

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ImmigrationPortal.Com
5225 N. Wilson Blvd.
Arlington, VA 22201
An Unincorporated Association
Represented By:

Dr. Ram K. Grandhi
Director, Pre-doctoral Orthodontics
University of Missouri - Kansas City,
School of Dentistry
Kansas City, MO 64108

Kresna Hartandi
5212 Solomon Ct., Apt. A
Gurnee, IL 60031

Rajkumar Kandasamy
36325 Grand River, Apt. 203
Farmington, MI 48335

Kazuomi Kashii
80 2nd Street, Apt. 6
Los Altos, CA 94022

Vladimir Morozov
235 Columbia, Apt. 3L
Cambridge, MA

On behalf of ImmigrationPortal.Com,
Individually on their own behalf and on
behalf of their derivative beneficiaries, and
on behalf of all others similarly situated,

AND

Mathew Chacko
2400 South Glebe Road, Apt. 707
Arlington, VA 22206

COMPLAINT FOR MANDAMUS,
DECLARATORY AND INJUNCTIVE
RELIEF

CASE NUMBER 1:03CV02606

JUDGE: James Robertson

DECK TYPE: General Civil

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**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

Samrajya L. Kompella
2507 William Taft Court
Herndon, VA 20171

Savita Krishnamurthy
113 4th Street, SE, Apt. B
Washington, DC 20003

Rajah Kalipatnapu
4300 The Woods Drive, #1805
San Jose, CA 95316

Individually on their own behalf and on
behalf of their derivative beneficiaries, and
on behalf of all others similarly situated,

Plaintiffs,

VS.

Tom Ridge, Secretary
Office of the General Counsel
U.S. Department of Homeland Security
Washington DC 20258

U.S. Department of Homeland Security
Office of the General Counsel
U.S. Department of Homeland Security
Washington DC 20258

Eduardo Aguirre, Jr. Director
U.S. Citizenship and Immigration Services
425 Eye St. NW
Washington DC 20536

U.S. Citizenship and Immigration Services
425 Eye St. NW
Washington DC 20536

Donald Neufeld, Director
California Service Center
U.S. Citizenship & Immigration Services
24000 Avila Road, 2nd Flr. Room 2302
Laguna Niguel, CA 92677

Terry E. Way, Director
Nebraska Service Center
U.S. Citizenship & Immigration Services
850 "S" Street
Lincoln, Nebraska 68501

Evelyn Upchurch, Director
Texas Service Center
U.S. Citizenship & Immigration Services
4141 St. Augustine Rd.
Dallas, TX 75227

Paul Novak, Director
Vermont Service Center
U.S. Citizenship & Immigration Services
75 Lower Weldon Street
St. Albans, VT 05479-0001

John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

United States of America
US Attorney
555 Fourth Street, NW
Washington, DC 20001
Defendants.

**COMPLAINT FOR MANDAMUS,
DECLARATORY AND INJUNCTIVE RELIEF**

The Plaintiffs present instant Complaint before this honorable court requesting relief against the Defendants for their actions and for their failure to act in accordance with law.

I. INTRODUCTION

1. This is a putative class action for relief pursuant to law including the US Constitution, Mandamus Act (28 U.S.C. § 1361), Declaratory Judgment Act (28 U.S.C. § 2201), and the Administrative Procedure Act (5 USC § 551 et seq.).

This action challenges the unreasonable delays in processing of Employment Based Adjustment of Status (AOS) Applications pending before all Service Centers of the United States Citizenship and Immigrations Services (USCIS).

This action further challenges the USCIS policy of requiring repeated applications for issuance of Employment Authorization and Advance Parole and for repeated Fingerprints during the pendency of the AOS Applications.

