UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 08-688 JVS (SHx) Date August 25, 2008

Title Teresita G. Costelo et al. v. Michael Chertoff, et al.

Present: The Honorable	James V. Selna	
	Karla J. Tunis	Not Present
	Deputy Clerk	Court Reporter
	Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
	Not Present	Not Present

Proceedings: (IN CHAMBERS)
Plaintiffs' Order Denying Motions to Amend Class Definition and to Certify Class, and Staying Action for 180 days

Plaintiffs Teresita Costelo et al. (collectively "Costelo") brought a motion seeking certification of a class for injunctive and declaratory relief against Defendants Michael Chertoff et al. (collectively "Chertoff"). The requested relief involves the interpretation of a provision of the Child Status Protection Act, codified at § 203(h)(3) of the Immigration and National Act ("INA"), 8 U.S.C. § 1153(h)(3) (hereinafter "§ 203(h)(3)"). While the motion was pending, Costelo also filed a motion to amend to proposed class definition.

Chertoff argues that the Court should deny certification, because the government has already certified two similar cases for hearing before the Board of Immigration Appeals ("BIA") ("the pending § 203 cases"). Further, because the government has requested a written opinion from the BIA interpreting § 203(h)(3), Chertoff requests that the Court decline to issue its own interpretation of the statute until such time as the BIA has had an opportunity to rule on the issue.

The Court is sensitive to Costelo's concern that (1) the BIA may chose not to issue a written opinion on the pending § 203 cases; and (2) there is no time limit in which the BIA must rule on those cases, if ever. However, the resolution of Costelo's class certification analysis, including common questions of law and superiority, is affected by construction of the substantive statute and the Court believes that it would benefit greatly from any interpretation of § 203(h)(3) which the BIA might issue.

Because the Court finds that the BIA expertise in this area might help this Court

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reach a proper conclusion, and further, because administrative review might preclude the need for review by this Court, the Court declines to rule on the merits of Costelo's motion at this time. See El Rescate Legal Services, Inc. v. Executive Office of Immigration Review, 959 F.2d 742, 747 (9th Cir. 1999) (A court may apply a prudential exhaustion requirement where (1) agency expertise makes agency consideration necessary to generate a record and reach a decision; (2) not applying exhaustion would encourage bypass of administrative scheme; and (3) administrative review is likely to allow the agency to correct its mistake and preclude the need for judicial review.). The Court declines, however, to impose an exhaustion requirement in the absence of a statutory mandate. See id.

Accordingly, this action is stayed in its entirety for 180 days to afford the BIA an opportunity to issue an interpretation of § 203(h)(3) in the first instance.

Costelo's motions to amend the class definition and to certify the class are therefore denied without prejudice. If appropriate, Costelo may renew those motions or submit revised motions after the expiration of the stay.

Chertoff shall keep both Costelo and the Court apprised of any relevant developments in the pending § 203 cases and shall also file the following documents: (1) within 14 days, a copy of all briefs submitted by any parties in the pending § 203 cases thus far; (2) within 14 days of their filing, a copy of any briefs submitted in the pending § 203 cases in the future; and (3) within 90 days, a report detailing the status of the pending § 203 cases.

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