filipinos, who applied pursuant to a court order extending the filing period because of INS regulations that were held to be invalid. These cases have been the subject of litigation the past ten years.

The end, however, may be near and it will probably be bad news to the applicants, thanks to the new immigration law. This law states that the courts no longer have jurisdiction over the claim of these applicants unless they had timely filed their applications or attempted to file completed applications with filing fee to an INS officer but were rejected.

The constitutionality of this new law was put to test recently and a federal court upheld it. The case involved a group of amnesty applicants known as the CSS class. The court dismissed the lawsuit. This court decision could affect LULAC cases as well.

This is a big blow to amnesty applicants. In a related development those already granted permanent resident status will find their amnesty applications reviewed again for possible fraud when they file for citizenship.

As a brief background, under the 1986 amnesty program, aliens who resided continuously in the U.S. in an unlawful status since before January 1, 1982 and made a timely application could have their status legalized and were entitled to stays of deportation and employment authorization during the period of application and any appeals. Those who entered without authorization had to prove their entry before that date and continuous illegal residence thereafter. Absences were limited to 30 days each or a total of 90 days. Those who entered with a nonimmigrant visa had to prove that their authorization to stay expired before January 1, 1982. The nonimmigrants could also show that they violated their status before January 1, 1982 in a manner "known to the government."

If the applicants took a brief, casual and innocent trip outside the U.S. they were not qualified under the legalization program pursuant to INS regulations. Likewise, as regards the requirement that the applicants should show that they violated their status in a manner "known to the government" before January 1, 1982, the INS construed "government" to mean solely the INS. Proof that other federal agencies like the Social Security Administration and the Internal Revenue Service knew about the violation of status before January 1, 1982 was not acceptable to the INS.

Because of these INS practices and regulations, many applications were rejected and others who were potentially qualified for amnesty were discouraged from filing applications. As a result, lawsuits by CSS, LULAC and IAP challenging these INS regulations were filed. Subsequently, previously denied cases were reopened by the INS. The court ordered INS to maintain the existing application system for a certain period of time. Hence, INS had to accept applications from aliens who were dissuaded or prevented from timely filing by the INS' original rulings.