2. The process of obtaining employment based US Lawful Permanent Residence (“green card”), especially for Labor Certification based cases has become egregiously dilatory over the past few years. The delays in the process have now come to the point where in States like New York and California it can take six years or more to obtain a green card. In the interim, an employee is left with continuous dread and insecurity. Loss or diminishment of employment almost invariably means abrupt uprooting of years of life and career built in this country. In most cases, USCIS practice permits not even one day of grace period to arrange for passage out of USA - a state of affairs long way from the constitutional ideal of “...pursuit of happiness.”
3. Additionally, for labor certification based cases, which form a large majority of employment-based applications, any substantial career advancement is unwise. A promotion leads to nullification of the entire green card process, thereby necessitating starting the process all over again - resetting the six-year countdown back to zero. Thus, an employee is required to continue at the same job level year after year.

4. The Defendants have administered immigration laws by ad-hoc memoranda and unwritten policy rather than by regulation. Several laws remain inexactly implemented without regulations by the agencies for years. The will of Congress, articulated in various ameliorative statutes, has been thwarted by the lack of regulations and the atmosphere of uncertainty for employees.
5. A more detailed, but in no way exhaustive, enumeration of the harm suffered by the Plaintiffs and other members of the putative class is submitted under the caption "INJURY TO PLAINTIFFS."

II. JURISDICTION

6. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction) because Plaintiffs' claims arise under the Constitution and the laws of the United States, including, the Fifth Amendment to the U.S. Constitution, various provision of Title 8 U.S.C. § 1101 et seq. (Immigration & Nationality Act, "INA") and applicable regulations, policies and procedures arising thereunder. This Court may grant relief in this action under 28 U.S.C. § 1361 (Mandamus Act); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2201 (Declaratory Judgment Act); and under 5 U.S.C. § 701 et seq. (Administrative Procedures Act).
7. There are no administrative remedies available to Plaintiffs or class members to redress the grievances described herein. This action challenges only the Defendants' timeliness in adjudications, procedural policies and related practices, not the granting or denial of individual applications. Therefore, the jurisdictional limitations of 8 U.S.C. § 1252 are not applicable.

III. VENUE

8. Pursuant to 28 U.S.C. § 1391(e), venue is proper in this judicial district, because the Defendants operate within this district and maintain headquarters in Washington, D.C., and, because a substantial part of the events or omissions giving rise to the claims herein occurred in Washington, D.C.

IV. PARTIES

Plaintiffs

9. Plaintiff ImmigrationPortal.Com is an unincorporated association of individuals, including over 72,000 registered members and numerous other individuals who congregate online on the Internet primarily to share information regarding and seek redress against violations of Immigration and Nationality Laws.
10. Individual Plaintiff, Dr. Ram K. Grandhi, is an Assistant Professor and Pre-Doctoral Orthodontist by profession, whose AOS application is pending as of the date of this Complaint before Nebraska Service Center of the USCIS since April 16, 2001. Dr. Grandhi appears before this honorable court in his own behalf as an individual, on behalf of his derivative beneficiaries and as a registered member of ImmigrationPortal.Com on behalf and in representation of ImmigrationPortal.Com, and on behalf of all other similarly situated individuals.
11. Individual Plaintiff, Kresna Hartandi, is an Associate Chemist by profession, whose AOS application is pending as of the date of this Complaint before Nebraska Service Center of the USCIS since September 15, 2001. The plaintiff appears before this honorable court in his own behalf as an individual, on behalf of his derivative beneficiaries and as a registered member of

ImmigrationPortal.Com on behalf and in representation of

ImmigrationPortal.Com, and on behalf of all other similarly situated individuals.

12. Individual Plaintiff, Rajkumar Kandasamy, is a Software Engineer by profession, whose AOS application is pending as of the date of this Complaint before Vermont Service Center of the USCIS since October 7, 2002. The plaintiff appears before this honorable court in his own behalf as an individual, on behalf of his derivative beneficiaries and as a registered member of ImmigrationPortal.Com on behalf and in representation of ImmigrationPortal.Com, and on behalf of all other similarly situated individuals.

