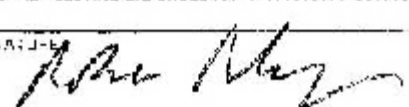


| APPLICATION<br>FOR FEES AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT<br>Title 28 U.S.C. Section 2412(d), Title 11 of Public Law 98-403, 94 STAT 2325   |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
|--|----------------|---|-------------------------------|--|----------------|------------------|-------------|-----------|--|-------------|--|-----------------------|--|---------|--|------------|--|------------------------|--|--------------------------------------|--|-----------|--|-----------|--|-----------|--|----------------------------|----------|
| 1. COURT<br>A. <input type="checkbox"/> SUPREME COURT<br>B. <input type="checkbox"/> CUSTOMS AND PATENT APPEALS<br>C. <input type="checkbox"/> COURT OF CLAIMS<br>D. <input type="checkbox"/> INTERNATIONAL TRADE<br>E. <input type="checkbox"/> COURT OF APPEALS<br>F. <input checked="" type="checkbox"/> DISTRICT COURT<br>G. <input type="checkbox"/> BANKRUPTCY COURT   |                | 2. DATE FILED<br>Aug. 4, 2005   | 3. DOCKET NO.<br>04-04-45430W |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| 4. NAME OF APPLICANT (One per form)<br>Robert G. Ryan  |                | 5. GOVERNMENT AGENCY INVOLVED IN CLAIM<br>(Use agency code on reverse side)<br>IHS (COMPT. INS)   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| 6. NATURE OF APPLICATION<br>A. <input checked="" type="checkbox"/> Original application under 28 USC 2412 (d) (1) (A) after judgment in civil action against U.S.<br>B. <input type="checkbox"/> Appeal of fees and expenses awarded by Lower Court, (1) from 68 or 70 or 71 or 72<br>C. <input type="checkbox"/> Original application under 28 USC 2412 (d) (3) after review of agency decision.<br>D. <input type="checkbox"/> Petition for leave to appeal an administrative agency fee determination under 5 USC 554 (d) (2).  |                | 7. APPEAL FROM:<br><input type="checkbox"/> DISTRICT COURT <input type="checkbox"/> BANKRUPTCY COURT<br><input checked="" type="checkbox"/> OTHER: IHS (COMPT. INS) |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| 8. ADMINISTRATIVE AGENCY DOCKET NO.<br>AAF-136-233   |                | 9. DATE FILED IN ADMINISTRATIVE AGENCY<br>June 30, 2003   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| 10. SHOW NO OF PREVAILING PARTY STATUS (28 U.S.C. § 2412(d)(1)(B))<br><input type="checkbox"/> IS AGENCY ORDER, COURT ORDER, OR OTHER RELEVANT DOCUMENT ATTACHED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO  |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| 11. SHOWING OF ELIGIBILITY (28 U.S.C. § 2412(d)(2)(B))<br><input checked="" type="checkbox"/> IS NET WORTH INFORMATION ATTACHED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO   |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| 12. STATE ALLEGATION THAT GOVERNMENT POSITION WAS NOT SUBSTANTIALLY JUSTIFIED (28 U.S.C. § 2412(d)(1)(B))<br>The government's position was not substantially justified because the petitioner, who was and is legally blind with a 99 percent hearing deficit, was qualified for a disability waiver to exempt him from the English, language and history and government requirements of the naturalization examination.   |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| 13. FOR EACH AMOUNT CLAIMED, PLEASE ATTACH ITEMIZATION INFORMATION INDICATING SERVICE PROVIDED, DATE, HOURS, AND RATE (28 U.S.C. § 2412(d)(3)(A)):<br><table border="1"> <thead> <tr> <th></th> <th>AMOUNT CLAIMED</th> </tr> </thead> <tbody> <tr> <td>A. ATTORNEY FEES</td> <td>\$ 1,624.40</td> </tr> <tr> <td>B. STENOY</td> <td></td> </tr> <tr> <td>C. ANALYSIS</td> <td></td> </tr> <tr> <td>D. ENGINEERING REPORT</td> <td></td> </tr> <tr> <td>E. TEST</td> <td></td> </tr> <tr> <td>F. PROJECT</td> <td></td> </tr> <tr> <td>G. EXPERT WITNESS FEES</td> <td></td> </tr> <tr> <td>H. OTHER FEES AND EXPENSES - SPECIFY</td> <td></td> </tr> <tr> <td>(1) _____</td> <td></td> </tr> <tr> <td>(2) _____</td> <td></td> </tr> <tr> <td>(3) _____</td> <td></td> </tr> <tr> <td>I. TOTAL FEES AND EXPENSES</td> <td>\$ _____</td> </tr> </tbody> </table> |                |   |                               |  | AMOUNT CLAIMED | A. ATTORNEY FEES | \$ 1,624.40 | B. STENOY |  | C. ANALYSIS |  | D. ENGINEERING REPORT |  | E. TEST |  | F. PROJECT |  | G. EXPERT WITNESS FEES |  | H. OTHER FEES AND EXPENSES - SPECIFY |  | (1) _____ |  | (2) _____ |  | (3) _____ |  | I. TOTAL FEES AND EXPENSES | \$ _____ |
|  | AMOUNT CLAIMED |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| A. ATTORNEY FEES   | \$ 1,624.40    |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| B. STENOY  |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| C. ANALYSIS  |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| D. ENGINEERING REPORT  |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| E. TEST  |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| F. PROJECT   |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| G. EXPERT WITNESS FEES   |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| H. OTHER FEES AND EXPENSES - SPECIFY   |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| (1) _____  |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| (2) _____  |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| (3) _____  |                |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| I. TOTAL FEES AND EXPENSES   | \$ _____       |   |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |
| 14. SIGNATURE<br>   |                | 15. DATE<br>08/04/2005  |                               |  |                |                  |             |           |  |             |  |                       |  |         |  |            |  |                        |  |                                      |  |           |  |           |  |           |  |                            |          |

