Table of Contents

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ImmigrationPortal.Com, et al., Plaintiffs, V. Tom Ridge, et al., Defendants.	Civil Action: 03-2606 Judge James Robertson

PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CERTIFICATION OF CLASS ACTION

Plaintiffs, by and through undersigned counsel, respectfully submit this supplemental memorandum in support of their Motion for Certification of Class Action filed with the Court on March 10, 2004.

Plaintiffs' Submissions

1. The Proposed Class Satisfies the Commonality Requirement

In addition to the submissions made by the Plaintiffs in the Motion for Certification of Class Action, the Plaintiffs submit that contrary to their assertions in Court, Defendants have admitted several times during their depositions that essentially all Employment-Based Adjustment of Status ("EBAOS") applications involve the same practice, procedures and questions of law. The following common questions obtain across the entire putative class.

Common Question: Unreasonable Delay

Defendants admit that: All EBAOS applications involve the same issues and are treated alike; all security clearances are generally resolved within days; and the actual adjudication of the EBAOS applications takes minutes. It is then incomprehensible why it takes Defendants several years[1] to process EBAOS applications.

Defendants Admit That All EBAOS Applications Are Treated Alike For Processing

Paul Pierre, branch chief, USCIS, during his deposition conducted on August 6, 2004, stated:

> **Page 13:**
> Q. The process is the same for all employment-based applications, Mr. Pierre.
> A. Basically, yes, except as you know most employment-based—485's rely on I-140's, some rely on the 526, so there is a variety and there are some I-360's. It's a petition for special immigrants.
> Q. But generally it's the same process?
> A. Yes.
> (Pierre Dep. Page 13.)
>
> **Pages 42-43:**
> Q. Is there any difference in processing of I-485 applications whether they are concurrently filed or individually filed?
> A. As far as the qualification of the alien to demonstrate that they do merit the benefits for the 485, the requirement are the same whether they are concurrently filed or not.
> (Pierre Dep. Page 42, 43.)
>
> **Page 150:**
> A. Yes. Earlier you asked the question whether or not the life cycle of the underlying petitions for the 485 or the 485 itself is the same. I just want to go on the record as clarifying that generally for the 485, the steps that we take to adjudicate the 485 because we're looking at either admissibility or removability would be the same.
> (Pierre Dep. Page 150.)

[1] Until June 2004, the processing time for EBAOS was over as much as three years. Plaintiffs believe that the apparent reduction in backlog is more due to creative accounting, and less due to actual reduction in backlog.

Page 151:
Q. But not the 485 itself, the 485 itself involves the same criteria?
A. The 485 looks at the admissibility or removability.
Q. So, it does involve the same criteria?
A. It does target the same requirements, the same queries, the same reviews.
Q. So, the answer is yes, it does involve the same criteria?
A. Generally, yes.
(Pierre Dep. Page 151.)

Page 156:
Q. All I-485's are not the same?
A. Are all 485's the same?
Q. Is the processing not the same for all of them?
A. In so much as we are looking at inadmissibility or removability, we are looking at the same issue. However, looking at the same issue if we were to get let's say an alien who has a criminal record, that would further delay the 485 because we would have to clarify—get the J&C docs and so forth and so on.
(Pierre Dep. Page 156.)

Pages 156-157
Q. An I-485 involves the same adjudication no matter which preference category it comes from; is that correct?
A. Generally, yes, however, there are some differences. I will give you one example. Let's say ability to pay the profit wages. Under the reg—and I believe it's 214—we, the government, need to continue to look at ability to pay all the way to the time of adjustment. So, that would be the case for a 485 with an I-140 whereas that may not be the case with an I-485 and a 360 for a religious worker.
(Pierre Dep. Pages 156, 157.)

Page 168:
Q. All employment based 485 applications are the same?
A. Generally.
(Pierre Dep. Page 168.)

Attached hereto is **Exhibit A**, a more detailed extract of the relevant portions of said deposition.