13. Individual Plaintiff, Kazuomi Kashii, is a Software Manager by profession, whose AOS application is pending as of the date of this Complaint before California Service Center of the USCIS since February 15, 2002. The plaintiff appears before this honorable court in his own behalf as an individual, on behalf of his derivative beneficiaries and as a registered member of ImmigrationPortal.Com on behalf and in representation of ImmigrationPortal.Com, and on behalf of all other similarly situated individuals.

14. Individual Plaintiff, Vladimir Morozov, is a Bioinformatics Scientist and Project Manager by profession whose AOS application is pending as of the date of this Complaint before Vermont Service Center of the USCIS since October 9, 2001. The plaintiff appears before this honorable court in his own behalf as an individual, on behalf of his derivative beneficiaries and as a registered member of ImmigrationPortal.Com on behalf and in representation of ImmigrationPortal.Com, and on behalf of all other similarly situated individuals.

15. Individual Plaintiff, Mathew Chacko, is an Operations Research professional, whose AOS application is pending as of the date of this Complaint before Vermont Service Center. The plaintiff appears before this honorable court in his own behalf as an individual, and on behalf of all other similarly situated individuals.
16. Individual Plaintiff, Samrajya L. Kompella, is an Accountant by profession, whose AOS application is pending as of the date of this Complaint before Vermont Service Center of the USCIS. The plaintiff appears before this honorable court in her own behalf as an individual, and on behalf of all other similarly situated individuals.
17. Individual Plaintiff, Savita Krishnamurthy, is a Technical Writer by profession, whose AOS application is pending as of the date of this Complaint before Vermont Service Center of the USCIS. The plaintiff appears before this honorable court in her own behalf as an individual, and on behalf of all other similarly situated individuals.
18. Individual Plaintiff, Rajah Kalipatnapu, is a Software Engineer, whose AOS application is pending as of the date of this Complaint before California Service Center of the USCIS. The plaintiff appears before this honorable court in his own behalf as an individual, and on behalf of all other similarly situated individuals.

Defendants

19. Tom Ridge is the Secretary of Homeland Security. Secretary Ridge, pursuant *inter alia*, to 8 U.S.C. § 1103 is charged with, among other matters, administering

the USCIS and the implementing and enforcing the Immigration and Nationality Act. As such, he has ultimate decision-making authority over the matters alleged in this Complaint.

20. John Ashcroft is the Attorney General of the United States. Pursuant, *inter alia*, to 8 U.S.C § 1103, he is charged with controlling determination of all issues of law pertaining to immigration and with representing the United States of America in various legal matters.

21. Eduardo Aguirre, Jr., is the Director of USCIS of the DHS. In his capacity as the Director of BCIS, Mr. Aguirre is responsible for the administration of immigration benefits and services including the processing of citizenship applications and family and employment-based petitions. As such, he has decision-making authority over the matters alleged in this Complaint.

22. Donald Neufeld, is the Director of the California Service Center of USCIS of the DHS. In his capacity as the Director of the California Service Center, USCIS, Mr. Neufeld is responsible for the administration of immigration benefits and services including the processing of citizenship applications and family and employment-based petitions. As such, he has decision-making authority over some of the matters alleged in this Complaint.

23. Terry E. Way, is the Director of the Nebraska Service Center of USCIS of the DHS. In his capacity as the Director of the Nebraska Service Center, USCIS, Mr. Way is responsible for the administration of immigration benefits and services including the processing of citizenship applications and family and employment-

based petitions. As such, he has decision-making authority over some of the matters alleged in this Complaint.

24. Evelyn Upchurch, is the Director of the Texas Service Center of USCIS of the DHS. In her capacity as the Director of the Texas Service Center, USCIS, Ms. Upchurch is responsible for the administration of immigration benefits and services including the processing of citizenship applications and family and employment-based petitions. As such, she has decision-making authority over some of the matters alleged in this Complaint.

