

## RETAINER AGREEMENT

**THE CASE – USCIS and US DOS - “Visa bulletin / visa availability”**

**[PLEASE NOTE - IF YOU SUBMITTED OR WILL SUBMIT YOUR ADJUSTMENT OF STATUS APPLICATION FOR RECEIPT BY USCIS IN JUNE 2007 (IN THE “OTHER WORKER” CATEGORY ONLY) OR JULY 2007 (IN ANY EMPLOYMENT-BASED CATEGORY EXCEPT “OTHER WORKER”), paragraph I.A. below applies to you.**

**IF YOU DID NOT AND DO NOT PLAN TO SUBMIT YOUR ADJUSTMENT OF STATUS APPLICATION TO USCIS solely because of the issues being litigated in this lawsuit, paragraph I.B. below applies to you.**

**THE REMAINDER OF THE RETAINER AGREEMENT IS THE SAME FOR ALL CLIENTS.]**

1.A. I am \_\_\_\_\_, the CLIENT. The U.S. Department of Homeland Security, and specifically its sub-component agency the U.S. Citizenship and Immigration Service (USCIS) has rejected or has said it will reject applications for adjustment of status (AOS) such as mine because there are insufficient visas available, even though the U.S. State Department’s Visa Bulletin issued for the month for which I tried to file my AOS application stated that such visas were or are available. My application already has been rejected (or I fear it will be rejected) by USCIS on this basis. Also, the U.S. Department of State (DOS) issued an “Update” to its Visa Bulletin on July 2, 2007. I relied on the prior Visa Bulletin(s) to prepare and submit my AOS application.

1.B. I am \_\_\_\_\_, the CLIENT. I am eligible to apply for adjustment of status. The U.S. Department of Homeland Security, and specifically its sub-component agency the U.S. Citizenship and Immigration Service (USCIS) has said it will reject applications for adjustment of status (AOS) such as mine because there are insufficient visas available, even though the U.S. State Department’s Visa Bulletin issued for July stated that such visas are available. I fully expect that if I submit (or would have submitted) my AOS application for receipt in July, USCIS will reject it or would have rejected it on this basis. I would have submitted my application for adjustment of status for receipt by USCIS during July 2007 but for this statement by USCIS.

Also, the U.S. Department of State (DOS) issued an “Update” to its Visa Bulletin on July 2, 2007. Based on the July 2007 Visa Bulletin issued in June 2007, I believed that visas would be available in July 2007 and relied on the prior Visa Bulletin to prepare my AOS application.

1.C. I understand that the American Immigration Law Foundation (AILF) has agreed to file a class action lawsuit in U.S. District Court against the USCIS and DOS to attempt to

rectify these problems. I wish to be included as a named plaintiff in this suit, representing others in like circumstances. I understand that legal representation by AILF is specifically conditioned upon the terms of this agreement.

## **REPRESENTATION**

2. AILF and attorneys with whom AILF may be co-counsel in this case (hereafter AILF) have agreed to represent me only for the purposes of the following stage of the following lawsuit:

Lawsuit against U.S. CIS for refusing to accept my adjustment of status application; and U.S. DOS for its change in policy and practice regarding the Visa Bulletin.

3. By signing this Retainer Agreement, I agree to participate in this litigation as a plaintiff and class representative, and to appoint AILF as my attorney in this litigation. I understand that AILF agrees to represent me ONLY in connection with this lawsuit and to perform services that AILF may determine to be proper to pursue this lawsuit, but that this Retainer Agreement does not apply to any other services. I acknowledge that AILF also will represent other individuals who are being injured by the USCIS and DOS on the same grounds, and consent to the joint representation. I understand that the services of AILF in connection with this lawsuit supplement, but do not replace, the services of my other attorney or representative (if applicable).

4. I understand that litigation is uncertain by nature and that AILF cannot guarantee the results of the litigation. Also, if AILF believes that the subject of the suit has been adequately resolved before this lawsuit is filed, I understand that AILF may not file the suit, even if my own AOS application has not been accepted, or my case otherwise has not been resolved to my satisfaction.

5. I agree that if AILF determines that I am not an appropriate plaintiff or class representative, it may proceed with this lawsuit without including me as a named plaintiff.

## **COSTS AND ATTORNEY FEES**

6. I understand that AILF will not charge me any fees or any expenses for AILF's legal services in connection with the lawsuit. AILF also will pay all expenses reasonably necessary for the lawsuit, with **one possible exception**. I may be responsible for my own travel and lodging expenses in the unlikely event that I should need to attend a hearing or deposition.

7. If the resolution of this matter results in a recovery of attorneys' fees and/or expenses, AILF or other co-counsel shall be entitled to reimbursement from this recovery of all attorneys' fees and/or expenses that it advanced on my behalf. I hereby assign all such fees to AILF, and agree that all fees and costs recovered in this case may be paid directly to AILF or another law firm it designates. If the defendants agree to pay such

fees and expenses as part of a settlement agreement or consent decree, I agree that such fees and expenses will also belong to AILF.

