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6 **United States District Court**
7 **For the Central District of California**
8 **Western Division**
9

10 Pierre Genevier | **No: CV 08-5681 AG (PLA)**
11 | **Plaintiff** | **Objections to the**
12 **V.** | **Report & Recommendation**
13 | **of Magistrate Judge**
14 Commissioner of Social Security | **With Memorandum of**
15 **Defendant** | **Points and Authorities**

16 **To the Honorable Judges Paul Abrams and Andrew Guilford**

17 Plaintiff, Pierre Genevier, presents the following objections to the
18 report and recommendation (R&R) of Magistrate Judge Abrams:

19 1)_ Unlike Judge Abrams writes it and/or **implies it** on page 8 line 12
20 and note 8, page 9 line 2 and 9-10, page 6 line 22-27, the regulation **20 CFR**
21 **416.1618 (d)** does **not** require that the INS verifies if the document (s) is
22 (are) evidence (s) of a specific ‘accepted’ status, **the SSA knows the status**
23 **from the document itself already. 20 CFR 416.1618 (d)** requires the SSA
24 administration to verify that (and to pay the benefits if) the document (s)
25 presented is (are) found to be ‘currently valid’ by the INS. And in this
26 case the INS (USCIS) confirmed that plaintiff’s A3 refugee EA card was
27 ‘**currently valid**’ on 10-5-05 as required by 20 CFR 416.1618 (d) (3) (ii),

1 which was enough to pay the SSI. In fact the SSA had accepted this G845
2 verification form on 10-5-05 as sufficient to start (on 10-18-05) the
3 **medical evaluation process at the DSS** (and indirectly as sufficient to pay
4 the benefits) **at first at least**, so the (8 months) later denial of benefits (on
5 June 15 2006) on the ground that plaintiff was not a qualified alien (refugee)
6 **was even more unjustified and dishonest.**

7 2)_ The fact that ALJ Reich had the 2 pages '*refugee*' verification of
8 status form dated 9-5-02 and pretended she had only one page was not a
9 harmless error because this document **listing plaintiff as a refugee** is
10 accepted by the 20 CFR 416.1618 (d) (3) (i) regulation; and it was found to
11 be '*currently valid*' **by transitivity** when the A3 **refugee** EA card was found
12 to be '*currently valid*', so it was/is an additional proof of plaintiff 's eligibility
13 for SSI that creates (d) a preponderance of evidence in plaintiff's favor.

14 3)_ Judge Abrams forgets to take into consideration the letter
15 addressed to Mr. Christian, USCIS National Refugee Center Director [SSA
16 rec. 249-252] sent after Mr. Christian requested plaintiff's refugee status
17 evidence [SSA rec. 246-247] **although it is a critical evidence** that the INS
18 National Refugee Center Director accepted plaintiff 's evidences
19 (verification of status dated 9-5-02, ALJ Tolentino's decision,) as proof of
20 his refugee status (and applied the collateral estoppels principle) to **issue the A3 refugee**
21 **EA card in 12-10-04**, just few months before plaintiff's SSI application.

22 4)_ Judge Abrams also forgets to take into consideration the USCIS
23 information letter attached to EA cards presented in the motion for summary
24 judgment (MSJ) exhibits 1 which clearly explains that the EA card is an
25 evidence of the alien status, meaning that plaintiff's A3 refugee EA card is
26 an evidence of his refugee status [and there is no need to ask the INS
27 (USCIS) for this information again it is obvious].

1 **Memorandum of Points and Authorities.**

2 **I Remarks on the MJ Abrams' Statement of Facts.**

3 Plaintiff will only point out some of the critical errors of facts and
4 omissions in MJ Abrams' R&R to simplify the work of the Court.