25. Paul Novak, is the Director of the Vermont Service Center of USCIS of the DHS. In his capacity as the Director of the Vermont Service Center, USCIS, Mr. Novak is responsible for the administration of immigration benefits and services including the processing of citizenship applications and family and employment-based petitions. As such, he has decision-making authority over some of the matters alleged in this Complaint.

V. CLASS ACTION ALLEGATIONS

26. Pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), 23.2, and 17(b) some of the Plaintiffs bring this action on behalf of ImmigrationPortal.Com, themselves, their derivative beneficiary family members and all other similarly situated individuals. Plaintiff ImmigrationPortal.Com is an unincorporated association of individuals, including over 72,000 registered members and numerous other individuals who congregate online on the Internet primarily to share information regarding and seek redress against violations of Immigration and Nationality Laws.

27. Pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), some of the Plaintiffs bring this action on their own behalf, on behalf of their derivative beneficiary family members and all other similarly situated individuals.

28. The Plaintiff class consists of:

All persons and their derivative beneficiary family members whose Employment Based Adjustment of Status Applications are pending before the various Service Centers and other offices of the USCIS.

29. The above class, based upon the class members' affiliation with the community, ImmigrationPortal.Com, is divisible into two subclasses:

- i. all members of and other participants in the community ImmigrationPortal.Com and their derivative beneficiary family members whose Employment Based Adjustment of Status Applications are pending before the various Service Centers and other offices of the USCIS.
- ii. all persons - other than ImmigrationPortal.Com members and participants - and their derivative beneficiary family members whose Employment Based Adjustment of Status Applications are pending before the various Service Centers and other offices of the USCIS.

30. The membership in the class is so numerous that joinder of all members is impracticable. The combined number of individuals in the class is expected to be in thousands (readily ascertainable from the records of the defendants) spread all over the United States. The resultant difficulties in contacting and communicating with members of the class make joinder of all class members impractical.

31. There are questions of law and fact that are common to the named Plaintiffs and class members. Common questions of law include:
1. whether or not the delay in adjudicating AOS Applications is in violation of law; and
 2. whether or not USCIS policy of requiring repeated applications for issuance Employment Authorization and for Fingerprints during the pendency of the AOS Applications is in violation of law.
32. The claims of the named Plaintiffs are typical of the claims of the class. Plaintiffs know of no conflict between their interests and those of the class they seek to represent. In defending their own rights, the individual Plaintiffs will defend the rights of all proposed class members.
33. The named Plaintiffs are adequate representatives of the class. Defendants have acted on grounds generally applicable to each member of the class.
34. Adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of the other members not parties to the adjudications.
35. Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.
36. Defendant, USCIS, has offices throughout the United States, and as noted above, there are several thousands of members in each class. There is no assurance that, if class members prevailed in individual suits, the Defendants would or could

conform their conduct to matters beyond those adjudicated. The prosecution of separate actions by individual class members would also create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for the Defendants.

VI. FACTS

37. The Plaintiffs have validly filed AOS Applications that are currently pending before various Service Centers and offices of the USCIS.
38. The Plaintiffs are eligible to receive an immigrant visa and are admissible to the United States for permanent residence.
39. An immigrant visa was immediately available to the Plaintiffs at the time their AOS applications were filed.
40. The adjudication of these applications are likely to take from approximately two to three years according to the data supplied publicly by USCIS. This data changes every month and can be found online at <https://egov.immigration.gov/graphics/cris/jsps/index.jsp?textFlag=N#>
41. Congress has clearly expressed an opinion that a reasonable time for AOS adjudications is approximately six months.
42. The Defendants have clearly exceeded the bounds of reasonableness in the time for adjudications.
43. During the pendency of the AOS Applications, it is the policy of the Defendants to require repeat Employment Authorization Documents as well as fingerprinting. This policy is arbitrary, capricious and in violation of law.

