



February 28, 2007

# Fact Sheet

## **Guatemalan Asylum Applicants in the Context of the ABC Settlement Agreement and Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA)**

### **ABC Settlement Agreement**

- In 1985, a group of religious organizations and refugee advocacy organizations filed the American Baptist Churches v. Thornburgh (ABC) class action lawsuit in federal court against the Immigration and Naturalization Service (INS), the Executive Office for Immigration Review (EOIR) and the United States Department of State (DOS). A federal judge subsequently certified a class of Guatemalan and Salvadoran nationals as plaintiffs in the lawsuit.
- The plaintiffs alleged, among other things, that the INS, EOIR, and DOS engaged in discriminatory treatment of asylum claims made by Guatemalans and Salvadorans.
- In 1990, the Government and attorneys representing the certified class settled the class action lawsuit. The ABC settlement agreement, which was approved by a federal court in January 1991, provides that an eligible class member who registers for benefits and applies for asylum by the agreed-upon dates (these deadlines were initially defined in the settlement agreement, but the asylum filing deadlines were later extended by agreement of the parties) is entitled to an initial or new asylum interview and adjudication pursuant to the regulations published on July 27, 1990, which became effective October 1, 1990 and special procedures set forth in the agreement. The settlement agreement also contains special provisions regarding employment authorization and detention of eligible class members.
- In order to be eligible for ABC class benefits, a Guatemalan national must have been physically present in the United States on or before October 1, 1990; registered in writing for ABC benefits on or before December 31, 1991, and filed an asylum application on or before January 3, 1995.
- Between FY 1990 and FY 1995, INS received approximately 150,000 new asylum applications from Guatemalan nationals, many, but not all, of whom were registered ABC class members.

### **NACARA 203**

- On November 19, 1997, President Clinton signed the Nicaraguan Adjustment and Central American Relief Act (NACARA).
- Section 203 of NACARA (NACARA 203) provides that certain Salvadorans, Guatemalans and nationals of former Soviet Bloc countries as well as their qualified relatives may apply for relief from deportation or removal and, if granted, gain lawful permanent resident status. Applicants must first establish

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eligibility to *apply* for NACARA 203 relief (most ABC class members are eligible to apply), and then demonstrate that they are eligible for a *grant* of relief. (See USCIS web site at [www.uscis.gov](http://www.uscis.gov) for details on eligibility criteria.)

- By the time NACARA was enacted in 1997, the INS had between 150,000 and 200,000 pending asylum applications filed by Guatemalan and Salvadoran class members. On February 2, 1998, the Attorney General approved a proposal to integrate into the affirmative asylum process the adjudication of certain NACARA 203 applications filed by individuals with asylum applications pending with INS. Previously, only immigration judges had authority to grant the type of relief made available under NACARA 203. This expanded authority of asylum officers, put in place through promulgation of regulations in 1999, streamlines NACARA 203 processing by providing an efficient and simplified method for resolving a large number of NACARA 203 applications earlier in the administrative process.
- Individuals can currently apply for relief under NACARA 203 either with USCIS or, if in removal proceedings, with an immigration judge with EOIR.
- If the USCIS asylum office does not grant relief under NACARA 203 and the applicant also is not granted asylum, the applicant is referred to an immigration judge, who can re-consider the application.
- The NACARA 203 program has been very successful. Since USCIS first began to adjudicate NACARA 203 applications in 1999, USCIS has granted relief to over 156,000 individuals (as of the end of January 2007), including Salvadorans, Guatemalans, nationals of the former Soviet Bloc countries, and their qualified family members. Most individuals who obtain permanent residence through NACARA 203 elect to withdraw their underlying asylum application.

### **Guatemalan NACARA 203 Applicants**

- Under the NACARA 203 program, a large number of Guatemalans and their family members who have been living in the U.S. for over a decade have been able to adjust their status to lawful permanent residents. Between June of 1999 and the end of January 2007, approximately 54,500 Guatemalan nationals have applied with USCIS for benefits under NACARA, and approximately 43,100 were granted lawful permanent resident status. There are approximately 4,000 applications filed by Guatemalan nationals still pending. The USCIS grant rate of NACARA applications filed by Guatemalans that have been decided is approximately 85%.
- There is no deadline for Guatemalans to apply for relief under NACARA 203.

### **Asylum Application Processing for ABC Class Members and NACARA 203-Eligible Applicants**

- There were two periods of delay during which the legacy INS suspended processing ABC asylum applications and different reasons for the delays during those two periods. However, both delays were thought to be in the interest of both the ABC class members and the Government:

- The first period was from the provisional settlement in 1990 to the summer of 1996. During this period, the INS and attorneys representing the class cooperated to extend the dates by which registered class members could file asylum applications (beyond those agreed to in the initial settlement), so that ABC class members were afforded the fullest opportunity to lay claim to the benefits of their class membership. Also during that period, the INS received many new applications and needed to direct resources to the overall application workload. At the same time, INS sought to establish national procedures for implementing the ABC settlement agreement, while giving ABC class members more time to apply for benefits of the settlement agreement.
- The second period was after Congress enacted NACARA in November of 1997. After the legislation passed, the advocacy community requested that INS delay processing asylum applications filed by those who might be eligible to apply for benefits under NACARA 203. This was to give class members with pending asylum applications the opportunity to obtain permanent residence under NACARA 203. The INS agreed, not only because it was consistent with the humanitarian purpose of NACARA 203, but also because it would be more efficient for the Government to process the NACARA 203 and asylum applications simultaneously rather than to process the asylum application and have the person submit a NACARA 203 application afterwards, likely in the course of costly removal proceedings.
- In 2003, after having given class members more than four years to apply for benefits under NACARA 203, USCIS began scheduling asylum interviews for individuals who had not yet applied for benefits under NACARA 203. At the time of interview, USCIS let the class member know that he or she might be eligible to apply for benefits under NACARA 203 and offered the class member an additional 90 days to do so. In these cases, if the class member does not submit the NACARA 203 application, USCIS continues processing the asylum application.
- Generally, ABC class members could come forward and request that their applications be processed during the periods of delay.

### **Eligibility for Asylum**

- In general, U.S. law allows USCIS Asylum Officers to grant asylum to certain individuals if they have experienced past persecution or have a well-founded fear of future persecution based on one of the protected grounds in the refugee definition outlined in the Immigration and Nationality Act: race, religion, nationality, membership in a particular social group, or political opinion. These provisions apply to all asylum applicants in the United States, including ABC class members. Individuals who have engaged in certain criminal activities, have persecuted others, or are inadmissible under certain national security provisions in the law are not eligible for asylum.
- Each case is decided on a case-by-case basis, taking into account the personal circumstances of the asylum applicant and conditions in the applicant's country at the time the case is decided.
- The purpose of asylum, which is based on U.S. treaty obligations, is to provide protection to those who have a well-founded fear of persecution or who have suffered past persecution. If an asylum applicant no longer has a well-founded fear of persecution in his or her home country because conditions there have

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improved, then the applicant is no longer in need of U.S. government protection and generally would not be eligible for asylum. However, such an applicant may be granted asylum if he or she has compelling reasons for being unwilling or unable to return to the home country arising out of the severity of the past persecution, or the applicant has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country.

- Fear of harm from civil strife and criminal activity is generally not a basis for asylum under U.S. law.