



# Fact Sheet

Sept. 22, 2008

## New Policy for *ABC* Registration Determinations After *Chaly-Garcia v. U.S.*, 508 F.3d 1201 (9<sup>th</sup> Cir. 2007)

On November 29, 2007, the United States Court of Appeals for the Ninth Circuit issued a ruling in *Chaly-Garcia v. U.S.*, 508 F.3d 1201 (9<sup>th</sup> Cir. 2007) regarding what may constitute evidence of registration for benefits under the ABC Settlement Agreement, as set forth in *American Baptist Churches (ABC) v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991). The Ninth Circuit interpreted the ABC registration rules under the Settlement Agreement and found that, "Plaintiff's written asylum application, which demonstrated his membership in the ABC class, thus requested the benefits of the ABC Agreement and was a writing that indicated an intent to receive them."

Previously, in determining whether Guatemalan and Salvadoran nationals satisfied the registration requirement to receive ABC benefits under the Settlement Agreement, USCIS required evidence of registration, which could be established through credible testimony. Prior to the *Chaly-Garcia* decision, USCIS did not view the filing of an affirmative asylum application alone as sufficient evidence to satisfy the ABC Settlement Agreement registration requirement. Pursuant to the Ninth Circuit's findings, however, USCIS will consider that a Guatemalan or a Salvadoran national who affirmatively filed an I-589 application during the registration period indicated the intent to receive ABC benefits under the ABC Settlement Agreement and therefore will be considered "registered."

### Questions & Answers

#### **Q1: What were the original registration requirements under the Settlement Agreement?**

**A1:** Under the Settlement Agreement, a Guatemalan or Salvadoran class member must have indicated to the legacy Immigration and Naturalization Service (INS) (the predecessor agency to USCIS) his or her intent, in writing, to: (1) apply for a *de novo* asylum adjudication before an Asylum Officer, or (2) receive ABC benefits. Additionally, a Salvadoran class member could have applied for Temporary Protected Status (TPS) under Section 303 of the Immigration Act of 1990.

#### **Q2: Historically how has legacy INS and now USCIS determined compliance with registration requirements?**

**A2:** To be eligible for ABC benefits, a Guatemalan or Salvadoran class member must have registered directly for ABC by sending an ABC registration form to the legacy INS by the date agreed upon by the parties to the ABC Settlement Agreement. A Salvadoran class member also may have registered by applying for TPS by the required date.

Guatemalans and Salvadorans had different registration dates, as follows:

- Guatemalans: Must have sent an ABC registration form to INS on or before December 31, 1991.

- Salvadorans: Must have sent an *ABC* registration form to INS or applied for TPS on or before October 31, 1991.

In determining whether Guatemalan and Salvadoran nationals satisfied the registration requirement to receive *ABC* benefits, USCIS required evidence of registration, which could include credible testimony.

**Q3: How has *Chaly-Garcia* changed the registration requirements under the ABC Settlement Agreement?**

**A3:** Generally, a Guatemalan or a Salvadoran class member evidenced registration through the submission of an *ABC* registration form or credible testimony that he or she submitted such a form to INS during the relevant time period. USCIS did not view the filing of an affirmative asylum application alone as evidence that satisfied the registration requirement. Pursuant to *Chaly-Garcia*, however, USCIS will now consider such a filing as evidence of an individual's intent to register for *ABC* benefits.

As such, USCIS will consider Guatemalan nationals who affirmatively filed an I-589 application between December 19, 1990 and December 31, 1991; and Salvadoran nationals who affirmatively filed an I-589 application between December 19, 1990 and October 31, 1991, as having met the *ABC* registration requirement.

**Q4: Why has USCIS chosen these specific dates?**

**A4:** On December 19, 1990, the court provisionally approved the ABC Settlement Agreement. Accordingly, Guatemalan and Salvadoran nationals could express their intent to receive *ABC* benefits as provided in the Settlement Agreement on or after December 19, 1990. December 31, 1991 is the last date that Guatemalan nationals were able to evidence their intent to receive *ABC* benefits. October 31, 1991 is the last date that Salvadoran nationals were able to evidence their intent to receive *ABC* benefits or apply for TPS.

**Q5: What rights are accorded to individuals who registered for *ABC* benefits?**

**A5:** Guatemalan and Salvadoran class members who are eligible for the benefits of the Settlement Agreement are entitled to the following:

- stay of deportation/removal;
- *de novo* asylum interview and decision by an Asylum Officer under the 1990 asylum regulations;
- restrictions on detention under immigration law; and
- employment authorization.

In addition, individuals eligible for *ABC* benefits may be eligible to have their applications for special rule cancellation of removal or suspension of deportation under Section 203 of the Nicaraguan and Central American Relief Act (NACARA) considered by a USCIS asylum officer (see question 11, below).

For additional details, see HYPERLINK for Webpage titled, *American Baptist Churches v. Thornburgh (ABC) Settlement Agreement*.

**Q6: *Chaly-Garcia* involved a Guatemalan national. Do I have to be a national of Guatemala to be considered under this new policy for determining whether I met the registration requirement for *ABC* benefits?**

**A6:** No. The Settlement Agreement involves nationals from Guatemala and El Salvador. Accordingly, the new policy for determining whether an individual timely registered for *ABC* benefits includes nationals from both Guatemala and from El Salvador.

**Q7: Will all asylum applications filed with USCIS be considered under this new policy for determining whether the registration requirement for *ABC* benefits has been met?**

**A7:** No. Only asylum applications filed by Guatemalan nationals between December 19, 1990 and December 31, 1991 will be considered as evidence of meeting the registration requirement. In the case of Salvadoran nationals, only asylum applications filed between December 19, 1990 and October 31, 1991 will be considered as evidence of meeting the registration requirement.

