

Memorandum



BIA 08-06

Subject	Date
Administrative Closure of cases pursuant to the <i>ABC</i> Settlement Agreement	October 1, 2008

To Board Legal staff

From Juan P. Osuna, Chairman *JPO*

The Board is anticipating receiving requests for administrative closure in a limited number of pending Salvadoran and Guatemalan cases as the result of a change in policy by the U.S. Citizenship and Immigration Services ("USCIS") relating to registration for benefits under the settlement agreement set forth in *American Baptist Churches v. Thornburgh*, 760 F.Supp. 796 (N.D.Cal. 1991) ("*ABC*"). On September 22, 2008, the USCIS issued the attached Fact Sheet regarding their "New Policy for *ABC* Registration Determinations After *Chaly-Garcia v. U.S.*, 508 F.3d 1201 (9th Cir. 2007).¹ The Fact Sheet advises Salvadoran and Guatemalan *ABC* class members with cases pending before EOIR who were previously found ineligible for *ABC* benefits and believe they are eligible for *ABC* benefits under the *Chaly-Garcia* ruling to file a motion to administratively close their proceedings. This memorandum provides general guidance on addressing such requests for administrative closure. If you have any questions regarding the processing of these requests for administrative closure, please consult your Team Leader or Senior Panel Attorney, and/or Board Member.

Application of the *ABC* settlement agreement - The Board has previously determined that EOIR's role under the *ABC* settlement agreement is restricted to inquiries under paragraph 19 of the agreement. *Matter of Morales*, 21 I&N Dec. 130 (BIA 1996). In this regard, (1) whether the alien is a class member, (2) whether he has been convicted of an aggravated felony, and (3) whether he is subject to detention under paragraph 17 of the agreement. *Id.*

Initially, the *ABC* settlement agreement defines an *ABC* class members as all Salvadorans in the United States as of September 19, 1990; and all Guatemalans in the United States as of October 1, 1990. Paragraph 19 of the *ABC* settlement agreement provides in relevant part:

[A]ny class member whose deportation proceedings is based on a criminal ground of deportability or whose proceedings commenced after November 30, 1990, will not have his or her case automatically administratively closed on or before January 31, 1991. Rather, that individual may ask the Immigration Court or the BIA to administratively close his or her case and the case will be administratively closed unless the class member has been convicted of an aggravated felony or is subject to detention under paragraph 17.

¹ The Fact Sheet is also available online at www.uscis.gov/files/article/Chaly_22Sep08.pdf

Paragraph 17 of the agreement sets forth the conditions under which DHS (former INS) may detain eligible class members. It provides in relevant part:

The INS may only detain class members, eligible for relief under paragraph 2, who are otherwise subject to detention under current law and who: (1) have been convicted of a crime involving moral turpitude for which the sentence actually imposed exceeded a term of imprisonment in excess of six months; or (2) pose a national security risk; or (3) pose a threat to public safety.

The Board has held that the former INS, now DHS/USCIS is assigned the role of making substantive determinations of an alien's eligibility and EOIR's obligation is to assure that each qualified class member under paragraph 19 has an opportunity for an eligibility determination by USCIS. *Matter of Morales, supra*, at 134. As a result, the Board will not evaluate whether or not a class member is eligible for a *de novo* asylum adjudication before an Asylum Officer as provided under paragraph 2 of the settlement agreement.

Accordingly, where a class member requests administrative closure from the Board and they are not convicted of an aggravated felony and are not subject to detention under the provisions of paragraph 17 of the settlement agreement, administrative closure should be granted in accordance with the *ABC* settlement agreement. However, if you have a case where the alien seeking administrative closure is detained or is subject to paragraph 17, please bring the matter to the attention to your Team Leader or Senior Panel Attorney for further assessment.

Suggested language - Below is some suggested language granting the request for administrative closure as well as ORDER language:

In the present case, the respondent has requested administrative close proceedings based upon his/her membership in the class of persons governed by the settlement agreement in *American Baptist Churches v. Thornburgh*, 760 F.Supp. 796 (N.D.Cal. 1991) ("*ABC*"). The respondent appears to be a class member by the terms of the settlement, and he/she has not been convicted of an aggravated felony and is not subject to detention under paragraph 17 of the settlement agreement. We further find that this case is governed by our precedent decision in *Matter of Morales*, 21 I&N Dec. 130 (BIA 1995). Therefore, we find that administrative closure is appropriate under the facts of this case.

ORDER: The respondent's motion for administrative closure is granted.

FURTHER ORDER: The proceedings before the Board in this case are continued indefinitely without further Board action pending the respondent's effectuation of her/his rights under the *ABC* settlement.

FURTHER ORDER: Proceedings will be reinstated upon written notice by either party with proof of service of such notice upon the opposing party.

Decision and Disposition Codes - When a case is administratively closed pursuant to the *ABC* settlement, please select the CON decision code and the N disposition code on the back of the circulation sheet.