5 **1)_In the back ground facts section** [R&R p. 2 line 12] and later in
6 the R&R, Judge Abrams forgets to mention that after the SSA received the
7 G845 form from the INS **on 10-5-05** confirming that plaintiff's A3 Refugee
8 EA card **was 'currently valid'** [on **10-5-05** since it was valid until 12-9-05],
9 it rightly accepted this so-called 2nd INS verification of information as
10 sufficient to start the medical evaluation process (and to pay the benefits), **on**
11 **10-18-05** (again no medical evaluation should be started or medical test
12 purchased if the alien is not a qualified alien 20 CFR 919b). It is only on
13 **June 15 2006 (8 months later)**, after plaintiff disability had been renewed
14 several times by county mandated doctors (over 18 months almost, more
15 than a year) and after there were therefore no valid **medical** reasons to deny
16 him the SSI benefits that the SSA employees pretended that plaintiff's
17 refugee documents were not sufficient to find him eligible and denied the
18 SSI benefits [SSA rec. 76-85, see request for reconsideration of 6-15-06
19 decision].

20 **2) MJ Abrams also forgets** to mention and to take into consideration
21 the USCIS information letter attached to EA cards presented in the motion
22 for summary judgment (MSJ) exhibits 1 which clearly explains that the EA
23 card is an evidence of the alien status; meaning here that plaintiff's A3
24 refugee EA card is an evidence of his refugee status [and there is no need to
25 ask the INS (USCIS) for this information again, it is obvious].

26 **3) As the result of these 2 omissions and his incorrect reading of**
27 **20 CFR 416.16128 d, the Magistrate Judge makes several incorrect**

1 statements of facts in his report [R&R p. 6 line 25:

2 ‘*the SSA attempted **two times** to verify plaintiff’s alleged refugee status before*
3 *denying plaintiff application... **INS did not provide the requisite information on either***
4 ***occasion.**’* ; page 8 line 11 ‘*On October 5, 2005, INS responded that the Card was*
5 *valid as to plaintiff’s temporary employment status, but the INS did not verify that he had*
6 *refugee status’*; page 9 line 2 ‘*the SSA was not permitted to grant him SSI payments*
7 *because his alleged status was never verified’*; page 9 line 11 ‘*INS did not verify*
8 *plaintiff’s alleged refugee status, and without proper verification, the SSA was not*
9 *permitted to grant SSI ...’*].

10
11 The purpose of the G845 verification for the SSA is, according to 20
12 CFR 416.1618 (d) (3) (ii) (see below), only to verify if the document, A3
13 refugee EA card in this case, is ‘**currently valid**’, so the INS (USCIS) **had**
14 **no reason** to verify anything else or to put any other information about the
15 meaning of the card (or to mark the box stating ‘*this document relates to an*
16 *alien having been granted asylum/refugee status in the US*’ on the G845
17 form) [the meaning of the card was already obvious for the SSA, A3 is the
18 refugee category and the SSA knows it (as well as the fact that the card is an
19 evidence of status (MSJ exh. 1), especially when they are given the meaning
20 of the different alien categories as plaintiff did].

21 Concerning the 2 attempts to verify plaintiff information: the SSA
22 **first** attempted to verify plaintiff’s A3 Ea card’s validity via computer (with
23 SAVE system as required); and it did not work because as explained in the
24 letter (SSA rec. 249-252) to the USCIS National Refuge Center Director,
25 Mr. Christian, who issued plaintiff’s refugee A3 EA card, there is a
26 discrepancy on the INS computer record [the word ‘refugee’ has been
27 fraudulently erased between 9-5-02 and 11-30-02, it seems, see SSA rec.
28 107 for the INS computer record listing].

29 **But the second time** (or 2nd verification), the SSA attempted to verify
30 if the A3 refugee EA card was ‘**currently valid**’ with the G845 form, and the

1 INS (USCIS) did confirm that the A3 refugee card was '*currently valid*' on
2 10-5-05, which is the only requirement of the regulation as seen below [SSA
3 rec. 105, the G845 form states '*this document appears valid, and relates to*
4 *an alien authorized employment ..full-time...expires on 12-9-05*', the
5 important words for the SSA (and its regulation) are '*appears valid*' and
6 '*expires on 12-9-05*' meaning it was currently valid on 10-5-05 when it was
7 verified by the INS for eligibility purpose]. So MJ Abrams is wrong, **the**
8 **INS provided the requisite information the second time** [see below].