**Q8: What if I did not file my asylum application with USCIS between these dates? May I still meet the registration requirement for *ABC* benefits?**

**A8:** Yes. You still must produce some other evidence that you timely registered for *ABC* benefits.

**Q9: If I filed my asylum application with USCIS between these dates, do I automatically receive *ABC* benefits?**

**A9:** No. The registration requirement is only one of three requirements that you must meet to receive *ABC* benefits. You also must demonstrate that you are a class member and that you have applied for asylum by the required date:

- You are a Guatemalan national who initially entered the United States on or before October 1, 1990, and you filed an asylum application on or before January 3, 1995.
- You are a Salvadoran national who initially entered the United States on or before September 19, 1990, and you filed an asylum application on or before January 31, 1996 (grace period until February 16, 1996).

A class member who meets these requirements may still be ineligible for benefits if he or she has been convicted of an aggravated felony or was apprehended at the time of entry after December 19, 1990.

**Q10: What if my case is pending before USCIS and I filed an asylum application between the relevant dates?**

**A10:** You will be scheduled for an interview at the asylum office. You must go to your interview, at which time it will be determined whether you timely registered for *ABC* benefits under the Settlement Agreement. However, you still must demonstrate that you meet the other requirements to show that you are eligible for *ABC* benefits.

**Q11: What is the relationship between eligibility for *ABC* benefits and eligibility for NACARA relief?**

**A11:** An individual who is eligible for *ABC* benefits is entitled to receive a *de novo* asylum interview and decision by an Asylum Officer under the 1990 asylum regulations. In addition, certain *ABC* class members may file Form I-881, *Application for Suspension of Deportation or Special Rule Cancellation of Removal under section 203 of NACARA*, and if approved, receive legal permanent residence status.

**Q12: What if my asylum application (filed between the relevant dates) is pending before USCIS, but my NACARA application was not granted solely because it was determined that I did not timely register for *ABC* benefits?**

**A12:** You will be scheduled for an asylum interview at the asylum office. You must go to your interview, at which time the asylum office will reconsider the determination that you are not eligible for *ABC* benefits. If it is determined that you are eligible for *ABC* benefits and possibly NACARA relief, the

asylum office will reopen and reconsider your NACARA application. Otherwise, the asylum office will proceed with an *ABC* asylum interview.

**Q13: What if I have a pending asylum application before USCIS that I filed between the relevant dates, but I never filed a NACARA application because I thought that I would not be able to demonstrate that I timely registered for *ABC* benefits?**

**A13:** You should file Form I-881, *Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100, NACARA)* as soon as possible. If you are scheduled for an asylum interview before you are scheduled for a NACARA interview, go to your asylum interview with a copy of your I-881 filing receipt, a copy of your I-881 and supporting documentation. The asylum office will conduct a NACARA interview instead of an asylum interview, or reschedule a NACARA interview to take place at a later date. At your NACARA interview, you still must demonstrate that you have met each eligibility requirement for NACARA relief as explained in *Part II, Eligibility to be Granted Relief of the Instructions*.

**Q14: What if USCIS determined that I was ineligible for *ABC* benefits solely because I did not meet the registration requirement, but I filed an asylum application between the relevant dates and my case is pending before an immigration judge or the Board of Immigration Appeals of the Executive Office for Immigration Review (EOIR)?**

**A14:** You should discuss your case with your representative, who may coordinate with your local U.S. Immigration and Customs Enforcement (ICE) Office of the Chief Counsel to evaluate your *ABC* eligibility under this new policy. If you believe that you are eligible for *ABC* benefits under this new policy, you should file a motion with EOIR to administratively close proceedings based on *ABC* eligibility pursuant to the *Chaly-Garcia* decision. Administrative closure of *ABC* class member cases is governed by paragraphs 17 and 19 of the *ABC* Settlement Agreement. If EOIR administratively closes proceedings, USCIS will then review your case. In general, USCIS will NOT reconsider the decision if your case was referred to the Immigration Court for any reason other than a failure to demonstrate timely registration for *ABC* benefits.

**Q15: What if USCIS determined that I was ineligible for *ABC* benefits solely because I did not meet the registration requirement, but I filed an asylum application between the relevant dates and my case is pending before a federal court?**

**A15:** You should discuss your case with your representative, who may coordinate with the Department of Justice's Office of Immigration Litigation and ICE to evaluate your *ABC* eligibility under this new policy. If you believe that you are eligible for *ABC* benefits under this new policy, you may file a motion to stay the proceedings with the federal court. USCIS will then review your case. In general, USCIS will NOT reconsider the decision if your case was referred to the Immigration Court for any reason other than a failure to demonstrate timely registration for *ABC* benefits.

**Q16: What if USCIS determined that I was ineligible for *ABC* and/or NACARA benefits solely because I did not meet the registration requirement, but I filed an asylum application between the relevant dates and my case was not referred to the Immigration Court?**

**A16:** You must submit a Motion to Reconsider with the asylum office that has jurisdiction over your case, indicating that you may be eligible for *ABC* benefits pursuant to the *Chaly-Garcia* decision, in order to have the USCIS decision reviewed. If USCIS grants the Motion to Reconsider after finding that you are eligible for *ABC* benefits based on this new policy, you will be scheduled for another NACARA or asylum interview, as appropriate. You must go to your interview, at which time it will be determined whether you have timely registered for *ABC* benefits under the Settlement Agreement. If applying for NACARA, you still must demonstrate that you have met each eligibility requirement for NACARA relief as explained in *Part II, Eligibility to be Granted Relief Instructions*.