

The Honorable Richard A. Jones
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

B.H., M.A., A.S.D., M.F., H.L.,
L.M.M.M., B.M., G.K., L.K.G., and D.W.,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

U.S. CITIZENSHIP AND
IMMIGRATION SERVICES;
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Janet
NAPOLITANO, Secretary, Department of
Homeland Security; Alejandro
MAYORKAS, Director, U.S. Citizenship
and Immigration Services; Eric H.
HOLDER, Jr., Attorney General of the
United States; Juan OSUNA, Director,
Executive Office for Immigration Review,

Defendants.

Case No. 2:11-cv-02108 R.A.J.

UNOPPOSED MOTION FOR
DEADLINE EXTENSIONS DUE TO
APPROPRIATIONS LAPSE

NOTE ON MOTION CALENDAR:
November 1, 2013

B.H. v. USCIS, Case No. 2:11-cv-02108RAJ
Unopposed Motion for Deadline Extensions
Due to Appropriations Lapse

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U.S. DEPARTMENT OF JUSTICE
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
202-305-7551

1 On May 8, 2013, the Court granted preliminary approval of the parties'
2 settlement agreement that would resolve this class action in its entirety, and it
3 approved the notice to the class. Dkt. No. 61. The agreement establishes certain
4 deadlines for implementation of its provisions, including some deadlines that are "six
5 (6) months of the Effective Date of this Agreement." The agreement defines the
6 "Effective Date" as the date upon which the Court grants preliminary approval. On
7 September 20, 2013, the Court held a fairness hearing on the proposed settlement
8 agreement. Dkt. No. 67. No formal objection to the settlement was received;
9 however, the Court received a letter raising concerns regarding a single issue. In
10 response to this letter of concern, and for purposes of clarifying the agreement, the
11 parties proposed to revise the agreement slightly. Dkt. No. 68. The Court tentatively
12 approved the revised settlement agreement, pending a revised notice to the class. Dkt.
13 No. 70. The Court then directed counsel for the parties to issue a revised notice to the
14 class which would include a description of the revised settlement agreement, including
15 a link to a red-lined version of the revised settlement agreement, and the parties'
16 stipulated motion for attorneys' fees. Counsel complied with the Court's directive,
17 filing the required documents on September 26, 2013. Dkt. Nos. 68 & 69. The Court
18 approved the parties' notice on attorneys' fees and modification of settlement
19 agreement, as well as the revised class notice, on September 27, 2013. Dkt. No. 70.

1 Finally, the Court directed counsel to file a joint proposed final order certifying the
2 settlement class and approving class action settlement, which the parties will do on
3 October 30, 2013.

4 The Court granted counsel 30 days to allow class members to respond to the
5 revised class notice, which directed that “objections to the above revisions of the
6 proposed settlement agreement or to the proposed payment of Attorney’s Fees and
7 Costs should be submitted to the Court within thirty (30) days of the date of this
8 notice.” The Court scheduled a hearing for final approval of the settlement in this
9 case on November 4, 2013.

10 At the end of the day on September 30, 2013, the appropriations act funding,
11 inter alia, the Department of Justice and much of the Department of Homeland
12 Security, expired and appropriations lapsed. The Government did not resume normal
13 activities until October 17, 2013. During that period of lapse – from October 1
14 through October 17, 2013 – many Government operations were shut down and many
15 federal employees were barred from working. Even those employees who were
16 permitted to work were limited in their abilities to accomplish their tasks, due to the
17 massive reduction of the federal workforce during that period.¹ As a result, the
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22 ¹ Both the Office of Immigration Litigation and EOIR were significantly affected by
23 the shutdown. In addition, while most USCIS employees continued to work during
24 shutdown, Department of Homeland Security headquarters personnel were affected,
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Defendants in this case were hampered in their ability to implement the provisions of the Agreement due to be rolled out six (6) months from the Effective Date of the Agreement, or not later than November 8, 2013.²

Accordingly, Defendants propose, and Plaintiffs do not oppose, to extend those deadlines affected by the Government shutdown until Tuesday, December 3, 2013. This brief extension corresponds to the length of the Government shutdown, plus a few additional days to accommodate the fact that the Thanksgiving Holiday falls during that period.³ Specifically, Defendants seek to extend deadlines associated with the following:

- Defendants will implement the interim procedures to afford relief to the affected “Hearing Claim” subclass members (relating to the “lodge not filed” relief)
- Defendants will implement the interim procedures to afford relief to the affected “Notice and Review Claim” class members (relating to amending the November 15, 2011, Operating Policies and Procedures Memorandum (OPPM) 11-02: The Asylum Clock from Chief

including leadership and supervisory employees necessary for review and clearance of documents and other matters at various stages of preparation, and otherwise necessary to the timely implementation of the Agreement.

² The Government Defendants have calculated and announced this deadline as November 7 in some of their publications, while the Plaintiffs have reported it as November 8.

³ The parties submit that no additional notice of these changes is required, because the only purpose of such a notice would be to allow individuals to object to the delay, which would, by necessity, create *more* delay.

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Immigration Judge Brian O'Leary, and the creation of interim notices, including the USCIS and EOIR Joint Notice, regarding employment authorization for individuals with pending applications)

- Defendants will implement the interim procedures to afford relief to the affected “Prolonged Tolling” subclass members (including further amendments to OPDM 11-02)
- Defendants will implement the procedures to afford relief to the affected “Missed Asylum Interview Claim” subclass members
- Defendants will implement the procedures to afford relief to the affected “Remand” subclass members (relating to the inclusion of time after remand of an asylum claim into the calculation for eligibility for employment authorization)

CONCLUSION

Because the lapse in appropriations and the resulting Government shutdown has caused Defendants to require additional time to complete the necessary tasks to implement various provisions of the proposed settlement agreement, and because the parties have agreed that a brief extension neither frustrates the purpose of the agreement, nor is unfair to class members, Defendants ask the Court, without opposition from Plaintiffs, to extend all deadlines which otherwise would have occurred on November 8, 2013 (*i.e.*, six (6) months after the date the Court granted preliminary approval), until December 3, 2013.

1 DATED: October 30, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2013, I electronically filed the foregoing unopposed motion and proposed order with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered parties and their counsel.

/s/ J. Max Weintraub
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