Defendants assert that there are differences in the processing of the underlying petitions (Form I-140, I-360 and I-526), which create variations in the processing of the EBAOS applications. But an at-length questioning failed to reveal any substantial difference. During his deposition, Mr. Pierre could only cite one example of a minor difference in the processing of one subcategory within the category of Form I-140-based EBAOS applications, namely those in which there could be an issue regarding employer's ability to pay proffered wages, but only IF further evidence were requested. In such a situation, there could be an additional delay of 87 days. Mr. Pierre felt a further delay would be possible if the applicant were to request an extension to respond to the Request for Evidence. As a matter of fact, Defendants' own notices state that an extension to file a response to the Request for Evidence is not possible. Please see **Exhibit B**, copies of some Requests for Evidence clearly stating that an extension to file the response is not available.

It is thus clear that at most, one type of I-140-based EBAOS in which a Request for Evidence, if issued, could be delayed by a maximum of 87 days. That distinction is factually and legally insufficient to defeat commonality. The following excerpt from Mr. Pierre's deposition should be noted:

> **Pages 170-171:** (The following examination was conducted after Mr. Pierre claimed that there was one exception to the general commonality in all EBAOS applications.)
>
> BY MR. KHANNA:
> Q. Are there any other exceptions to the general rule that all employment based 485 applications are processed in the same manner?
> MR. KLINE: Okay. There's the question.

THE WITNESS: The answer to that is generally they are processed in the same manner looking principally into the issues of inadmissibility and removability.

BY MR. KHANNA.
Q. I still haven't received an answer. Is there any exception other than the continuing ability to pay wages in the employment based 485 application times?
A. None that I can think of right now other than the one that I gave you, that I offered, which is the ability to pay the profit wages.
MR. KHANNA: Would you check on that and get back with us to see if there is any other exceptions, sir?
MR. KLINE: No. We will review the transcript. If there are any changes that need to be made at the time the transcript is reviewed, we will do it.
(Pierre Dep. Pages 170, 171.)

Please refer to **Exhibit A**, a more detailed extract of the relevant portions of said deposition.

The Delay in Adjudicating EBAOS Applications is Unreasonable

Plaintiffs contend that the entire EBAOS adjudication process is fraught with delay. Plaintiffs further contend that the time between an EBAOS application is received and time it is taken up for adjudication is obviously unreasonable.

Defendants have admitted during their depositions the following facts:

There Are Three Kinds Of Security Checks – All Of Which Combined Take Only Days

The record developed so far demonstrates that security checks cannot justify the years of delay in the processing. Defendants admit that there are three types of security checks. Of these, two take only hours, minutes or even seconds to process. The third, FBI name checks, can take longer; approximately 45 days. Please refer to **Exhibit C,** an extract from Mr. Pierre's deposition, part of which is reproduced below:

Page 68:

Q. How long does it take for an average IBIS check to be performed or a lookout check to be performed?
Mr. Kline: If you know.
The Witness: I don't know the average, but it would vary.
By Mr. Khanna:
Q. Days, months, minutes?
A. Minutes, sometimes seconds.
Q. And these checks are performed within CIS service centers?
A. Yes.
(Pierre dep. Page 68.)

Page 70: (Referring to Name Checks)

Q. How long does that take?
A. It varies.
Q. Minutes, hours?
A. No. It takes longer than that. It can take days.
Q. It can take days? So the name checks procedure can take days you said?
A. Yes. But it's in a batch, so you send a batch of cases or names to be bounced against, say, the FBI database. It could take probably a month or so. It could be 45 days on the average for the name to come back, but it varies with the name. It could take longer. If there are glitches in the system, it could take longer.
(Pierre Dep. Page 70.)

Pages 70 -71:

Q. What is the third type of check, sir?
A. The third types of check for 485's are fingerprint checks.
Q. Could you describe how those are performed?
A. The case is received for the initial receipt. Once it's received, the name is dropped in a queue for scheduling at an ASC. And of course it varies by application support center. If there is a slot, the next available slot would be filled by the first one in the queue. So, in some application support centers, you may have it the next day.
… It's sent electronically to the FBI. The FBI receives it. Their computer runs it to see if there is a match. And generally that will take hours or a couple of days.
(Pierre dep. Pages 70,71.)

Adjudication of an EBAOS Application Takes Only Minutes

Defendants admit that it takes only minutes for an adjudicator to decide a case.