NOTE: THIS FORM SHOULD ACCOMPANY YOUR CLAIMANT ON FILED WITH THE CLERK OF COURT.

1 KEVIN V. RYAN (CSBN 118321)  
United States Attorney  
2 JOANN M. SWANSON (CSBN 88143)  
Chief, Civil Division  
3 ALTON E. DAW (CSBN 137026)  
Assistant United States Attorney

4 150 Almaden Blvd., Suite 500  
5 San Jose, California 95113  
6 Telephone: (408) 535-5044  
FAX: (408) 535-5081

7 Attorneys for Defendant

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

11 YICK HING SIM,

12 Petitioner,

13 v.

14 U.S. CITIZENSHIP AND IMMIGRATION  
SERVICES, et al.,

15 Respondents.  
16

No. C 04-4643 CW

ORDER RE NOTICE OF INTENT TO  
REOPEN NATURALIZATION  
APPLICATION FOR FAVORABLE  
ADJUDICATION

17 Yick Sim ("Sim") is a lawful permanent resident of the United States who has applied for  
18 naturalization. U.S. Citizenship and Immigration Services ("CIS") denied Mr. Sim's naturalization  
19 application due to his failure to meet two of the requirements of naturalization, to wit, the English  
20 language requirement and the requirement that he demonstrate knowledge and understanding of the  
21 fundamentals of history and the principles and form of government of the United States.

22 Mr. Sim filed an administrative appeal of the denial of his naturalization application along with a  
23 medical certification of disability and a request that CIS waive the English and history/government  
24 requirements. Mr. Sim's request for a waiver was based upon his loss of 80% of his normal vision, due  
25 to glaucoma, which renders him legally blind, and a severe hearing deficit (99%) in both ears. Despite  
26 the medical certification, CIS denied Mr. Sim's appeal. This action followed.