9 Again the Court will note that the SSA thought this 2nd verification was
10 enough as well since they started the medical evaluation process.

11 **4) The Magistrate Judge finally omits** to mention that plaintiff
12 presented a letter addressed to the USCIS National Refugee Center Director,
13 Mr. Christian, (SSA rec. 249-252) after Mr. Christian requested him to
14 present additional information on his refugee status (SSA rec. 246-247), and
15 that Mr. Christian used this letter and plaintiff's verification of status dated
16 9-5-02 and ALJ Tolentino's decision (and the collateral estoppels principle)
17 **to issue the refugee A3 EA card on 12-10-04**. So the 2 letters (to and from
18 Mr. Christian) and the A3 refugee EA card confirm (ed) that the USCIS
19 management **(a) was informed** of the INS computer discrepancy on
20 plaintiff's status, **(b) reviewed** the 2 documents presented by plaintiff to
21 support his refugee status (refugee verification of status, and ALJ
22 Tolentino's decision,), **(c) did not intend** to deport plaintiff, **and (d) found**
23 that these 2 documents were sufficient to evidence the refugee status and to
24 issue a A3 refugee EA card to plaintiff. All this just few (9) months before
25 the SSI application!

1 **II 20 CFR 416.1618 (d) requires the SSA administration to verify if the**
2 **documents presented are ‘currently valid’.**

3 20 CFR 416.1618 (d) states that the SSA Administration must verify
4 at the INS (USCIS) if (or find from the INS verification that) the documents
5 **presented are ‘currently valid’.**

6 20 CFR 416.1618 (d) (2) ‘If you give us any of the documents ... We will
7 *contact the Immigration and Naturalization Service to verify that the document you give*
8 *us is currently valid.’*

9 (3) ‘If you give us any of the documents ... we will contact the Immigration and
10 *Naturalization Service to verify that the document or other information **is currently valid.***
11 *We must also get information from the Immigration and Naturalization Service as to*
12 *whether that agency contemplates enforcing your departure.’*

13 ‘(i) If you have a document that shows that you have an INS status **that is valid**
14 **for an indefinite period** we will assume that the INS does not contemplate enforcing
15 your departure. Therefore, we will pay you benefits if you meet all other eligibility
16 requirements. If, based on the information we get from the INS, **we find that your**
17 **document is currently valid, we will consider this sufficient proof that the INS does**
18 **not contemplate enforcing your departure.** We will continue your benefits...

19 (ii) If you have a document that ‘**appears currently valid’** and shows you have an
20 **INS status for at least 1 year,** or that shows the INS is allowing you to remain in the
21 United States for a specified period due to conditions in your home country, **we will**
22 **assume that the INS does not contemplate enforcing your departure.** Therefore, we will
23 pay you benefits if you meet all other eligibility requirements. If, based on the
24 information we get from the INS, **we learn that your document is currently**
25 **valid** and ..., we will continue your benefits.’

26 The 20 CFR 416.1618 (d) regulation therefore clearly states that the
27 SSA must verify if the document is **currently valid**, not if the document is
28 an evidence of qualified status, again this is obvious from the document.

29 The G845 form used by the SSA and filed out by the USCIS (SSA rec. 105-
30 106) confirmed that plaintiff’s ‘***A3 refugee EA card***’ was ‘***currently valid***’
31 on 10-5-05, and the ‘***A3 refugee EA card***’ showed that plaintiff had the
32 refugee status for at least 1 year, which **was all that was required** by the
33 SSA 20 CFR 416.1618 (d) (3) (ii) regulation, and for the SSA to find
34 plaintiff ‘s eligible for SSI [As seen above the regulation does **not** require

1 the INS to verify that the document is an evidence of a qualified status, **or to**
2 **mark the box stating** *'this document relates to an alien having been*
3 *granted asylum/refugee status in the US'* on the G845 form; it is
4 evident/obvious already from the A3 refugee EA card that it relates to an
5 alien granted refugee status; as the USCIS explained in its information letter
6 attached to EA cards, the EA card is an evidence of the alien status (see MSJ
7 exh. 1). It was also obvious that the INS (USCIS) did not contemplate to
8 deport plaintiff when the Director of the USCIS National Refugee Center
9 confirmed plaintiff 's refugee status just few months before the SSI
10 application, and again here given that plaintiff presented a 1 year A3 refugee
11 EA card, the SSA had to **'assume that the INS did not contemplate**
12 **enforcing plaintiff's departure'** (see regulation above)!].

13 Again MJ Abrams omitted to take into consideration the exhibits 1 of
14 the motion for summary judgment (MSJ) giving the USCIS explanation
15 about the EA card, **and he does not read the regulation properly.** And
16 again, in this case the SSA rightfully found this G845 verification sufficient
17 **at first** (from 10-18-05 to 6-15-06) to find plaintiff eligible when it started the
18 medical evaluation process and it bought a medical examination because
19 again according to 20 CFR 416.919b *'no medical examination should be*
20 *purchased if the claimant does not meet the immigration requirements'*.
21 [§416.919b *'When we will not purchase a consultative examination. We will not*
22 *purchase a consultative examination in situations including, but not limited to, the*
23 *following situations: (a) ...; (b) When you do not meet all of the nondisability*
24 *requirements.'*]

25 The verification of status dated 9-5-02 listing plaintiff as a refugee (a
26 qualified status) **was also an accepted document** according to 20 CFR

1 416.1618 (d) (3) (i) as seen above, and it was found to be ‘*currently valid*’
2 **by transitivity** when the INS found the A3 **refugee** EA card ‘*currently*
3 *valid*’, so the error of ALJ Reich on this document was/is not a harmless
4 error since this document creates (d) **a preponderance of evidence for**
5 **plaintiff’s eligibility for SSI**, especially after reading the letter addressed to
6 Mr. Christian who issued the A3 refugee EA card in 2004 based on this
7 verification of status dated 9-5-02 listing him as refugee and on the collateral
8 estoppels principle. [It would be absurd for the SSA to ask the INS status
9 verifier: ‘*when you wrote A3 on this alien EA card, did you mean category*
10 *A3 for refugee or did you mean category C08 for asylum seeker?*’; or for the
11 SSA to ask the status verifier “*when you write ‘the alien is legally present in*
12 *the US and other status (specify) REFUGEE, and is entitled to reside in the*
13 *US for an indefinite period’ on the verification of status dated 9-5-02, did*
14 *you mean ‘Refugee’ as defined in 8 CFR 101 (a) (42) or did you mean*
15 *‘Refugee’ as French Tourist?*”, **it is obvious that the documents presented**
16 **by plaintiff refer (red) to a refugee, and therefore that the only**
17 **necessary information from the INS (USCIS) is/was whether they**
18 **are/were currently valid!**

19
20 **III The SSA and DPSS (and DSS) employees are in privity with each**
21 **other since they represent the same government right and are**
22 **sufficiently close here to warrant applying estoppel.**

23 20 CFR 416.1450 (f) states: ‘*Collateral estoppel—issues previously*
24 *decided. An issue at your hearing may be a fact that has already been*
25 *decided in one of our previous determinations or decisions in a claim*
26 *involving the same parties, but arising under a different title of the Act or*
27 *under the Federal Coal Mine Health and Safety Act. If this happens, the*
28 *administrative law judge will not consider the issue again, but will accept*

1 ***the factual finding made in the previous determination or decision unless***
2 *there are reasons to believe that it was wrong’.*

