UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF FINAL SETTLEMENT IN CLASS ACTION FOR ALIEN WIDOWS AND WIDOWERS OF UNITED STATES CITIZENS

A court authorized this notice. This is not a solicitation from a lawyer.

TO:

- All aliens whose United States citizen spouse died before the couple's two-year wedding anniversary, and whose citizen spouse filed an I-130 petition and a Form I-864 or I-864EZ affidavit of support on behalf of the alien spouse, so long as he or she can also demonstrate that (1) the Form I-130 petition is now pending with or was adjudicated by a USCIS office located within the jurisdiction of the Ninth Circuit, or (2) at the time of the citizen spouse's death, either the citizen spouse or the alien spouse resided within the jurisdiction of the Ninth Circuit.

- All aliens who, within ninety days of admission to the United States as a nonimmigrant fiancé(e), married the petitioning United States citizen, and whose citizen spouse died before the couple's two-year wedding anniversary, so long as he or she can also demonstrate that the citizen spouse filed an I-129F petition and a Form I-864 or I-864EZ affidavit of support on behalf of the alien spouse, and (1) the Form 1-129F petition is now pending with or was adjudicated by a USCIS office located within the jurisdiction of the Ninth Circuit, or (2) at the time of the citizen spouse's death, either the citizen spouse or the alien spouse resided within the jurisdiction of the Ninth Circuit.

Purpose Of This Notice

You are hereby notified that the Honorable Christina A. Snyder, District Judge of the United States District Court for the Central District of California, has approved a final settlement of the claims that have been brought on your behalf in this lawsuit.

Background

This class action lawsuit ("Hootkins") was filed on August 30, 2007, to challenge the policies and procedures then followed by the United States Citizenship and Immigration Service ("USCIS") in adjudicating Form I-130 petitions filed on behalf of aliens by their U.S. citizen spouses, where those U.S. citizen spouses died before the second anniversary of the marriage. In addition, the lawsuit challenged the former policies of USCIS in adjudicating Form I-485 application for adjustment of status by those surviving spouses and by surviving spouse who entered the United States on a fiancé(e) visa, married the United States citizen and filed a timely Form I-485 before the U.S. citizen's death.

However, on October 28, 2009, President Barack Obama signed into law DHSAA, which included an amendment to 8 U.S.C. § 1151(b)(2)(A)(i) striking the phrase requiring that an alien who applies to adjust status as an immediate relative spouse of a U.S. citizen must be married to the U.S. citizen

spouse-petitioner for at least two years, and providing other assorted relief. Pub. L. 111-83, § 568(c)-(e), 123 Stat. 2142, 2186-88 (2009). The amendments became effective immediately upon enactment, and apply to any visa petition or adjustment application pending on or after the date of enactment.

In light of this new law, the parties have reached a settlement. Under this settlement, the parties' disagreement about how the law applied to Class Members' visa petitions and adjustment applications before October 28, 2009, has been set aside, and Class Members' petitions and applications will be decided under the new law. The Court has approved a final settlement of this lawsuit.

Description Of Final Settlement Agreement

The following description is only a summary of the key points in the final settlement agreement. Information on obtaining a copy of the full agreement is provided after this summary. The settlement agreement became effective on April 5, 2010, the date that the district court approved it and issued a Final Judgment Order. The settlement agreement will be in effect for two (2) years.
The key terms of the proposed settlement agreement provide for adjudication of all cases of class members in accordance with the memorandun issued by USCIS on December 2, 2009, entitled "Additional Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and their Children (REVISED)." In particular:

- Any Class Member's Form I-130 that is still pending with USCIS is converted to, and will be adjudicated as, a widow(er)'s Form I-360.
- If USCIS denied the Form I-130, the Form I-130 is reopened, as of December 2, 2009, and converted to a Form I-360.
- Any pending or reopened Form I-130 that is converted to a Form I-360 will be adjudicated under 8 U.S.C. § 1151(b)(2)(A)(i) as amended by § 568(c) of Public Law 111-83. The Class Member must establish that he or she was married to the deceased citizen when the deceased citizen died, that their marriage was bona fide, that they were not divorced or legally separated when the deceased citizen died, and that the Class Member has not remarried. All other requirements for approval of a visa petition apply to the adjudication of the case, including 8 U.S.C. §§ 1154(c), 1154(g) and 1255(e)(3), if applicable.
- If, as in the case of Liju LU and Class Members represented by her, a Form I-130 was approved, but the approval was revoked under 8 C.F.R. § 205.1(a)(3)(i)(C), the approval is deemed reinstated as of October 28, 2009.
- USCIS will also adjudicate any Class Member's Form I-485 in light of 8 U.S.C. § 1151(b)(2)(A)(i) as amended by § 568(c) of Public Law 111-83, if the Class Member is still in the United States and USCIS still has jurisdiction of the Form I-485. If USCIS had denied the Form I-485, the Form I-485 is reopened, as of December 2, 2009.
- For surviving spouses admitted to the United States as K nonimmigrants, there will be no Form I-130 if the couple married within 90 days of the K-1's admission. In this situation, for purposes of adjudicating of a Form I-485 that was pending on October 28, 2009, the K-1 nonimmigrant, and any K-2 children, will be deemed to be the beneficiaries of an approved Form I-360.
- If a Class Member had abandoned his or her adjustment application by departing the United States without a grant of advance parole, or by leaving with a grant of advance parole but not returning before the expiration of the advance parole period, the approval of the Class Member's Form I-360 will permit the Class Member to apply for an immigrant visa.

- For purposes of 8 U.S.C. § 1182(a)(9)(B), a Class Member shall be deemed not to have accrued any unlawful presence within the United States on or before October 28, 2009.
- Any Class Member who was removed from the United States will be required to file an individual Form I-212, Application for Permission to Reapply for Admission, to waive inadmissibility under 8 U.S.C. § 1182(a)(9)(A). The Form I-212 will be accepted without regard to the length of time the Class Member has remained outside of the United States.
- All converted Form I-360 Self-Petitions will carry the filing date of the Form I-130 Petition originally filed. As a result, under 8 U.S.C. § 1151(f)(1), any unmarried sons or daughters of Class Members who were under 21 years of age at the time the Form I-130 Petition was filed will still be considered to be under 21 years of age, for purposes of determining whether they qualify as derivative beneficiaries of the Form I-360 Self-Petition.
- If USCIS denies a Class Member's converted Form I-360, the Class Member may seek administrative appeal or judicial review to the extent permitted bylaw.
- If USCIS denies a Class Member's Form I-485, then, unless the alien is in a lawful nonimmigrant status, or is not entitled to a removal proceeding, USCIS will initiate a removal proceeding. The Class Member may apply for adjustment of status before the immigration judge, unless the immigration judge lacks jurisdiction under 8 C.F.R. § 1245.2(a)(1).

The agreement also provides for and resolves all claims by Plaintiffs and Class Counsel for an award of attorneys' fees and costs.

Obtaining a copy of the Settlement Agreement

You may obtain a copy of the Settlement Agreement at the following websites:

www.ssad.org – under the Class Action tab

www.uscis.gov – under the Legal Settlement Notices tab

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