44. Plaintiffs have made numerous inquiries regarding the status of their cases ~~from~~ various Service Centers named in this action, but to no avail. The community at ImmigratinPortal.Com has also sent numerous petitions signed by thousands of its members and participants, again to no avail.

VII. RELEVANT LAW AND PROCEDURES

Employment-Based Categories

45. Under INA, the employment-based category is divided into five preferences or groupings. 8 U.S.C. § 1153(b).

46. The highest priority goes to first employment-based “priority workers” who consist of:

- a) Aliens with extraordinary ability;¹
- b) Outstanding professors and researchers; and
- c) Certain multinational executives and managers subject to international transfer to the United States.

47. The second employment-based preferences include professionals holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit the national economy, cultural or educational interests, or welfare of the United States.

(A) ¹An alien is described in this paragraph if—

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

48. The third employment-based preference include certain professional, skilled and unskilled workers, where qualified workers are not available in the United States.
49. The fourth employment-based preference includes certain special immigrants, including ministers of religion.
50. The fifth employment-based category includes alien investors who create or maintain at least ten jobs in USA, none of which can be for their own family members.

Timeliness Requirements and Consequences

51. Section 202 (8 U.S.C § 1571) of the Title II² of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21) clearly lays down the parameters of reasonableness in immigration adjudications, stating: “[i]t is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application.”
52. As of December 2003, the Service Centers have delays ranging from almost two years to almost three years in AOS Applications.
53. Section 204 of AC21 (8 U.S.C § 1573) mandates that the “Attorney General shall take such measures as may be necessary to reduce the backlog in the processing of immigration benefit applications, with the objective of the total elimination of the backlog not later than one year after the date of enactment of this Act.” That Section also mandates that futures backlogs must be prevented and infrastructure improvements must be made for effective provision of immigration services.

² Title II of AC21 was independently captioned: Immigration Services and Infrastructure Improvements Act of 2000.

54. AC21 was enacted on 17 October 2000, more than three years ago. So far, there have been no improvements in processing times or infrastructure. The Defendants have even failed to promulgate regulations that would at least permit orderly administration of laws and procedures.
55. Defendants are also required by 5 U.S.C. § 555 "within a reasonable time . . . to conclude a matter presented . . ."
56. All applicants for AOS are in the United States on nonimmigrant status such as H, L, O, etc. 8 U.S.C. § 1101. After going through appropriate procedures, individuals may apply to "adjust" their status to that of lawful permanent residence (LPR or green card status). 8 U.S.C. § 1152. LPRs are known colloquially as people who hold "green cards."
57. Lawful permanent resident status confers many advantages over nonimmigrant status. As the name implies, LPRs have the privilege of residing and working permanently in the United States. 8 U.S.C. § 1101(a)(20). They may travel outside the United States freely and generally are readmitted to the United States automatically. 8 U.S.C. § 1101(a)(13)(C). They may petition to immigrate close family members. 8 U.S.C. § 1151, 8 U.S.C. § 1153.
58. LPRs may retain their LPR status (or their "green card") for the rest of their lives or, after five years of LPR status, they may apply to "naturalize," that is, to become a United States citizen. 8 U.S.C. § 1427(a). Citizenship conveys many benefits over LPR status. Citizens may vote; they may apply for and receive a United States passport; they cannot be deported from the United States; and they may travel freely into and out of the United States. They may petition to

immigrate family members, including elderly parents, as "immediate relatives," thus eliminating many long waiting periods. 8 U.S.C. § 1151(b)(2)(A)(i). They may hold many jobs that are restricted to United States citizens. They may run for public office.

59. LPR status is a prerequisite for naturalization. Thus, any delay in adjusting to LPR status also delays eventual naturalization.