Please refer to **Exhibit D**, an extract from Mr. Pierre's deposition, part of which is reproduced below:

> **Page 62: (Referring to actual time required to adjudicate an EBAOS application)**
> Q. Do you have even ballpark figures? Was it hours, days, minutes?
> A. No, of course, not days. It was minutes, but we look at—usually when I estimate, I look at completions per hour.
> Q. Completions per hour?
> A. Yes.
> Q. So, the number of cases decided per hour?
> A. Yes.
> (Pierre dep. Page 62.)

Defendants Possess Sufficient Resources to Adjudicate Applications in a Timely Manner

Defendants also possess sufficient resources to timely adjudicate matters.

Please refer to **Exhibit E**, an extract from Mr. Pierre's deposition, part of which is reproduced below:

> **Page 93:**
> Q. Your answer as I understand it--let me rephrase the part that I need to rephrase. Correct me if I'm wrong, of course. Your answer is that as far as resources related to adjudicating officers are concerned, you have sufficient numbers in the pipeline today?
> A. To meet the backlog elimination plan goals.
> Q. So, you do not need to at least at this point hire any more adjudicating officers?
> A. In order to meet the backlog elimination plan goals, no.
> (Pierre dep. Page 93.)

Plaintiffs believe that Defendants appear to be resorting to whitewashing the legal infirmities of their action rather than taking meritorious corrective action. For instance, until June 2004, the Vermont Service Center was processing EBAOS applications

received by it on or before February 15, 2002. Attached hereto is **Exhibit F**, a copy of the Service Center Processing Dates for Vermont Posted June 23, 2004. Currently, the Vermont Service Center is processing EBAOS applications received by it on or before September 21, 2002. Attached hereto is **Exhibit G**, a copy of the Service Center Processing Dates for Vermont Service Center Posted September 22, 2004. Plaintiffs believe that this sudden reduction in backlog is more a result of creative accounting than of actual reduction in backlog. Nevertheless, keeping in view the times required in processing and adjudication as admittedly being days (not years), it is inconceivable that an average processing time of even two years could be reasonable. It should further be noted that for applications that are transferred to CIS District/Field Offices, as much as a year or more of additional processing time might be needed.

Other Common Questions

Defendants are acting illegally, arbitrarily and capriciously in failing to administer laws and policies in accord with statutory mandates contained, *inter alia*, in the American Competitiveness in the 21st Century Act of 2000 (codified as amended in various sections of 8 U.S.C., including 8 U.S.C. §§ 1571, 1154(j)) (2004) ("AC21"). Defendants are acting contrary to law and are neglecting to act in accordance with law in failing to articulate appropriate legal principles implementing AC21. Defendants are interpreting the provisions of AC21 in violation of the plain language and ameliorative intent of that statute.

Defendants' Policies and Practices Are Illegal, Arbitrary and Capricious

One instance of Defendants' arbitrary and capricious policy is the requirement that all EBAOS applicants submit new fingerprints every 15 months during the pendency

of their applications. Much to Plaintiffs' surprise and contrary to public knowledge, the number 15 was not a requirement of the Federal Bureau of Investigation. Defendants formulated that number for reasons that even they do not know. Mr. Pierre testified as to why fingerprints had to be obtained every 15 months:

> Q. Why is that, sir?
> A. Because until very recently we were not storing the prints, so, therefore, we -- it was a policy decision made by the agency by the former INS that if the print results are more than 15 months old-again, the 15 was a policy decision that was made - then we need to get an update of the person's files to make sure that there hasn't been any additional activity or criminal records created since the last time we fingerprinted that person. So, 15 was the number that INS working with other agencies and other stakeholders came up with.
> (Pierre Dep. Pages 53, 54.)

Attached hereto is **Exhibit H**, a more detailed extract of the relevant portions of said deposition.

As another illustration, Plaintiffs would like to bring to the Court's attention Section 106(c) of AC21 (8 U.S.C § 1154(j) (2004)). Pursuant to this provision of the law,[2] if an EBAOS application has been pending for 180 days, the applicant may change employers if the subsequent employment is in the "same" or "similar" occupation classification as the job described in the pending petition. AC21 was enacted in October 2000. To this day, Defendants have neglected to provide and publish meaningful guidelines for this law. Further, Defendants are implementing policies, practices and

---

[2] 8 USC § 1154
(j) Job flexibility for long delayed applicants for adjustment of status to permanent residence. A petition under subsection (a)(1)(D) for an individual whose application for adjustment of status pursuant to section 245 [8 USCS § 1255] has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

procedures that violate AC21. This environment combined with unreasonable delay has caused and continues to cause egregious injury to the Plaintiffs.

