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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CATHOLIC SOCIAL SERVICES,  
INC., - IMMIGRATION PROGRAM,  
et al.,

NO. CIV.S-86-1343 LKK/JFM

Plaintiffs,

v.

O R D E R

MICHAEL CHERTOFF, SECRETARY  
U.S. DEPARTMENT OF HOMELAND  
SECURITY, et al.,

Defendants.

\_\_\_\_\_ /

Julio Cesar Benitez ("Benitez") has filed objections to the special master's decision that he was not entitled to class membership under the court approved settlement agreement in this case. For the foregoing reasons, the court grants Benitez sixty (60) days to present information to the court that his criminal convictions do not bar class membership. If Benitez fails to provide the court with information on this issue, Benitez objections will be overruled.

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**I. BACKGROUND**

**A. The Settlement**

Under the 1986 Immigration Reform and Control Act, certain aliens could apply for temporary resident status if, *inter alia*, they had resided continuously in the United States since 1982, they were physically present in the United States continuously since November 6, 1986, and they had applied for temporary resident status between May 5, 1987 and May 4, 1988. Reno v. Catholic Soc. Servs., 509 U.S. 43 (1993). Regarding the continuous physical presence requirement, this court held in 1988 that this requirement was met for those applicants who had "brief, casual, and innocent" absences from the country without prior INS approval. After a series of appeals and remands, the parties entered a settlement that was approved in January 2004.

The settlement defined the plaintiff class entitled to relief as:

A. All persons who were otherwise prima facie eligible for legalization under section 245A of the INA and who tendered completed applications for legalization under section 254A of the INA and fees to an INS officer or agent acting on behalf of the INS, including a QDE, during the period from May 5, 1987 to May 4, 1988, and whose applications were rejected for filing because an INS officer or QDE concluded that they had traveled outside the United States after November 6, 1986 without advance parole.

B. All persons who filed for class membership under Catholic Social Services, Inc. v. Reno, CIV No. S-86-1343 LKK (E.D. Cal.), and who were otherwise prima facie eligible for legalization under Section 245A of the INA, who, because an INS officer or QDE concluded that they had traveled outside the United States after November 6, 1986 without advance parole were informed that they were ineligible for legalization, or were

1 refused by the INS or its QDEs legalization forms, and  
2 for whom such information, or inability to obtain the  
3 required application forms, was a substantial cause of  
their failure to timely file or complete a written  
application.

4 Joint Motion to Approve Settlement of Class Action, Dec. 1,  
5 2003, Ex. 1 ("Settlement") ¶ 1. The settlement set forth a  
6 process for determination of whether an individual was a member  
7 of the plaintiff class. The individual is to submit an  
8 application for class membership and application for status as a  
9 temporary resident, with supporting documentation, to the  
10 defendants. Id. ¶ 4. The defendants grant class membership  
11 applications if "it appears more probable than not that the  
12 applicant meets the class definition." Id. ¶ 6. Prior to denying  
13 an application, the defendants must forward to the applicant or  
14 his or her representative "a notice of intended denial  
15 explaining the perceived deficiency in" the application. Id. ¶  
16 7. The applicant then has thirty days to submit additional  
17 evidence or otherwise remedy the deficiency. Id.

18 If, after this, the application is denied, the defendants  
19 must send a copy of the notice of denial to the applicant, his  
20 or her attorney, and class counsel. Id. ¶ 8. The applicant may  
21 appeal the denial to a special master. Id. ¶¶ 8-9.

22 The special master is a person selected by both parties.<sup>1</sup>  
23 Id. ¶ 9.A. The purpose of the special master selected by the

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25 <sup>1</sup>Although the court recommended Magistrate Judge Moulds as the  
26 special master, this was replaced with the parties' agreement to  
a third-party special master as described in the settlement  
agreement. See Order, April 2, 2003 at 2; Settlement ¶ 9.

1 parties is to review decisions of denials of class membership  
2 and other of defendants' decisions. Id. ¶ 9.A-B. The settlement  
3 sets forth that the special master's review of the denial of an  
4 application for class membership shall be based on the  
5 documentary evidence the applicant provided to the defendants.  
6 Id. ¶ 9.B. It also describes the allocation of the special  
7 master's fees. Id.