Employment Authorization

60. It is unlawful for an employer to hire an alien who is not authorized to work in the United States. 8 U.S.C. § 1324a. AOS applicants are authorized to work in the United States upon approval of their Employment Authorization Document ("EAD").
61. Neither the statute, nor the regulations provide that EADs expire.
62. Defendants limit the duration of AOS applicants' EAD to one year.
63. Before October 1998, the renewal filing fee for the I-765 was \$70 per renewal. From October 1998 until February 18, 2002, the fee had been \$100 per renewal per year. On February 19, 2002, the renewal fee increased to \$120 per year.
64. Because of Defendants' delays in processing EAD applications, most AOS applicants must apply to renew their EADs before they expire and, then, must hope that the Defendants process the renewal application before their current EAD expires. Some Plaintiffs and class members have gone through considerable suffering because of the Defendants' delays in approving the EAD renewals.
65. In some cases where the EAD card is not renewed by the USCIS before the expiry of the previous one, the AOS applicant has to immediately discontinue

working thereby causing economic loss to the employer and the AOS applicant himself.

66. As AOS applicants now wait several years to adjust their status, the cost and inconvenience of filing for initial and renewal EADs is considerable. In addition, the durational limit of the EAD causes needless hardship on AOS applicants.

Repeated Fingerprints

67. The Defendants require AOS applicants to be fingerprinted before their adjustment applications are granted. AOS applicants who are 14 years old or older must pay a fingerprint processing fee and must appear at an USCIS "Application Support Center" (ASC) to be fingerprinted. The fingerprint processing fee was \$25; on February 1, 2002, the USCIS increased the fee to \$50.
68. After 15 months, the Defendants consider the fingerprints to have "expired." The Defendants have obligated the Plaintiffs and class members to be fingerprinted again before their adjustment applications have been approved, at additional expense and inconvenience, even though, of course, their fingerprints have not changed.

VIII. INJURY TO PLAINTIFFS

69. The Defendants have administered the immigration laws by ad-hoc memoranda and unwritten policy rather than by regulation. Several laws remain as bare statutes without implementing regulations. The lack of regulations and the atmosphere of uncertainty have thwarted the will of Congress articulated in various ameliorative statutes. Because of lack of published regulations, there have been several instances where class members were denied AOS Applications based upon USCIS' misunderstanding of its own interpretation. The

reinstatement process in such cases is time consuming, costly and nerve wracking for the class members.

70. Because Plaintiffs and class members have waited and will continue to wait significantly longer to become LPRs, they have been and are unable to stabilize their lives. Their status here has been and will continue to be uncertain. Some Plaintiffs and class members have been and will continue to be afraid to accumulate assets in the United States because they fear they may ultimately lose permanent residence status and may be required to depart. They have not been able to and cannot plan because they have not known and do not know when they will become permanent residents.
71. Some Plaintiffs and class members have suffered and will continue to suffer considerable setbacks in their careers, because of delayed adjudications.
72. Most Plaintiffs have lost significant work time and will lose significant work time while pursuing their adjustment applications, making inquiries at USCIS offices, meeting with lawyers, applying for renewals and travel documents, and otherwise pursuing their delayed permanent residency.
73. As stated earlier, the process of obtaining green card can take as much as over six years. Two years or more years of this can be attributed to AOS. In the meantime, most members of the class are either in a nonimmigrant visa status or in a deemed legal status because of the pendency of the AOS Application. Many class members recognize and dread the fact that loss of employment almost invariably would mean uprooting of years of life and career built in this country,

without there being even one day of grace period given to arrange for passage out of USA.