Defendants have settled into a practice of administering laws through ill-conceived and illegal *ad hoc* memoranda, issued in lieu of regulations, without inviting input from the stakeholders. During the pendency of the case at bar, Defendants, without any consultation with any of the stakeholders, issued a memorandum that, *inter alia*, violates AC21. During the deposition of Ms. Fujie Ohata, Plaintiffs specifically asked if any input was invited from the stakeholders before issuance of the Ohata Memorandum. Ms. Ohata admitted that no input from any of the stakeholders was invited:

> **Page 48:**
> Q. Very good. When a regulation, federal regulation is drafted, it is first issued—or it is first published in the Federal Register for public and stakeholders to comment upon. That way, we, the stakeholders, get our input into your process. But an Ohata memorandum, or a memorandum like this are never offered for public comment; is that correct?
> A. Not generally.
> Q. Ohata memorandum was not offered for public comment specifically?
> A. Not that I know of.
> (Ohata Dep. Page 48.)
>
> **Page 63:**
> Q. For the Yates memorandum, did you invite any input from the stakeholders?
> A. Not that I know of. This is policy memorandum and we don't generally ask for input from any stakeholders.
> (Ohata Dep. Page 63.)

Attached hereto is **Exhibit I**, a more detailed extract from the deposition of Ms. Fujie Ohata, Director of Service Center Operations, USCIS.

As submitted earlier, Ohata Memorandum dated March 31, 2004 (Exhibit 1 from deposition conducted on August 26, 2004) was brought into effect without offering the

same to the general public for notice and comments. This memorandum modified the earlier adjudicative process for concurrently filed I-140 and I-485s. The memorandum stated that for purposes of measuring and reporting local processing time for these forms, the local I-140 processing time will control and a concurrently filed I-485 will no longer be tracked based upon the local I-485 processing time. Attached please **Exhibit J**, copy of the Ohata Memorandum dated March 31, 2004. Plaintiffs contend that such tracking and reporting devices are a part of Defendants' creative accounting to promote an appearance of backlog reduction.

During depositions, Plaintiffs questioned Ms. Ohata about the discretion that had been left in the hands of the Service Center Directors to discontinue *prima facie* processing of any case that they chose. Please refer to **Exhibit K**, copy of the extract of Ms. Ohata's deposition conducted on August 26, 2004, part of which is reproduced below:

> Q. In this context, in the context of this question, the Service Center Director has an absolute discretion to discontinue concurrent processing if they so choose; is that correct?
> A. It says may discontinue to do prima facie review. Prima facie review. Not discontinue concurrent filing.
> (Ohata Dep. Page 52.)

It appears that as a direct result of the questions asked by Plaintiffs, Defendants issued a follow-up memorandum directed only to the issue raised in the deposition. Attached hereto is **Exhibit L**, copy of the memorandum dated September 16, 2004, issued by the Defendants. While Defendants' correction of their errors is to be applauded, this type of *ad hoc* rule-making by Defendants has created and continues to create an atmosphere of uncertainty for the putative class members, whose entire lives

depend upon the ill-considered and illegal practices of Defendants. The egregious injustice of this environment is further compounded by the fact that putative class members have no effective way to seek vindication of their legal rights through the Defendants.

Specific Common Questions Currently Presented

Specifically, the following common questions exist among the putative class members:

1. Are putative class members subjected to unreasonable delay in processing of EBAOS applications;
2. Are Defendants acting illegally, arbitrarily and capriciously in failing to administer laws and policies in accord with statutory mandates contained, *inter alia*, in the AC21;
3. Are Defendants acting contrary to law and neglecting to act in accordance with law in failing to articulate appropriate legal principles implementing AC21; and
4. Are Defendants interpreting the provisions of AC21 in accord with the ameliorative intent of that statute.