8 **B. Procedural Posture of Benitez's Claim**

9 In December 2005, Petitioner Julio Cesar Benitez  
10 ("Benitez") applied for class membership under the settlement  
11 approved by the court on January 23, 2004. On October 23, 2006,  
12 Benitez interviewed with the U.S. Citizenship and Immigration  
13 Services ("USCIS") concerning his application. On April 4, 2007,  
14 USCIS sent Benitez a Notice of Intent to Deny Class Membership  
15 ("NOID"), stating that Benitez was not eligible for class  
16 membership because (1) he did not leave the country between  
17 1987-1988 and (2) he had several misdemeanor and felony  
18 convictions. The NOID provided that Benitez had thirty (30) days  
19 to submit "additional written evidence or information to rebut  
20 or to explain the discrepancies." It appears that Benitez did  
21 not submit any additional evidence or information. On May 22,  
22 2007, USCIS sent Benitez a Notice of Denial of Class Membership  
23 ("NOD"), for the same reasons expressed in the NOID. On June 22,  
24 2007, Benitez appealed USCIS's decision to the Special Master,  
25 indicating that his application was denied because of prior  
26 criminal convictions. On July 28, 2009, the special master

1 denied Benitez's appeal. On August 24, 2009, Benitez filed  
2 objections to the special master's decision in this court pro  
3 ce. On September 1, 2009, defendants filed an opposition to  
4 Benitez's objections. Plaintiffs have not filed a brief in  
5 support or in opposition to Benitez's objections.

## 6 **II. STANDARD OF REVIEW**

7 Pursuant to this court's November 12, 2008 order, Doc. No.  
8 667, "objections to the special master's denial of an  
9 application for membership to the plaintiff class will result in  
10 the special master's decision being reviewed de novo." This  
11 standard of review is based upon Federal Rule of Civil Procedure  
12 53, which governs appointments of special masters.

## 13 **III. ANALYSIS**

14 Benitez raises several arguments in his objections; he also  
15 seeks to introduce new evidence in support of his claim for  
16 class membership. In essence, Benitez claims that during his  
17 USCIS interview, the officer intimidated and confused him.  
18 Ultimately, Benitez claims, this officer convinced Benitez to  
19 alter his application for class membership to indicate that he  
20 did not leave the country between 1987 and 1988. Benitez also  
21 seeks to introduce new evidence concerning his absence from the  
22 country during this critical time period. This evidence includes  
23 a letter dated August 10, 2009, from the Director of a  
24 construction company in Mexico stating that Benitez worked for  
25 him from January 3 to January 15, 1988 and a declaration from  
26 Benitez clarifying the facts relevant to his objections.

1 Benitez does not, however, present any evidence or  
2 arguments concerning his criminal convictions. Class members  
3 must be "eligible for legalization under Section 245A of the"  
4 Immigration and Nationality Act (INA), 8 U.S.C. § 1255a.  
5 Settlement ¶ 1. Section 245A requires that an alien "has not  
6 been convicted of any felony or of three or more misdemeanors  
7 committed in the United States." Id. at 8 U.S.C. §  
8 1255a(a)(4)(B). In Benitez's appeal to the special master, he  
9 indicated that he would be submitting a brief that argued, not  
10 only that Benitez left the country between 1987-1988, but also  
11 the following:

12 a. Mr. Benitez's 1985 conviction in the Los Angeles  
13 Municipal Court was arguably only a misdemeanor, not a  
14 felony. Counsel<sup>2</sup> will be investigating the possibility  
15 that Mr. Benitez was not advised by the judge of the  
16 immigration consequences of pleading guilty, and thus,  
17 a motion to vacate the conviction may be appropriate.  
18 Also because this was his first drug offense when he  
19 was 19 years old, he may have been eligible for an  
20 expungement under the Federal Youthful Offender Act or  
21 Federal First Offender Act, which would eliminate the  
22 use of this conviction for immigration purposes under  
23 Ninth Circuit law.

19 b. Mr. Benitez asserts that he was never convicted in  
20 1984 for the misdemeanor of tampering with a vehicle  
21 and/or taking a vehicle without [sic] owner's consent.

21 When the above is taken into account, it will be seen  
22 that Mr. Benitez was only convicted of one  
23 misdemeanor: on July 25, 1987 in Montgomery County  
24 District Court, Maryland, for unlawful possession of a  
25 controlled substance.

24 Attachment to Question 4, Benitez's Appeal to Special Master of

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26 <sup>2</sup> Benitez had counsel for his special master appeal, but has  
filed his objections to this court pro se.



1 his criminal convictions preclude him of class membership within  
2 sixty (60) days from the date of this order.

3 (2) If Benitez fails to timely submit this brief, the  
4 court will overrule Benitez's objections.


5 (3) Plaintiffs and defendants may file a response,  
6 either in opposition or in support of Benitez's brief, due  
7 fifteen (15) days after Benitez's brief is filed.

8 (4) Benitez may file a reply to any response filed due  
9 thirty (30) days after the response is filed.

10 IT IS SO ORDERED.

11 DATED: November 17, 2009.

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LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT