

# THE RECORDER

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## Class certified over immigration fees

By Evan Hill

RECORDER STAFF WRITER

A Northern District federal judge on Thursday certified a nationwide class action on behalf of hundreds of thousands of immigrants who have been subject to allegedly illegal application fees.

The suit, filed in 2007, alleges that the U.S. government has been charging immigrants an additional cost on top of a \$50 registration fee Congress prescribed for those seeking Temporary Protected Status. The plaintiffs contend the government can't charge more for collecting "biometric" information: fingerprints, an electronic signature and a photograph.

"I think that over the years [the government has] made errors, and they've lost sight of the purpose of TPS and the special nature of TPS and the type of people who they're providing services to," said Jonathan Kaufman, a San Francisco immigration lawyer who represents the plaintiffs.

The plaintiffs are seeking a ruling from U.S. District Senior Judge Thelton Henderson that will declare any fees that exceed the \$50 to be illegal. They're also asking for an injunction and a refund.

Kaufman and co-counsel Linda Dardarian, of Oakland's Goldstein, Demchak, Baller, Borgen & Dardarian, estimate the government has overcharged about 400,000 immigrants by a total of roughly \$100 million. But in the face of government opposition, Henderson excluded the issue of monetary relief from his class certification order for now.

Henderson wrote that certification for all purposes was "not unwarranted," but said he was limiting his order to only injunctive and declarative relief "in light of the fierce opposition registered by the

government to any certification in this case." He deferred the certification question on monetary relief until after he decides whether the government is liable.

By putting off a decision on certifying the class for damages, Dardarian said, Henderson took away a cause that the government could have used to appeal.

A spokesman for the Justice Department's civil division said that the government was reviewing Henderson's ruling.

The government had argued that the demand for a refund meant money was the plaintiffs' primary concern — disqualifying them for the kind of class action they filed. The plaintiffs brought the case under a rule for class actions that seek an injunction or declaration; the Ninth Circuit has said those must be the primary relief.

The plaintiffs argued that a ruling on the illegality of the biometrics fee was their primary objective and that the damages were incidental.

The class certification order covers immigrants from El Salvador, Honduras and Nicaragua who applied to register or re-register for TPS since Aug. 16, 2001. The biometrics fee has since risen from \$25 to \$80.

The fee is charged every time a country's TPS eligibility is renewed, according to Henderson's ruling. Dardarian said each of the three countries at issue in the suit have had theirs renewed six times.

The vast majority of the class members are from El Salvador, Kaufman said. He estimated that there are about 240,000 Salvadorans who currently have TPS, and a combined 10,000 or so Hondurans and Nicaraguans. The rest of the class is made of up immigrants whose TPS application was rejected or who have since lost that status.

Temporary Protected Status is available



**BIG PAYBACK:** Oakland attorney Linda Dardarian says the government has overcharged 400,000 immigrants by about \$100 million.

to aliens who are temporarily unable to safely return to their country because of conditions like armed conflicts or natural disasters.

A November 2004 congressional report estimated that 290,000 Salvadoran nationals had received protected status since that country became eligible in March 2001 after suffering two earthquakes. The report also found that 81,875 Hondurans and 4,309 Nicaraguans had received protected status since December 1998, after both countries were struck by Hurricane Mitch.

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