2. Possible Relief Available

Courts evaluating administrative delay under the six *TRAC* factors essentially balance, in the context of the statutory scheme, the harm caused by the delay against the agency's justification for the delay. *Telecommunications Research & Action Center v. FCC,* 750 F. 2d 70 (D.C. Cir. 1984). Courts are most likely to find delay unreasonable when it affects human health or welfare and is unjustified by the agency. The remedy for

unreasonable delay is usually one or more of the following: an injunction, a scheduling order, and continued judicial oversight to encourage the agency to act legally and promptly.

Equitable Remedies

In the interest of justice and fairness, courts can and should fashion relief to adequately address the unique exigencies of each case. Courts have fashioned various equitable remedies in cases involving unreasonable delay by agencies, especially where relief under APA is sought. Some examples of past remedies are listed below.

Requiring Schedules

The court held that a 10-year delay in resolving rate-making issues was unreasonable under section Administrative Procedure Act, 5 U.S.C. § 706(1) (2004). *Nader v. FCC*, 520 F.2d 182, 206 (D.C. Cir. 1975). The court then required the FCC to submit a schedule for orderly, expeditious resolution to the court within 30 days from the date of its order. *Id.* at 207. The FCC submitted the schedule and substantially adhered to it, apparently completing the proceeding within 17 months of the court's order. *See, MCI Telecommunications Corp. v. FCC,* 627 F.2d 322, 345 (D.C. Cir. 1980). Following the success of the scheduling remedy in *Nader*, the D.C. Circuit used the same approach in *MCI Telecommunications Corp.* and a slightly modified version in *TRAC*, 750 F.2d 70 (D.C. Cir. 1984). The *TRAC* court required the FCC to submit a schedule to the court within 30 days of judgment and to advise the court of its progress every 60 days thereafter. *TRAC,* 750 F. 2d at 81; *See also, Natural Resources Defense Council v. EPA,* 595 F. Supp. 1255, 1270 (S.D.N.Y. 1984); *Natural Resources Defense Council v. Jamison,* 815 F. Supp. 454 (D.D.C. 1992).

More recently, the court ordered the defendants to specify within 60 days "a date on which the United States Fish and Wildlife Service will begin work on a rule to revise the Cape Sable seaside sparrow's critical habitat designation and to provide an estimate as to how long that process will take." *Biodiversity Legal Fund. v. Norton,* 285 F. Supp. 2d 1, 17 (D.D.C. 2003).

Retaining Supervisory Jurisdiction

Courts have retained supervisory jurisdiction to ensure prompt action when judicial intervention is judged improper but delay is still found to be unreasonable. For instance, the *TRAC* court chose to retain supervisory jurisdiction over the matter in light of the agency's earlier failure to meet its previously self-declared deadlines. *TRAC*, 750 F. 2d at 70. In the matter of *In re* Center for Auto Safety, the court retained jurisdiction because, although past delays had been corrected, the court wanted to ensure elimination of the Agency's pattern of delay. *In re* Center for Auto Safety, 793 F.2d 1346, 1354 (D.C. Cir. 1986).

Imposing Deadlines

Court-imposed deadlines are generally disfavored, but in appropriate cases, courts do impose such deadlines. In a recent case, the Court required the agency (FERC) to "issue a judicially reviewable response to the 1997 petition within 45 days…." *In Re* American Rivers And Idaho Rivers United, 372 F.3d 413, 420 (D.C. Cir. 2004).

Relief Against Illegal Action or Inaction:

The remedy for illegal action or inaction presents a much simpler problem. Such action or inaction can be addressed by an appropriate writ, injunction or other similar

order of the Court. Relief is appropriate, *inter alia,* under Administrative Procedure Act, 5 U.S.C. § 706 (2004). The relevant provisions of the statute provide:

> § 706. Scope of review
> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—
> (1) compel agency action unlawfully withheld or unreasonably delayed; and
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.…
> 5 U.S.C. § 706 (2004)

3. Plaintiff ImmigrationPortal.Com Has Standing:

In addition to the submissions made by the Plaintiffs in the response dated April 28, 2004, Plaintiffs submit that ImmigrationPortal.Com possesses the required standing. *Capital Area Immigrant's Rights Coalition v. Dep't of Justice*, 264 F. Supp. 2d 14, 15 (D.D.C. 2003). Attached hereto as **Exhibit M** is an affidavit from Plaintiff, Rajkumar Kandasamy, a member of the Plaintiff ImmigrationPortal.Com. The affidavit demonstrates the numerous pro-bono efforts made by Plaintiff ImmigrationPortal.Com, an unincorporated association on behalf of the immigrant community at large. The affidavit clearly demonstrates that the interest ImmigrationPortal.Com seeks to protect is germane to the organization's purpose and by virtue of its purpose it would be the most natural adversary to Defendants in this lawsuit.