74. For labor certification based cases, which form a large majority of employment based applications, any substantial career advancement is unwise. A promotion leads to nullification of the entire green card process, thereby necessitating starting the process all over again. Thus, an employee is required to continue at the same job level year after year.
75. Some colleges and universities have considered and will continue to consider class members' children to be out-of-state residents and hence charged them out-of-state tuition. The class members have had and will continue to have other hardships involving scholarships for higher education.
76. Because they have had to wait and will continue to have to wait many years to adjust their status, and because of Defendants' policies and practices as described herein, Plaintiffs and class members have had to and will continue to have to submit to repeated fingerprinting at considerable cost and inconvenience.
77. Because Plaintiffs and class members have not and will continue to not become LPRs when or as quickly as they should have, their naturalization has been delayed. Career setbacks are but one of a long list of harms suffered by Plaintiffs. To list just a few, they have been and will continue to be unable to vote and participate fully in our democracy. They have been and will continue to be unable to petition for their family members to immigrate to the United States as immediate relatives.

78. Because Defendants have implemented unfair and illegal procedures, many Plaintiffs and class members have had to and will continue to have to obtain EADs and pay for repeated renewals of those EADs, resulting in significant out-of-pocket expense, including attorneys' fees, inconvenience, and loss of wages.
79. Some Plaintiffs and class members have suffered and will continue to suffer lapses between receiving EADs because of USCIS delays in processing their renewals. These lapses have resulted in and will continue to result in loss of income and risk of lost of jobs.
80. Because Defendants have implemented unfair and illegal procedures, many Plaintiffs and class members have had to and will continue to have to submit to repeated fingerprinting, resulting in significant out-of-pocket expense, including attorneys' fees, inconvenience, and loss of wages. Some of the class members have had to submit to two fingerprints within a span of a month. If a Plaintiff fails to appear for fingerprinting, there is a substantial risk that USCIS would consider their AOS Application to have been abandoned.
81. Delays in processing create greater possibility of error. There have been several instances of errors, followed by confusion and consternation among the AOS Applicants, then followed after some time by corrections and apologies from Defendant USCIS.
82. Plaintiffs' and class members' rights to due process of law and equal protection under the Fifth Amendment to the United States Constitution have been and are being violated and will continue to be violated by Defendants' failures and policies and practices as described herein.

IX. GROUNDS FOR RELIEF

83. Defendants, despite having a duty to act within a reasonable time, have failed to process and adjudicate Plaintiffs' applications in a timely manner.
84. Defendant USCIS' duty to process Plaintiff's applications and adjudicate each Plaintiff's application "within a reasonable time" is a non-discretionary duty mandated by federal law and judicial precedent.
85. Defendant USCIS' conduct in failing to process Plaintiffs' applications and adjudicate these cases in a reasonably timely manner has caused unnecessary and injurious delays to Plaintiffs, in violation of their rights.
86. Plaintiffs have exhausted all administrative remedies available and have determined that no adequate remedy exists.
87. Defendants' policies and procedures requiring repeated EAD applications and fingerprints are illegal and unjust.

Count I.

Mandamus Action

28 U.S.C. § 1361

88. Plaintiffs incorporate by reference all submissions made hereinabove that are pertinent to this Count.
89. Defendants are charged with the mandatory responsibility of administering and implementing the Immigration and Nationality Act.
90. Defendants bear sole responsibility for timely adjudication of AOS Applications and for orderly attendant procedures.
91. Defendants have failed to discharge their mandated duties.

92. As a result, Plaintiffs and class members have suffered and continue to suffer irreparable harm and damages entitling them to declaratory, injunctive and other relief.

93. Plaintiffs have exhausted all possible administrative remedies.

94. There exists no other adequate remedy.

95. Strong humanitarian factors favor the grant of Mandamus relief.

Count II.

Fifth Amendment

96. Plaintiffs incorporate by reference all submissions made hereinabove that are pertinent to this Count.

97. Defendants' policies, practices and customs violate Plaintiffs' and class members' Fifth Amendment substantive and procedural due process rights protected by the US Constitution.

98. As a result, Plaintiffs and class members have suffered and continue to suffer irreparable harm and damages entitling them to declaratory, injunctive and other relief.

Count III.

