

1 and adequacy of representation, however.¹

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3 **Fed. R. Civ. P. 23(a)(1): Numerosity**

4 Plaintiffs assert, based on third-party declarations and CIS' published data, that the
5 prospective class consists of thousands of religious workers whose employers have filed I-360
6 petitions. Motion at 2-3. Defendants object to the imprecision of plaintiffs' calculations and
7 argue that plaintiffs have failed to show that any of the putative class members have become
8 ineligible for adjustment of status as a result of CIS' policy of rejecting concurrently-filed I-485
9 applications.

10 Plaintiffs' have adequately shown that the putative class is numerous. CIS
11 estimates that 3,230 organizations will file I-360 petitions this year, a number which understates
12 the number of employee immigrants involved. See 72 Fed. Reg. 20442, 20448-50 (April 25,
13 2007). All putative class members were allegedly precluded from seeking adjustment of status
14 because of defendants' discriminatory and unlawful policy: plaintiffs have not alleged, and need
15 not show, that each class member is or will actually become ineligible for adjustment of status.
16 Because plaintiffs have described a large group of similarly-situated individuals, joinder would
17 be impractical and plaintiffs have met their burden of establishing numerosity.

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19 **Fed. R. Civ. P. 23(a)(3) : Typicality**

20 The proposed class is comprised of individuals currently living in the United
21 States who are the beneficiaries of I-360 petitions filed on their behalf and who would be
22 eligible to file an I-485 application but for CIS' policy against concurrent filing. The seven

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¹ After plaintiffs filed and defendants opposed the motion for class certification, plaintiffs
25 submitted a motion to amend their complaint to add additional parties. Plaintiffs have not yet been
26 granted leave to file a second amended complaint, and, for purposes of this motion, the Court has
considered the allegations of and parties to the currently-operative pleading.

1 named plaintiffs no longer fall within this class definition: six of the plaintiffs are now eligible
2 to file their I-485 applications and one is barred under 8 U.S.C. § 1255(a), not 8 C.F.R.
3 § 245.2(a)(2)(i)(B). Because “a class representative must be part of the class,” typicality does
4 not exist. Gen. Tel. Co. v. Falcon, 457 U.S. 147, 156 (1982).

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6 Because plaintiffs have failed to establish typicality, the Court need not determine
7 whether plaintiffs will adequately represent the interests of absent class members or whether a
8 class action can be maintained under Fed. R. Civ. P. 23(b).

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10 For all of the foregoing reasons, plaintiff’s motion for class certification is
11 DENIED.

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13 Dated this 30th day of April, 2008.

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16 Robert S. Lasnik
17 United States District Judge
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