3 Finally, on page 9 note 9, MJ Abrams writes that the collateral
4 estoppels principle does not apply here because SSA and DSS are agencies
5 of two different governments, so they are not in privity with each other. But
6 this remark does not take into consideration the definition of in privity [MJ
7 Abrams must (or should) know]. **Privity** means: *‘the connection or*
8 *relationship between two parties, each having legally recognized interest in*
9 ***the same subject matter (such as a transaction, proceeding, or piece of property).’***

10 Here the SSA and LA County DPSS (and, CA DSS, USCIS and even
11 ICE office) employees **all have a legally recognized interest to grant or**
12 **deny the federally funded social program benefits (RCA and SSI) to**
13 eligible alien based on their *‘qualified’* immigration status or on the
14 evaluation of their immigration documents (EA card, verification of status, ,
15 - refugee documents in this case for RCA and SSI) [meaning the government
16 right to verify the alien status for eligibility to benefits’ purpose], and they
17 are all are *‘sufficiently close’* to warrant applying estoppel in this case, so
18 they are in privity with each other [see People v. Sims 32 Ca. 3d 468 (1982)].

19 In Sunshine Coal Co. v. Akins 310 US 381, 402-403, the Supreme
20 Court wrote : *‘there is privity between officers of the same government so*
21 *that a judgment in a suit between a party and a representative of the US is*
22 *res judicata in relitigation of the same issue between that party and*
23 *another officer of the government... The crucial point is whether or not in*
24 ***the earlier litigation the representative of the US had authority to***
25 ***represent its interest in a final adjudication of the issue in controversy’.***

26 Here the LAC DPSS is the representative of the US when it comes to
27 granting RCA (refugee) benefits just as the SSA is the US representative

1 when it comes to granting SSI , and both have the authority to *‘represent its*
2 *interest in a final adjudication of the issue in controversy’ – the*
3 *verification of an alien status for purpose of granting RCA and SSI*
4 *benefits; so they are in privity.*

5 It is also obvious **(1) that** the DSS and SSA employee administer the
6 SSI program together in cooperation with the LAC DPSS that pays the
7 interim assistance and with the USCIS status verifier office that controls the
8 alien the immigration documents; (2) that the SSA employees make exactly
9 the same evaluation of the alien status to grant or deny federally funded SSI
10 benefits as the LAC DPSS employees do for the RCA benefits, **and with the**
11 **help of the same INS (USCIS) status verifier office; and (3) that** SSA
12 Administrative Law Judge Reich does exactly the same verification of the
13 SSA employees’ work on this issue as ALJ Tolentino does of the DPSS
14 employees work; so as in People v. Sims 32 Ca. 3d 468 (1982) and *‘in view*
15 *of this close association between the county, the SSA, the DDS and the*
16 *USCIS in controlling the status of aliens for the grant of federally funded*
17 *social benefits, and the fact that the SSA and DPSS represents the federal*
18 *government right to grant or deny these SSI and RCA benefits, this Court*
19 *must find that the SSA and LAC DPSS (and DSS, USCIS, ICE) were/are*
20 *in privity with each other’*. ALJ Tolentino’s decision confirming plaintiff’s
21 refugee status and eligibility for RCA refugee benefits is sufficient for ALJ
22 Reich to find plaintiff a refugee eligible for SSI according to 20 CFR
23 416.1450. SSA ALJ Reich should not have even addressed the refugee
24 status issue, especially when the A3 refugee EA card confirmed that ALJ
25 Tolentino did not make any mistake on this issue, and was found to be
26 currently valid by the INS on 10-5-05. The motion for summary judgment
27 confirmed that the 2 other requirements for the collateral estoppels principle

1 to apply were met here; MJ Abrams did not question these points (there was
2 a fair hearing for the DPSS, and the 2 issues in question are identical).

3 **IV Conclusion.**

4 The INS (USCIS) did verify that the A3 refugee EA card [SSA rec.
5 106] was ‘**currently valid**’ on 10-5-05 (at the time of the application) and
6 given the documents presented (letter to and from Mr. Christian, verification
7 of status, ALJ Tolentino’s decision, and in particular the 1 year A3 refugee
8 EA Card) the SSA had to assume that the INS (USCIS) did not contemplate
9 plaintiff’s deportation, so the A3 refugee EA card was enough to issue the
10 benefits according to 20 CFR 416.1618 (d) (3) (ii).