8. I have been informed that the Equal Access to Justice Act (EAJA), and other statutes and the Federal Rules of Civil Procedure may allow AILF to apply for an award of attorneys' fees and expenses if we prevail in this lawsuit. I agree that AILF may claim and collect fees and expenses awarded by the court(s).

9. Sometimes defendants offer to settle a case on the condition that the plaintiff(s) give up their right to receive attorneys' fees and/or costs. I understand that AILF's ability to represent people like me in this and future cases is dependent upon its recovery of costs and attorneys' fees for the work AILF performs. I therefore agree to assist AILF in obtaining full recovery of all costs and attorneys' fees as part of any settlement or disposition of the case. Should I accept any settlement of this case that requires me to waive the defendant's (or defendants') payment of fees and/or costs, I will be responsible for paying AILF's attorneys' fees and/or costs incurred in connection with this lawsuit that are not paid by the defendants. I will not be responsible for any of AILF's attorneys' fees or costs if I do not agree to such a waiver.

10. I understand that if this suit is not successful, the court may order the plaintiffs to pay the costs incurred by the opposing party's attorneys' fees and expenses. I also understand that if the court finds that the case was frivolous, unreasonable, groundless, vexatious, not reasonably based in law and/or fact, or pursued in bad faith, it may order me to pay the opposing party's or parties' costs and attorneys' fees. In the event of such an order, AILF agrees to pay the entire amount of the opponent's fees and costs awarded, **with one exception**. I alone will be responsible for such an award if I misrepresent facts to my immigration attorney or representative or to AILF and the court award is based upon facts found to be substantially and materially different than I have stated them.

#### **TERMINATION OF REPRESENTATION**

11. I understand that in the event AILF and its attorneys determine in their professional legal judgment that the lawsuit or other matter should be dismissed, settled, or otherwise disposed of, and I do not agree or consent to such resolution, AILF reserves the right to withdraw as counsel in this matter, subject to court approval. Grounds for such termination include, but are not limited to: (a) the suit becomes clearly frivolous, unreasonable or groundless; (b) the facts of the case are materially and significantly different than I stated them; or (c) the representation of my interests requires taking a position in opposition to AILF's mission. In the event that AILF withdraws, AILF will make reasonable efforts to obtain substitute counsel, but withdrawal is not dependent on finding substitute counsel.

12. I am free at any time to discharge AILF from representing me, subject to court approval. However, if I choose to discharge AILF and its attorneys, AILF is under no obligation to find a replacement counsel. Any continued AILF involvement in the case will be determined after consideration of all circumstances as they exist at the time. If I

discharge AILF, I will remain responsible for the payment of any attorney's fees or costs charged against me according to this Agreement.

**CLIENT'S RESPONSIBILITIES**

13. I agree to respond to all communications from AILF immediately when received. I agree to appear in court if and when required. I agree to notify AILF promptly of any change in my contact information, in the status of my AOS application, in my immigration status, or in any legal proceedings.

14. I agree to cooperate with AILF and to provide AILF complete and truthful information and documentation necessary and proper to the lawsuit. I understand that I alone will be responsible for any fees and expenses awarded to opposing parties if such an award is based upon any misrepresentations that I have made to AILF or my attorney or representative.

**CONFIDENTIALITY**

15. I understand that lawsuits are public information, and are available as a public court document. I realize that many courts now have lawsuits and other documents available electronically, accessible via the internet. I understand that there also may be other individual and organizational plaintiffs participating in this case. I also understand that AILF and its attorneys may consult and associate with other immigration counsel, AILF's affiliated bar association, the American Immigration Lawyers' Association (AILA) and its staff, as well as with experts who may assist AILF in litigating this case. I therefore authorize AILF to discuss any information with the other plaintiffs, AILA and its staff, and/or experts who may assist AILF in this lawsuit.

**PUBLICITY**

16. I authorize AILF to publicize the case in any manner AILF deems to be in my best interest and in the interest of educating the public about immigrants' rights or immigration law. I agree not to make statements to the news media except by arrangement and approval of AILF. Unless otherwise authorized, AILF will make any such news announcements on my behalf in this case.

**FUTURE REPRESENTATION**

17. I acknowledged that AILF has no obligation to represent me or to secure representation for me, in any subsequent stage of this litigation or in any proceedings, or in any legal matter that I may have.

18. I have read and received a complete copy of this Retainer Agreement today, \_\_\_\_\_, 2007, understand all the terms, and agree to them.

\_\_\_\_\_  
CLIENT

\_\_\_\_\_  
ATTORNEY (on behalf of AILF)