4. Permissive Intervention of Additional Individual Plaintiffs

In the case at bar, there are currently nine named Plaintiffs. In addition, there are at least 36 additional EBAOS applicants who are ready to intervene, if necessary, and if

permitted by the Court. Attached hereto is **Exhibit N**, an affidavit to that effect by Jitesh Malik, Esq., who is assisting counsel Rajiv S. Khanna in this litigation.

5. Plaintiffs Will Seek Leave to Amend the Complaint

During the pendency of the instant action, Defendants have implemented various changes in their practice, policy and procedures. Plaintiffs intend to seek leave of court to amend their Complaint, *inter alia*, to address the following matters.

1. Definition of Class

   The Plaintiff class may be defined without any subclasses as comprising:

   > All individuals 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.

2. Concurrent Adjudications

   Recent change in Defendants' policies, procedures and practice to concurrently adjudicate I-140 and AOS applications that are concurrently filed would require amendments in averments.

3. Elimination of Repeat Applications for Employment Authorization

   Recent change in Defendants' regulations to eliminate requirement that EBAOS applicants apply for employment authorization repeatedly would require amendments in averments.

4. Possible Elimination of Repeat Fingerprinting

   Defendants' statements during depositions that they can now store fingerprints, therefore repeated fingerprints will no longer be required, would require amendments.

5. Issuance of Illegal Memoranda and Policies

   Defendants have issued illegal memoranda and have so far failed to articulate important legal standards and have formulated illegal standards violative, *inter alia*, of Sec. 106(c) of AC21.

6. Change in Accounting

   Beginning about April 1, 2004, Defendants have consolidated I-140 and I-485 applications into one caseload;

7. If necessary, more potential putative class members will seek intervention in this matter.

8. Plaintiffs will seek to amend the Complaint to include the following matters in their prayer for relief requesting this Honorable Court to:

   a. Require the Defendants to present a definite schedule for elimination of delays in EBAOS and related petitions and applications;

   b. Require the Defendants to appropriately track and account for pending EBAOS and related petitions and applications;

   c. Direct Defendants to articulate legal standards for implementation of American Competitiveness in the 21st Century Act of 2000, and adequately publish the articulated legal standards;

   d. Require the Defendants to desist from unlawful and illegal acts and omissions;

   e. Retain supervisory jurisdiction over this matter to ensure compliance with the proposed schedule and other orders issued by the Court; and

f. Grant such other and further relief as deemed appropriate in the interest of justice.

Dated: 8 October 2004

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ImmigrationPortal.Com, et al., Plaintiffs, V. Tom Ridge, et al., Defendants.	Civil Action: 03-2606 Judge James Robertson

ORDER CERTIFYING CLASS

Upon consideration of Plaintiffs' Motion Pursuant to Fed. R. Civ. P. 23(c)(1) for Certification of Class Action, and submissions in opposition thereof, the Court finds that: (1) the class is so numerous that joinder of members is impracticable; (2) there are questions of law and fact common to the whole class; (3) the claims of the representative parties are typical of the claims of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

IT IS ACCORDINGLY ORDERED that Plaintiff's Motion Pursuant to Fed. R. Civ. P. 23(c)(1) for Certification of Class Action be and it is hereby GRANTED and that this action shall be maintained as a class action pursuant to the provisions of Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

IT IS ORDERED that the class represented by the named Plaintiffs be and is hereby certified as consisting 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.

IT IS FURTHER ORDERED that counsel for the Plaintiffs, Rajiv S. Khanna, is appointed counsel for the class.

Dated: _____, 2004

_____
JAMES ROBERTSON
United States District Court Judge

STATEMENT IN LIEU OF CERTIFICATE OF SERVICE

Pursuant to LCivR 5.4(d), a certificate of service is not required in this matter because the attached filing was made electronically and to the best of my knowledge, information and belief, all Defendants are notified through the Electronic Case Filing System.

Dated: 8 October 2004

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