Violation of INA

8 U.S.C § 1101 et seq.

99. Plaintiffs incorporate by reference all submissions made hereinabove that are pertinent to this Count.

100. Defendants' policies, practices and customs violate INA including § 204 of AC21 (8 U.S.C § 1573).

101. Defendants have failed to discharge their mandated duties.

102. As a result, Plaintiffs and class members have suffered and continue to suffer irreparable harm and damages entitling them to declaratory, injunctive and other relief.

Count IV.

Administrative Procedures Act

5 U.S.C. § 555 and 5 U.S.C. § 702 et seq.

103. Plaintiffs incorporate by reference all submissions made hereinabove that are pertinent to this Count.

104. By failing to render timely decisions and requiring repeated applications, Defendants' practices and procedures violate the Administrative Procedures Act and constitute agency action that is arbitrary and capricious, and not in accordance with law. 5 U.S.C. § 701 et seq., 702, 706 ("...agency action unlawfully withheld or unreasonably delayed" under §706(1)) and 5 U.S.C. § 555.

105. Defendants have failed to discharge their mandated official duties.

106. As a result, Plaintiffs and class members have suffered and continue to suffer irreparable harm and damages entitling them to declaratory, injunctive and other relief.

Count V.

Declaratory Judgment Act

28 U.S.C. § 2201

107. Plaintiffs incorporate by reference all submissions made hereinabove that are pertinent to this Count.

108. Plaintiffs contend that Defendants' actions and decisions relating to delays in AOS adjudications and attendant procedures are unconstitutional, violate the INA, and are arbitrary and capricious and seek a declaration to that effect under 28 U.S.C. § 2201.

109. Defendants have failed to discharge their mandated duties.

110. As a result, Plaintiffs and class members have suffered and continue to suffer irreparable harm and damages entitling them to declaratory, injunctive and other relief.

Count VI.

Equal Access to Justice Act

5 U.S.C. § 504 and 28 U.S.C. §2412

111. Plaintiffs incorporate by reference all submissions made hereinabove that are pertinent to this Count.

112. If they prevail, Plaintiffs will seek attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. §2412.

X. PRAYER FOR RELIEF

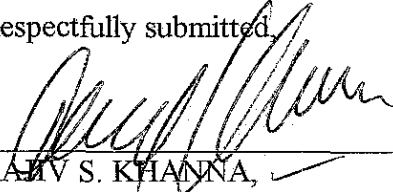
WHEREFORE, Plaintiffs respectfully pray that the honorable Court grant the following relief:

- i. Assume jurisdiction over this cause;
- ii. Enter an order pursuant to Rule 23 of the Federal Rules of Civil Procedure that this cause be maintained as a class action;
- iii. Declare that the Defendants' actions are an illegal, arbitrary and capricious abuse of discretion;
- iv. Declare that Defendants' failure to act is an illegal, arbitrary and capricious abuse of discretion;
- v. Enter Judgment ordering the Defendants to process Plaintiffs' pending Employment Based Adjustment of Status Applications;

- vi. Require the Defendants to ensure that appropriate procedures are implemented to eliminate future Employment Based Adjustment of Status backlogs;
- vii. Require the Defendants to eliminate repeated applications for issuance of Employment Authorization and Advance Parole and for repeated Fingerprints during the pendency of the Employment Based Adjustment of Status Applications;
- viii. Award Plaintiffs attorneys fees, costs and expenses under the Equal Access to Justice Act; and
- ix. Grant such other and further relief as this honorable Court deems just and appropriate.

Dated: 12/22/2003

Respectfully submitted,



RAJIV S. KHANNA,
Attorney for Plaintiffs
D.C. Bar No. 419023

Law Offices of Rajiv S. Khanna, P.C.
5225 N. Wilson Boulevard
Arlington, Virginia 22205
Phone: 703-908-4800, Extension 110
Facsimile: 703-908-4890
e-mail: rskhanna@immigration.com