**FAQ on Court’s Decision**

Thank you for all of your questions.

**The Court has decided against us. Now what?**

Because the court ruled against the 36 named plaintiffs before reaching the issue of whether to certify the class, this means that the decision has no legal effect beyond the 36 named plaintiffs. The 36 named plaintiffs can appeal the decision. (This is the subject of a separate letter I am sending to the plaintiffs.) If you are in the class of 22,000 and were not one of the named plaintiffs, you may initiate your own lawsuit against the Department of State. I am not advocating for or against the commencement of additional lawsuits; I am only confirming that it is possible.

**The Court stated that the State Department’s decision to take no further action on visa applications submitted by selectees after being notified of winning had legal effect and therefore was final agency action. Can that help me?**

Before answering that question, it is important to understand the two distinct aspects of a lawsuit: 1) procedural/jurisdiction; and 2) substantive. A court will only reach the substantive aspect – in our case, whether the State Department acted properly in invalidating the results – if the procedural aspect has been satisfied. For our purposes, the procedural aspect related to 1) standing and 2) final agency action. Very generally, standing means that a party must show it has a direct connection to the case and suffered concrete injury. Final agency action is one of the requirements of the Administrative Procedure Act. The idea behind it is that a court should not prematurely intervene in an agency action: it must be ripe and final – with legal effect or consequence - to warrant judicial review. On both of these issues, the Court found in our favor.

However, a finding in our favor on these procedural issues only allowed the court to take the next step: to review the merits of our case. These favorable procedural findings do not vest specific substantive, enforceable rights against the Department of State. Unfortunately, the Court ruled against us on the merits of the case.

**On what basis did the Court make its decision?**

The decision is very lengthy, but in essence, the Judge ruled that the Department of State properly treated the lottery results as void because it did not comply with the regulatory requirement “Upon completion of the numbering of all petitions, all numbers assigned for each region will be separately rank-ordered at random by a computer using standard computer software for that purpose.” Because of the programming error, according to the Judge, the randomization procedure was not adhered to and therefore the State Department acted properly in invalidating the results. This holding is narrow and will be very, very difficult to challenge on appeal.

**What about this theory of equitable estoppel for those who acted to their detriment, such as paying fees to adjust status, based on their notification?**

Michael Piston and I considered and reviewed in depth the various possible theories and grounds for challenging the Department of State’s action while we were preparing and prosecuting this case. As mentioned above, if someone wishes to file a lawsuit, he or she may pursue any theory that they feel is warranted.

**I paid fees to adjust my status but have not yet received a refund. Why not?**

The Department of State has announced that it will refund these fees. If you have not received a refund by mid-August, please contact me at [white@bridgewest.com](mailto:white@bridgewest.com)

**Why didn’t we have an expert testify at the trial?**

Before the hearing, we personally interviewed three statisticians with a view towards possibly having them testify. One expert was from Harvard; another was the head of an analytics consulting company (and a graduate of Penn); and the third is based in Washington, D.C. with more than 30 years of experience. We all reached the conclusion that their testimony would not be as definitive as necessary to make a difference in the case. Because the decision was primarily based on the Department of State’s failure to adhere to its randomization process, it is highly unlikely that an expert would have made any difference whatsoever.

**Can I have a problem in obtaining a visa to visit the United States because I am one of the 22,000?**

Firstly, it is important to distinguish among types of visas. Student (F-1), visitors (B), and exchange (J) visas requires a showing of a residence abroad and a lack of immigration intent. Work visas H-1B and L-1 allow for dual intent: an intent to immigrate and an intent to remain in the US temporarily to work. Investor/trader (E), extraordinary ability (O-1), athlete/artist/entertainment (P), and religious worker (R) temporary visas do not allow for dual intent, but do not require a residence abroad. What this means is that questions of immigrant intent are critically important when it comes to applications for student, visitors, and exchange visas.

The policy of the Department of State has been that mere registration in the Lottery is evidence of immigrant intent. Experience has shown, however, that mere registration is either disregarded by consular officers, or if considered, is only one of numerous factors in making a visa decision. Nevertheless, if someone wins the Lottery and acts on that selection – such as submitting paperwork to the Kentucky Consular Center – then the consular officer may believe that the person has shown a specific intent to immigrate to the United States. We have already been contacted by one individual among the 22,000 who submitted his application to KCC and was recently denied a visa. Previously, he had received four visas without a problem; while the consular officer did not tell him explicitly the reason for the denial, the consular officer was aware of his participation in the Lottery and the applicant strongly suspects that his submission of documents to KCC was the determinative factor in rejecting his visa.

This of course is a silly policy: individuals in such a situation have expressed a desire to legally immigrate to the U.S., not stay behind at all costs (this individual had a chance to do so on several occasions). Such a policy – if to be applied against the 22,000 – would be an outrage: first, to promise the ability to proceed with the immigration process, then to punish them for acting on that promise. Moreover, the Court received assurances from the State Department that “their temporary notoriety as lottery winners will not inure to their detriment in future matters concerning their status.” We will continue to liaise with the Department of State on this issue, so if you have been or will be denied a visa in the future and believe that the reason relates to your selection in the Lottery, please contact me at [white@bridgewest.com](mailto:white@bridgewest.com)

**What is the likelihood of Congress stepping in to rectify this injustice?**

It would be very difficult to convince Congress to pass a special bill or include a provision in another bill enabling the 22,000 to pursue immigrant visas. The Lottery program is not popular in Congress – there is talk of abolishing it; there is no strong constituency to lobby for such a provision; and there are other immigrant bills and groups competing for the attention of Congress (as well as higher priority issues, such as the economy and the national debt). On the plus side, there are several compelling reasons for Congress to act: 1) this fiasco is a black eye for US public image; 2) 22,000 have played by the rules and suffered as a result; 3) the State Department admits its negligence in creating this situation; 4) the Office of Inspector General is investigating the Department’s misfeasance; 5) the *Washington Post*, one of the most influential newspapers in the United States, has written a positive editorial calling for congressional action to allocate visas to the 22,000; and 6) there have been unused Lottery visas in past years – totaling approximately 34,000 over the past ten years - so that any new allocation would be, in effect, utilizing past unused visas. In any event, a campaign to get Congress to act would require a tremendously strong, concerted effort by the 22,000.