27 In his complaint, Mr. Sim asks that the Court

28

NOTICE OF INTENT TO REOPEN NATURALIZATION  
APPLICATION FOR FAVORABLE ADJUDICATION; ORDER  
C04-4643 CW

- 1 1. Accept jurisdiction and maintain continuing jurisdiction of this action.
- 2 2. Conduct a de novo proceeding on the Petitioner's naturalization application.
- 3 3. Declare unlawful, pursuant to 5 U.S.C. § 706(2)(A), the failure of Respondents to approve, without qualification, the Form N-648 medical exceptions regarding Petitioner's vision and hearing impairments, so that the requirements of English language literacy and knowledge and understanding of the fundamentals of United States history and principles and form of government of the United States shall be deemed completely waived.
- 4
- 5
- 6 4. Grant attorney's fees and costs of this suit under the Equal Access to Justice Act, 28 U.S.C. § 2412.
- 7
- 8 5. Grant such other relief as this Court may deem just and proper.

9 Petition for Review of DHS's Decision Denying Naturalization, at pp. 9-10.

10 CIS has reconsidered the medical exemptions provided by Mr. Sim. At this time, CIS will reopen  
11 Mr. Sim's naturalization application, approve the requested waivers, and adjudicate the naturalization  
12 application favorably to Mr. Sim.

13 The two issues Mr. Sim challenges herein, to wit, the denial of his naturalization application and  
14 CIS's failure to waive the English language and history/government requirements, will be resolved by  
15 the action that CIS will take following its reopening of Mr. Sim's naturalization application.  
16 Accordingly, CIS requests that the Court dismiss this action upon receipt of notice from defendant that  
17 Mr. Sim's naturalization application has been adjudicated in his favor.<sup>1</sup> In the meantime, CIS requests  
18 that the Court vacate the case scheduling order of February 14, 2005.

19 ///

20 DATED February 16, 2005

Respectfully submitted,

21 KEVIN V. RYAN  
22

23 <sup>1</sup> Respondents wish to advise the Court that they attempted to submit this to the Court by way  
24 of stipulation, but counsel for Mr. Sim indicated that he preferred to proceed with this action.  
25 Respondents understand that counsel disagrees with CIS's policy concerning the standard an applicant  
26 must meet to qualify for a disability-based waiver of naturalization requirements and would like the  
27 opportunity to litigate that issue here. However, the petition does not challenge the policy, but the  
28 denial of the waivers requested by Mr. Sim. Respondents submit that the issue challenged in the  
petition is moot as far as Mr. Sim is concerned, since CIS will approve the waivers he has requested as  
soon as it reopens his naturalization application.

NOTICE OF INTENT TO REOPEN NATURALIZATION  
APPLICATION FOR FAVORABLE ADJUDICATION ORDER  
C06-4643 CW -2-

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United States Attorney

/s/ Alison R. Day  
ALISON R. DAY  
Assistant United States Attorney

ORDER

Pursuant to respondents' notice of intent to reopen Mr. Sun's naturalization application for favorable adjudication, and good cause appearing therefor, the Court hereby VACATES the scheduling order of February 14, 2005. Respondents shall provide the Court with evidence no later than March 11, 2005 of the favorable adjudication of Mr. Sun's naturalization application. IT IS SO ORDERED.

DATED: 2/22/05

/s/ CLAUDIA WILKEN  
CLAUDIA WILKEN  
United States District Judge

DECLARATION OF YICK HUNG SIM


I, the undersigned, declare:

1. I am the petitioner in Yick Hung Sim v. U.S. Citizenship and Naturalization Service, et al., C-04-4643 CW. My petition was filed on November 2, 2004.

2. When the petition for review was filed on November 2, 2004, my net worth did not exceed \$2,000,000.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on this 25<sup>th</sup> day of July, 2005 at San Francisco, California.



Yick Hung Sim

DECLARATION OF YICK HUNG SIM