



AMERICAN IMMIGRATION LAW FOUNDATION

DOL LABOR CERTIFICATION LAWSUIT

May 2007

Frequently Asked Questions about Participating in this Lawsuit

AILF is considering filing a lawsuit in federal district court against the U.S. Department of Labor (DOL) regarding regulations DOL issued on May 17, 2007. Among other things, the regulations forbid employees from paying any of the expenses of a labor certification, even if the employee is able and willing to do so, and is the primary moving party in the labor certification process. Instead, the regulations require employers pay all of these expenses.

The regulation also authorized DOL to “debar” an employer and a lawyer from using the labor certification process for violating the regulations.

If you are considering being a participant in this lawsuit, you may find the following frequently asked questions and answers helpful.

Q: What is AILF?

A: The American Immigration Law Foundation (AILF) is a non-profit organization dedicated to protecting the rights of immigrants and refugees and to securing fair and just application and administration of the U.S. immigration laws. In order to achieve these goals, AILF sometimes files lawsuits involving various aspects of immigration law.

Q: What is this lawsuit about?

A: This lawsuit will be filed by plaintiffs who are or will soon be harmed by the DOL’s new regulations on labor certification applications. Among other things, the regulations say that employees or potential employees may not pay the costs of a labor certification application – including attorneys fees, publication expenses, and other costs – even if the employee is able and willing to do so and is the primary moving party involved. With one minor exception, the employer is now required to pay all of the expenses related to a labor certification. The employer is also forbidden from seeking payment or reimbursement in any form for these expenses from the employee.

Through this lawsuit, we will challenge these regulations as violating the law and will challenge DOL's authority to issue them.

Q: What is a "plaintiff" and how do I know if I am eligible to be a "plaintiff" in this lawsuit?

A: A plaintiff is a person who files a lawsuit against someone else. Eligible plaintiffs for this lawsuit include:

An employer who wants to, needs to, and would be eligible to file a labor certification application (ideally but not necessarily for a specified employee) but who is unwilling (or unable for non-financial reasons) to pay the attorneys' fees and other costs;

An employee or potential employee who:

is a foreign national;

is eligible to have a labor certification application filed on his or her behalf;

is willing to pay the attorneys' fees and other costs for a labor certification application;

has an employer or potential employer who is willing to file the labor certification application, for him or her, but is unwilling (or unable for non-financial reasons) to pay. The employer must be willing to be identified in and cooperate with the lawsuit even if the employer is not a named plaintiff in the lawsuit.

Q: Why should I participate in this lawsuit?

A: Through this lawsuit, we hope to have a federal court stop DOL from enforcing its regulations because they violate the law. If we succeed, this will mean that employees will be permitted to pay the expenses for applications for labor certification if they are able to and want to, and if they and their employers decide that it is appropriate in their circumstances. Without plaintiffs, we cannot challenge DOL's regulation. We cannot guarantee that this lawsuit will be successful, but without plaintiffs there will be no lawsuit.

Q: What is likely to happen because of the suit?

A: Lawsuits are uncertain by nature. We cannot predict the exact outcome. Our goal is to overturn the DOL regulations. We would not be filing this lawsuit if we did not think there is a likelihood of success.

Q: Will participating in this lawsuit hurt my chances for a labor cert or a green card?

A: If an individual is otherwise legally entitled to have an application granted, the government cannot lawfully deny that application on the basis that the person is participating or participated in a lawsuit. If we believed the government was taking such action, we would complain to the

lawyers representing the government and to the judge handling the case. In our experience, this retaliation has not happened.

Please be aware, though, that DOL and the Department of Homeland Security (DHS) are likely to examine plaintiffs' labor certification applications or other applications or petitions more closely than they otherwise might. They may ask the plaintiffs questions and ask for additional information about their labor certification application or other applications or immigration status. See below regarding "discovery."

Q: How much time must plaintiffs spend on this lawsuit?

A: Plaintiffs will have to provide us with the information and documentation we need in order to prepare the lawsuit. AILF will do most of the work in the lawsuit on paper. Depending on how the case proceeds, the government and its attorneys may want to ask the plaintiffs some questions about their case, either through written questions and answers or in person. This is called "discovery." One type of discovery is a "deposition," which is an interview where parties are asked questions about their cases.

Depositions are possible but not common in this type of case. In the event that discovery and/or depositions were required, an AILF attorney or an attorney working with us would assist plaintiffs to comply with any discovery requests, and would appear with plaintiffs at any deposition. At a later stage, a plaintiff may be required to be present at a hearing or a trial and possibly be asked to testify about their particular case, but this is quite rare.

Q: Will it cost me anything to participate in this lawsuit?

A: AILF and any co-counsel will not charge any attorney's fees for representing individuals in this lawsuit. AILF and any co-counsel also will pay the costs and expenses associated with the lawsuit, such as filing fees, copying, long distance calls, travel expenses for AILF attorneys and staff, depositions, transcripts, etc. In the unlikely event that an individual should be required to be present at a deposition, hearing or a trial, we may ask that he/she pay their own travel and lodging expenses, if any. Those expenses would be reimbursed if the lawsuit is successful and we recover costs.

Q: Will anyone know that I am a plaintiff in this lawsuit?

A: Lawsuits are public information, and are available as a public court document. Many courts now have lawsuits and other documents available electronically, accessible via the internet. Also, DOL will, of course, know the identity of the plaintiffs. We also will discuss plaintiffs' cases with any other lawyers working with us on the lawsuit. It also is possible that the media – newspapers, radio, or TV reporters – will see the court documents and decide to do a story on the lawsuit.

Q: What should I do if I am eligible and interested in being a plaintiff in the lawsuit?

A: Send an email to laborcert@aif.org and we will respond soon. You will need to complete a questionnaire for us, send us documents, and sign a “retainer agreement” with us.

If you have any questions that are not answered by this FAQ or the questionnaire, please send them to laborcert@aif.org and we will respond. Thank you!

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