11 Moreover, the refugee verification of status form dated 9-5-02 was
12 also an accepted document according to the regulation and was found **by**
13 **transitivity** to be currently valid in 10-5-05 when the A3 refugee EA card
14 was found to be currently valid, so there is/was a preponderance of evidence
15 supporting plaintiff’s eligibility and to establish ALJ Reich’s error. Finally,
16 SSA ALJ Reich should **not** have even addressed plaintiff’s refugee status
17 issue according to 20 CFR 416.1450 because the SSA and the DPSS (and
18 DSS, USCIS, ICE) employees **who represent the same federal**
19 **Government right (to verify the alien status for eligibility to government**
20 **benefits purpose)**, work in cooperation to grant these federally funded
21 benefits and are ‘sufficiently close’ to warrant applying estoppel in this case,
22 **are in privity with each other;** and DSS ALJ Tolentino’s decision
23 addressing this same issue for the RCA program was enough. And there is
24 no doubt that there is a preponderance of evidences that SSA ALJ Reich’s
25 decision was/is in error and that plaintiff is eligible for SSI as a refugee.

1 Plaintiff must ask again the SSA and USA office attorneys **(1) to do a**
2 **precise reading** of the 20 CFR 416.1618 d (as done above); **(2) to admit**
3 **the obvious** - that plaintiff's refugee documents (or evidences) made him
4 eligible for SSI according to 20 CFR 416.1618 regulation; **(3) to admit** that
5 the collateral estoppels principle applies in this case (as Mr. Christian
6 concluded) because the SSA, LAC DPSS (CA DSS, ICE and USCIS)
7 employees **are all in privity with each others** when they represent the same
8 government right to verify the status of an alien for eligibility to benefits'
9 purpose **and they work in cooperation with each other to grant the**
10 **federally funded benefits to eligible aliens**, and **(4) to order an immediate**
11 **payment** of SSI from 3-6-05 to now to avoid an appeal on obvious issues).
12

13 And, of course, (if they don't) plaintiff also respectfully requests that
14 the Magistrate Judge and District Judge **(1) reverse** the report and
15 recommendation conclusions, **(2) find** plaintiff eligible for SSI as refugee,
16 **(3) confirm** that the SSA, LAC DPSS (CA DSS, ICE and USCIS)
17 employees **are all in privity with each others** when they represent the same
18 government right to verify the status of an alien for benefits eligibility's
19 purpose and that the collateral estoppel applies in this case **(4) grant** the
20 motion for summary judgment, **(5) reverse** the SSA Commissioner's
21 decision, **and (6) order the immediate payment of SSI after so long from 3-**
22 **6-05 until now** (a new disability evaluation can be made later to determine if
23 further payment should be made after that).

24 Dated: November 16, 2009

25 Pierre Geneviev

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5
6 **United States District Court**
7 **For the Central District of California**
8 **Western Division**
9 **Proof Of Service**

10
11 I, the undersigned, certify and declare that, on November 16, 2009, I served
12 a true copy of the **Objection to Report & Recommendation of Magistrate**
13 **Judge with Memorandum of Points and Authorities, by fax and/or**
14 **email to:**

15
16 **Mrs. Lucille G. Meiss**, Region IX Chief Counsel, Office of Regional
17 Counsel and **Mrs. Mary Beth O’Connors**, 333 Market Street, Suite 1500,
18 San Francisco, CA 94105, fax.: (415) 744 0134.

19
20
21
22 I hereby certify under the penalty of perjury that the foregoing is true
23 and correct. I also certify that I don’t know anybody who can do the service
24 for me, and that I do not have any money to pay someone to do the service
25 for me.

26
27
28 Pierre Genevier